

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
John C. Hayes, III, Circuit Court Judge

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S.C. Supreme Court

Opinion No. 2013-UP-020 (S.C. Ct. App. filed 1/16/2013)
10-GS-46-3461

THE STATE,

RESPONDENT,

V.

JASON RAY FRANKS

PETITIONER

Appellate Case No. 2013-000618

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jason Ray Franks, Appellant.

Appellate Case No. 2011-182106

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2013-UP-020
Submitted December 3, 2012 – Filed January 16, 2013

AFFIRMED

Appellate Defender Robert Michael Dudek, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General Julie Kate Keeney, all of Columbia;
and Solicitor Kevin Brackett, of York, for Respondent.

PER CURIAM: Affirmed¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in rejecting proffered testimony regarding the victim's physical abilities during a subsequent incident: *State v. Lewis*, 293 S.C. 107, 110, 359 S.E.2d 66, 67 (1987) ("The admission and rejection of proffered testimony is largely within the sound discretion of the trial [court]. Absent an abuse of discretion, [the trial court's] rulings will not be disturbed on appeal."); Rule 401, SCRE ("Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); Rule 402, SCRE ("Evidence which is not relevant is not admissible.")²

2. As to whether the trial court erred in allowing extrinsic evidence of a prior inconsistent statement of a witness in violation of Rule 613(b), SCRE: Rule 613(b), SCRE ("Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible."); *State v. Moses*, 390 S.C. 502, 522, 702 S.E.2d 395, 406 (Ct. App. 2010) ("Generally, where the witness has responded with anything less than an unequivocal admission, trial courts have been granted wide latitude to allow extrinsic evidence proving the statement." (citation and internal quotation marks omitted)).

AFFIRMED.

HUFF, THOMAS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

² Franks additionally argues in his brief that Rule 608(c), SCRE, applies; however, this argument is not preserved because Franks did not raise it at trial. *See State v. Jones*, 392 S.C. 647, 655, 709 S.E.2d 696, 700 (Ct. App. 2011) ("[A] party may not argue one ground at trial and an alternate ground on appeal." (citation and internal quotation marks omitted)).

THE STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JASON RAY FRANKS

APPELLANT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

Opinion No. 2013-UP-020

Appellate Case No. 2011-182106

PETITION FOR REHEARING

Petitioner seeks rehearing pursuant to Rule 221(a), SCACR because this Court may have overlooked the fact that the alleged victim's physical prowess was relevant under Rule 401, SCRE because it directly contradicted his claim at trial. As this Court will recall during Mullins' testimony he admitted he had cocaine in his system at the time of the incident or accident but he claimed it was "from two days earlier." R. 178, ll. 19-25. Mullins admitted he filed a lawsuit against appellant and Mullins testified: "I mean I didn't deserve to be run down like a dog in the road, or twenty-one stitches in my head, my teeth knocked out, my shoulder permanently dislocated don't you think I deserve something." R. 182, ll. 1-18. *Mullins denied that he walked around after the accident, he and denied he gave appellant "the finger": "I was just hit at 50 miles an hour or*

60. *I'm not Superman.*" R. 182, l. 14 – 183, l. 5. Mullins said he was badly hurt when appellant hit his moped and he had to undergo rehab treatment. R. 185, ll. 14-18.

When defense counsel began questioning him about an incident that happened 290 miles away in Clay, West Virginia, the solicitor objected. R. 184, ll. 6-21. Appellant proffered the testimony about what happened two weeks after this incident in West Virginia.

The following occurred on the proffer of Mullins:

Q. You weren't too bad to get into a physical altercation with two women at the same time, right?

A. There wasn't an altercation.

Q. And you weren't hurt too bad to physically drag a woman up a flight of steps by her hair?

A. That didn't happen.

Q. And you weren't hurt too badly to fight off the other woman, Ms. Deborah Nelson, while that was going on?

A. That's not true.

Q. And you weren't hurt too bad – now, when the police came for you, you were able to run away from the police, right?

A. (No response)

THE COURT: *Did you run away from the police?*

THE WITNESS: *Yes, sir.*

BY MR. BARROWCLOUGH:

Q. *From an officer Davis?*

A. *Right.*

Q. *And you weren't hurt too bad when they tackled you and you fight him off, right?*

A. *I was never tackled.*

Q. And you weren't hurt too bad to outrun him and escape, right?

A. I did outrun him, yes.

Q. And then you weren't hurt too bad to travel another 290 miles back to South Carolina in your car?

A. I wasn't -- I didn't travel. I wasn't driving, no.

Q. But, I mean, you traveled?

A. Right.

R. 186, l. 8 – 187, l. 13. (emphasis added).

Defense counsel argued that Mullins had testified about how badly he was hurt -- that his teeth were knocked out and he went through rehabilitation -- *and the defense was entitled to show the jury that Mullins was quite capable of physical activity two weeks after this incident.* The solicitor argued it was irrelevant, and the judge ruled he agreed this evidence was irrelevant. R. 188, ll. 6-22. The judge reasoned: "It might have something to do with his damages claim in a civil trial, but the issue here is whether your client ran over this man. And, if so, did he suffer injuries from it. Not the degree of injuries -- I know he went quite into detail as to what injuries he had, but I find it's -- you are on the record for grounds for appeal, but I find it's not relevant." R. 188, l. 22 – 189, l. 4.

Later during the trial the defense was also precluded from having the paramedic who arrived at the scene testify he was told that Mullins was "ambulatory at the scene prior to EMS arrival" but Mullins was told bystanders to lie down. R. 209, l. 7 – 220, l. 12.

The issue on appeal again was:

The Court erred by refusing to allow impeachment evidence on cross-examination that complaining witness Mullins was involved in an incident in West Virginia a few weeks after this incident which led to Mullins outrunning police officers where Mullins on direct examination claimed appellant intentionally hit him with his car

while Mullins was on his moped and severely injured him *since this was relevant impeachment evidence given Mullins' claims on direct examination.*

In South Carolina the scope of **relevant cross-examination is broad.** In State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976) our Supreme Court said that "anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony." State v. Brewington 267 S.C. at 101, 226 S.E.2d at 249. See, also, State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002); Davis v. Alaska, 415 U.S. 308 (1974).

The credibility of Mullins in this case was key, and appellant had the right to show the jury Mullins was not credible with this evidence that was in direct response to his direct testimony. See State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001). This Court stated in footnote two of its opinion that the Rule 608 (C), SCRE argument was not preserved. However, and respectfully, it is inherent in defense counsel's desire to impeach Mullins that he wanted to show the jury that Mullins had a motive to misrepresent the truth and to show his bias given his direct examination testimony. The trial judge understood why the defense wanted to show the jury Mullins was misrepresenting the truth. See State v. Kromah, Op. No. *, Shearouse's Adv. Sh. #* (filed *).

Here, again the state presented a case where Mullins said he was deliberately hit by appellant in his SUV while Mullins was defenseless on his moped. Appellant *attempted to murder* Mullins was the state's case. Appellant had as much right to show Mullins' bias and motive to misrepresent the truth in this criminal case *as he did in the civil action* where the judge ruled he would have allowed this impeachment evidence. This Court should grant rehearing on this issue.

Issue two

This Court may have overlooked the fact a proper foundation was never laid under Rule 613 (b), SCRE for this impeachment evidence. As this Court will recall the Rule 613 (b), SCRE issue concerned fourteen-year-old Taylor [J.] who lived next door to Valenti with her mother. Appellant was dating her mother. R. 67, l. 17 – 69, l. 2. On the afternoon of June 7, 2010, at about two o'clock, she was home with her mother and appellant. [J.] testified on direct examination by the solicitor that she did not remember appellant saying: **"I'm going to get him"** when Mullins rode by their house on his moped. R. 69, ll. 14-22; R. 70. The following then occurred on direct examination of Taylor by the solicitor:

Q. Do you remember telling your grandmother Pat Johnson that Jason saw a man on the moped, left, ran out of the house and said that "I'm going to get him" and jumped in your mom's car? Do you remember saying that?

A. I remember when he came back in, he said that he had seen him leaving **and he was going to wait a few minutes so he didn't run into him to leave.**

Q. **Taylor, Jason Franks didn't say that, did he?**

A. **Yes, sir, I think he did.**

Q. Who told you to say that, Taylor?

A. Nobody.

R. 70, ll. 10-20. (emphasis added)

Taylor's mother, Patricia Johnson, also testified for the State. R. 73, l. 2 – 74, l. 23. Johnson said that appellant was angry with Mullins over his statements about Mullins making him "my bitch" in prison, and she said appellant had threatened to hurt Mullins by stabbing him. Johnson

testified she told appellant to “drop it,” and that it was not worth getting in trouble over. R. 76, ll. 2-25.

The solicitor then stated he wanted to impeach Taylor through Patricia Johnson under Rule 613(b), SCRE. Defense counsel stated the solicitor **had not laid the foundation as to “time and place” with Taylor and the judge agreed.** R. 77, l. 1 – 78, l. 12.

After the jury was sent out the solicitor claimed Taylor said this “after the incident, on the telephone.” Defense counsel again objected **this was not specific as the rule of evidence mandated, and it could have been “a day, a week, a month, or six months after the incident.”** The judge disagreed and ruled that **“it being said over the telephone” was sufficient for purposes of Rule 613(b), SCRE.** R. 79, l. 18 – 80, l. 7. (emphasis added).

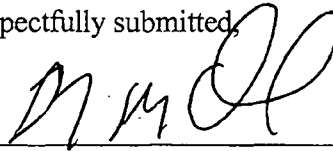
Over objection Johnson then claimed Taylor told her that: “Mr. Franks saw Mr. Mullins leave from his neighbor’s house and get on his moped. And she said when Jason saw that happen, he said *‘I’m going to get him.’*” R. 81, ll. 5-11. (emphasis added).

On cross-examination Johnson acknowledged she never gave the police a statement and she had not talked to the defense about the case. She was hostile to appellant and the defense team. R. 81, l. 22 – 82, l. 21.

Taylor was **never** told of the alleged time and place she allegedly made this statement as mandated by Rule 613(b), SCRE. This Court – respectfully – in its summary paragraph merely states the applicable law without any application of it to the facts this case. The truth is that the solicitor **did not comply** with the rule because he never told the witness the time and place she supposedly made this statement to him. This is not a difficult rule to comply with, and in fairness it was unfair to Taylor to impeach her with extrinsic evidence without telling her when and where she allegedly made this statement.

The judge initially correctly ruled that the solicitor had not laid a proper foundation for this impeachment evidence. He erred in changing his mind because the solicitor's assertion that the statement was allegedly made over the telephone did not add anything of substance to the deficiency of the foundation for the admissibility of this statement under Rule 613 (b), SCRE. Rehearing should be granted on this issue as well.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

This 31st day of January, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

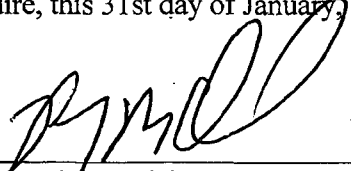
V.

JASON RAY FRANKS

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Julie Kate Keeney, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, Esquire, this 31st day of January, 2013.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 31st day
of January, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

The South Carolina Court of Appeals

The State, Respondent,

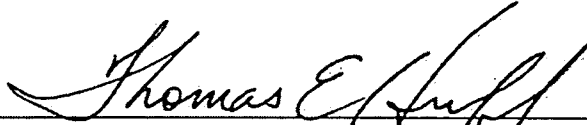
v.

Jason Ray Franks, Appellant.

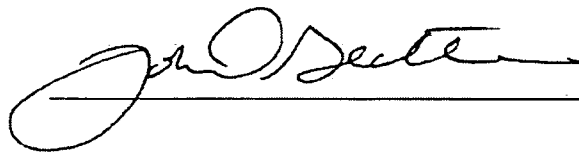
Appellate Case No. 2011-182106

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc:

Robert Michael Dudek

Julie Kate Keeney

FEB 21 2013

FILED

21 Feb 2013

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON RAY FRANKS

APPELLANT

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS
3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 JASON FRANKS,) 2010-GS-46-03461
7 DEFENDANT.) DECEMBER 13, 2010
YORK, SOUTH CAROLINA

8 (VOLUME I)
9

10 B E F O R E:

11 THE HONORABLE JOHN C. HAYES, III, JUDGE. ; And a Jury.
12

13
14 A P P E A R A N C E S:

15 E.B. SPRINGS, IV, ASSISTANT SOLICITOR
16 ATTORNEY FOR THE STATE

17 B.J. BARROWCLOUGH, ASSISTANT PUBLIC DEFENDER
18 ERIK DELANEY, ASSISTANT PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDANT

19
20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

1 please.

2 OFFICER DAVID GIBSON, having been first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. SPRINGS:

5 Q. Trooper, there is a hand held microphone there. If you
6 would, pick it up. It's a supplement to the regular
7 amplification, which doesn't work well.

8 Tell us all your name, sir.

9 A. David Lamar Gibson.

10 Q. Who do you work for?

11 A. The South Carolina Highway Patrol.

12 Q. And were you on duty about two o'clock in the afternoon
13 of June 7th of this year?

14 A. Yes, I was.

15 Q. Were you dispatched to Gold Hill Road in the Tega Cay
16 area about two o'clock on June 7th?

17 A. Yes.

18 Q. And when you got to the scene, were there any other
19 police officers there that got there before you?

20 A. Yes.

21 Q. What agency were they from?

22 A. Tega Cay Police Department.

23 Q. Okay. And did you see some evidence of an accident or
24 a wreck?

25 A. Yes.

1 Q. Was the wreck outside the Tega Cay city limits?

2 A. Yes.

3 Q. So the Tega Cay officers were just hanging out?

4 A. They got there before, yes.

5 Q. And was there any injured person still on the scene
6 when you got there?

7 A. Yes.

8 Q. Was the injured person being cared for anyone?

9 A. Yes, sir, EMS was there.

10 Q. Who was the injured person?

11 A. Mr. Mullins.

12 Q. Edward Mullins?

13 A. Yes.

14 Q. Was he when you got there on the scene standing up,
15 laying down, sitting down? Describe the position of his
16 body.

17 A. He was laying down and EMS was already tending to him
18 on the shoulder of the road, between the road and the
19 sidewalk.

20 Q. Okay. Completely laying down; head down, feet down?

21 A. Yes.

22 Q. All right.

23 Did you look at Mr. Mullins?

24 A. Yes.

25 Q. How did he look?

1 A. He had road rash, cuts, bleeding. Pretty bad.

2 Q. Had the ambulance gotten there when you arrived?

3 A. Yes, the EMS was already there.

4 Q. And did you see what appeared to be any motor vehicle
5 that had been involved in the wreck?

6 A. Yes, a moped, a red moped.

7 Q. Okay. Did you see any other vehicles that appeared to
8 have been in a wreck?

9 A. No, sir.

10 Q. I'm showing you what's been marked for State's Exhibit
11 No. 16 for identification. Do you recognize that?

12 A. Yes.

13 Q. Was is that?

14 A. That's the moped that was found at the scene. Mr.
15 Mullins moped.

16 Q. Okay. All right. Do you know who set it up on its
17 kickstand?

18 A. No, sir, I do not.

19 Q. Is it an accurate picture of that moped as you saw it
20 there at the scene of the crash?

21 A. Yes, sir.

22 MR. SPRINGS: Your Honor, we do offer State's 16
23 into evidence.

24 MR. DELANEY: No objection, judge.

25 THE COURT: In without objection.

1 BY MR. SPRINGS:

2 Q. Was Mr. Mullins conscious?

3 A. Yes.

4 Q. Did you look at Mr. Mullins body?

5 A. Yes.

6 Q. I'm showing you what's been marked as State's Exhibit
7 91 for identification. Do you recognize what that -- who
8 that is?

9 A. Yes.

10 Q. State's Exhibit 91, who is the person in that picture?

11 A. Mr. Mullins.

12 Q. Is that picture a fair representation of some part of
13 his body?

14 A. Yes.

15 Q. Which part of his body?

16 A. That's his head.

17 Q. Okay. Was his head injured?

18 A. Uh-huh.

19 Q. Was any other part of his body injured?

20 A. He had some cuts and abrasions on his arms, from what I
21 I can recall.

22 Q. Okay. Is State's Exhibit 91 a fair and accurate
23 representation of what his head looked like?

24 A. Yes.

25 MR. SPRINGS: Your Honor, we do offer State's

1 Exhibit No. 91 into evidence.

2 MR. DELANEY: No objection.

3 THE COURT: In without objection.

4 MR. SPRINGS: We ask to publish it to the jury.

5 THE COURT: All right.

6 MR. SPRINGS: Mr. Bailiff, would you ask the
7 jurors -- to just pass this around from juror to juror until
8 it comes back to you, a picture of Mr. Mullins.

9 BY MR. SPRINGS:

10 Q. So as a highway patrol trooper, do you investigate
11 accidents a good bit?

12 A. Yes.

13 Q. How many vehicles did it appear to you had been
14 involved in this crash out there on Gold -- was it Gold Hill
15 Road?

16 A. Yes, it was Gold Hill Road.

17 Q. How many vehicles?

18 A. Two appeared to be.

19 Q. Okay. Now, you say there was only the one vehicle, the
20 moped, on the scene?

21 A. Yes.

22 Q. You didn't have a second vehicle?

23 A. No.

24 Q. Did you have a second driver on the scene?

25 A. No.

1 Q. The moped, did you see any skid marks or gouge marks or
2 other marks relating to the moped that appeared, in your
3 opinion, to have had come from the wreck?

4 A. Yes.

5 Q. What kind of marks?

6 A. There was gouge marks in the roadway from the picture
7 of the moped, the brake pedal, clutch pedal, and stuff -- or
8 peg pedal.

9 Q. Okay. Keep your voice up. So these were what kind of
10 marks?

11 A. Gouge marks.

12 Q. Gouge marks in the asphalt of the road?

13 A. Yes.

14 Q. How long did those gouge marks run down the roadway?

15 A. Estimated about 75 yards to a 100 yards.

16 Q. And did they lead to the moped?

17 A. Not to where the moped was, when I arrived on the
18 scene, no.

19 Q. Did they lead to the vicinity of where the moped had
20 been?

21 A. Yes.

22 MR. DELANEY: Your Honor, I object to the leading
23 questions at this point.

24 THE COURT: Rephrase your question. Don't ask
25 leading questions.

1 BY MR. SPRINGS:

2 Q. How close were the gouge marks to the moped as it was
3 when you found it?

4 A. It was probably a couple feet away.

5 Q. Did you take a good look at the moped --

6 A. Yes, sir.

7 Q. -- pretty close?

8 Was there any blood on the roadway?

9 A. Yes.

10 Q. Were you there when Mr. Mullins was put into the
11 ambulance?

12 A. Yes, sir, I was.

13 Q. Did he walk to the ambulance or get there some other
14 way?

15 A. He was placed on a stretcher and placed in the
16 ambulance.

17 Q. Okay. I'm handing you a lot of pieces of paper. I
18 want you to put the mike down. Go through -- take your
19 time, because after you have looked at all of them, I'm
20 going to ask you if you recognize what they are a picture
21 of.

22 A. (Witness reviewing photographs)

23 Q. All right. Now, you said you saw gouge marks on the --

24 A. Yes.

25 Q. -- asphalt, that ran for about how many yards down the

1 road?

2 A. 75 to a 100.

3 Q. Okay. And they terminated in the --

4 A. In the vicinity of the moped, where the moped was.

5 Q. Okay. All those pictures I have handed you, what thing
6 are they a picture of?

7 A. What's that question?

8 Q. What are those all a picture of?

9 A. Damage to the moped.

10 Q. Okay. The moped that you saw out there at the scene?

11 A. Yes.

12 Q. And are they accurate pictures of various damage to the
13 moped?

14 A. Yes.

15 Q. Nothing phony about them? They are the way the moped
16 looked that day?

17 A. Yes.

18 Q. Looking at the pictures, looking at the gouge marks on
19 the roadway, what do you think had happened to the moped?

20 MR. DELANEY: Your Honor, I object at this time.

21 THE COURT: I sustain the objection.

22 BY MR. SPRINGS:

23 Q. Trooper, do you have some training in accident
24 investigation?

25 A. Yes.

1 Q. Are you trained to look for skid marks and gouge marks?

2 A. Yes.

3 Q. And do you have actual on-the-job experience
4 investigating traffic accidents?

5 A. Yes, sir.

6 Q. And have you ever seen gouge marks similar to what you
7 saw in the roadway on June 7th --

8 A. Yes.

9 Q. -- before in your experience?

10 A. Yes.

11 Q. Pursuant to your training and your experience, what put
12 those many yards of gouge marks on the roadway?

13 A. From the moped where it traveled down the side -- on
14 the side going down the road from the metal pieces.

15 Q. Okay.

16 MR. SPRINGS: Your Honor, at this time we do offer
17 State's 23, 22, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33,
18 34, 35, 36, 43, 44, 45, 55, 48, 49, 47, 46, 40, 37, 38, 41,
19 42, 39, 18, 17, 111, 19, and State's 20. We offer those
20 into evidence.

21 MR. DELANEY: No objection, judge.

22 THE COURT: In without objection.

23 BY MR. SPRINGS:

24 Q. I'm showing you what's been marked as State's Exhibit

25 15. Do you recognize what that's a picture of?

1 A. Yes.

2 Q. What is it?

3 A. It's asphalt with blood speckles on it.

4 Q. And where was that taken?

5 A. Gold Hill Road.

6 Q. At the location of this crash?

7 A. Yes.

8 Q. Is that an accurate picture of the blood in the
9 roadway?

10 A. Yes.

11 MR. SPRINGS: Your Honor, we do offer State's
12 Exhibit 15 into evidence.

13 MR. DELANEY: No objection.

14 THE COURT: In without objection.

15 BY MR. SPRINGS:

16 Q. I'm showing you what's been marked State's Exhibit 13
17 and 14. Do you recognize those pictures?

18 A. Yes.

19 Q. And what are they pictures of?

20 A. It's the pictures of the collision scene or the area
21 where the collision happened.

22 Q. Okay. And are they accurate pictures of the collision
23 scene?

24 A. Yes.

25 Q. Is your car actually in one of those pictures?

1 A. Yes.

2 Q. Okay. Let me show you what's been marked State's
3 Exhibit 4 and 6 and 12. Do you recognize what's in those
4 pictures?

5 A. Yes, this is the same roadway.

6 Q. Okay. From the crash scene?

7 A. Yes.

8 Q. And State's Exhibit 13 and 14, those are accurate
9 pictures of what the crash scene looked like?

10 A. Yes.

11 MR. SPRINGS: Your Honor, we do offer into
12 evidence 13 and 14.

13 MR. DELANEY: Without objection.

14 THE COURT: In without objection.

15 BY MR. SPRINGS:

16 Q. States 4 and 6 and 12, are those accurate pictures of
17 the roadway out at the crash scene?

18 A. Yes.

19 MR. SPRINGS: We do offer State's Exhibit 12, 6
20 and 4 into evidence, Your Honor.

21 MR. DELANEY: No objection.

22 THE COURT: In without objection.

23 BY MR. SPRINGS:

24 Q. Did you determine in your opinion where the initial
25 impact was for this crash?

1 A. Yes.

2 Q. And did you determine to your satisfaction where the
3 final resting point of the moped was?

4 A. Yes.

5 Q. Let's talk about the final resting point of the moped.
6 Where was it in relation to where you found it sitting up?

7 A. When I got there, it was in the median between -- in
8 the turn lane.

9 Q. Okay. Was the moped -- how far was the moped from the
10 final resting point of the moped?

11 A. It was a few feet. It finished in the lane beside
12 where they moved it to, where they moved it.

13 Q. Okay. I want you to put that mike down and come on
14 down here to me.

15 MR. SPRINGS: Could we dim the lights, please?

16 (Witness off the witness stand)

17 BY MR. SPRINGS:

18 Q. And let's look at State's Exhibit 14. There is State's
19 Exhibit 14. If you would -- you have got a pen.

20 Does State's Exhibit 14 show where you think the first
21 impact, the initial impact of this crash was?

22 A. Yes.

23 Q. Would you point to it, please?

24 A. It would be right in -- about right in there. Right
25 near that sign. Even with that sign and that pole.

1 Q. Okay. Is that looking down into Tega Cay or looking
2 from Tega Cay up towards Highway --

3 A. That picture was taken towards Tega Cay.

4 Q. Looking into Tega Cay, okay.

5 Let's look at State's Exhibit 13 now. If you would,
6 point out the moped.

7 A. The moped is actually in front of my patrol car.

8 Q. Is that the moped that you just pointed to?

9 A. Yes.

10 Q. And that's your police car behind it?

11 A. Yes.

12 Q. Okay. And the final resting point of the moped, where
13 would it have been?

14 A. It was in the what we call the number one lane, which
15 is the fast lane. It ended up somewhere right there. That
16 would have been essentially moved to the left for
17 convenience.

18 Q. Okay. So the initial point of impact, is it on this
19 picture that we are looking at now?

20 A. No. The initial impact?

21 Q. Right.

22 A. I don't believe it would be.

23 Q. Okay.

24 A. If it would, by this picture, it would have to be --

25 Q. I'm going to ask you to take this pointer and actually

1 go over and point --

2 A. Where we did find the initial point of impact, it
3 probably would have been over in this area.

4 Q. Okay.

5 A. I don't know if this picture actually shows me where
6 exactly.

7 Q. Okay. Okay. Fair enough. Fair enough. Thank you.

8 Let's look at these pictures. This is State's Exhibit
9 12. Is that the same roadway out there?

10 A. Yes.

11 Q. Okay. State's Exhibit 6, let's see if we can zoom in
12 on that.

13 There is a sign there. Do you recall that sign?

14 A. Yes.

15 Q. Where is that sign in relation to the point of the
16 first impact of the crash?

17 A. It was just about even with that sign and the telephone
18 pole, right there beside it.

19 Q. Okay. All right. Trooper, if you would, I will have
20 you retake your seat.

21 (Witness back on the witness stand)

22 BY MR. SPRINGS:

23 Q. Did a sheriff's deputy come out to the scene to take
24 the case?

25 A. Yes.

1 Q. Which deputy was it, do you remember?

2 A. Officer Sanchez.

3 Q. Do you recognize this fellow?

4 A. Yes, that's the deputy.

5 Q. That's the deputy. You don't remember his name?

6 A. I'm not --

7 Q. When the deputy got there to take the case -- let's
8 talk -- you were there?

9 A. Yes.

10 Q. The Tega Cay officers, it wasn't in their jurisdiction,
11 right?

12 A. No.

13 Q. Why didn't you take the case? You are the highway
14 patrol.

15 A. Intentional act. We do not work intentional acts, as
16 far as what happened on the roadway.

17 Q. Okay. Hold the mike up a little bit.

18 The highway patrol by policy doesn't take intentional
19 acts?

20 A. We do not work intentional acts, no.

21 Q. You just -- what did you investigate?

22 A. The collision that's unintentional.

23 Q. Accident?

24 A. Accidents.

25 Q. Okay. When this deputy got there. Did you tell them

1 what you knew about it?

2 A. Yes.

3 Q. Did you point out the things that you had found?

4 A. Yes.

5 Q. And that roadway we have been looking at there, what's
6 the name of the roadway?

7 A. Gold Hill Road.

8 Q. Is all that, that whole scene from the beginning of the
9 first point of impact, all the gouge marks, the ending, is
10 it all in York County?

11 A. Yes.

12 Q. From what you had out there - point of impact, final
13 resting point, looking at where Mr. Mullins was laying on
14 the ground, the gouge marks - did you have an opinion as to
15 how fast you think --

16 MR. DELANEY: Your Honor, I have an objection at
17 this time.

18 THE COURT: You object to him giving an opinion as
19 to?

20 MR. DELANEY: As far as the officer giving his
21 opinion.

22 THE COURT: As to speed based on gouge marks?

23 MR. DELANEY: Yes, Your Honor.

24 THE COURT: Lay a better foundation. You have
25 already talked a little bit about that, but -- go ahead.

1 BY MR. SPRINGS:

2 Q. From everything that you had - from looking at the
3 moped, looking at the gouge marks, looking at the posted
4 speed limit - did you have enough factors there that you
5 could make an opinion pursuant to not just your common
6 sense, but your training and experience as to how fast you
7 thought the moped probably was going at the time of the
8 crash?

9 A. Yes.

10 Q. In your opinion, how fast would the moped be going?

11 A. My opinion, at 25 to 35 miles an hour.

12 Q. Okay. Looking at all those factors - gouge marks,
13 point of initial impact, where that moped ended up, the
14 posted speed limit - using your common sense and your
15 training and your experience, how fast do you think the
16 vehicle that crashed into that moped was going at the time
17 of the crash, of the impact?

18 A. I would estimate 45 to 55 miles an hour.

19 Q. Now, the moped, you saw it. Where was it hit; from the
20 side? From the front, from the back?

21 A. From the rear.

22 Q. Trooper, I thank you. The defense attorneys may have
23 some questions for you.

24 CROSS EXAMINATION BY MR. DELANEY:

25 Q. Good afternoon, trooper.

1 A. Good afternoon.

2 Q. And Trooper Gibson, you have been a highway patrol
3 officer for how long?

4 A. Four years.

5 Q. Four years.

6 And before becoming a highway patrol officer, you went
7 to the Criminal Justice Academy in Columbia, is that
8 correct?

9 A. Yes.

10 Q. And that is where you received your training to become
11 a highway patrol officer, right?

12 A. Yes.

13 Q. And that is where you received your training in how to
14 investigate cases, right?

15 A. Yes.

16 Q. And from that training you learned to be detailed,
17 right?

18 A. Yes.

19 Q. Learned to be thorough, right?

20 A. Yes.

21 Q. Learned to be meticulous, correct?

22 A. Yes.

23 Q. And this is important when you are investigating at an
24 accident scene, because you want to know who was involved in
25 the accident, right?

1 A. Yes.

2 Q. How the accident happened?

3 A. Yes.

4 Q. Why the accident happened, right?

5 A. Yes.

6 Q. And from your training at the academy, you learned the
7 importance of various types of evidence, correct?

8 A. Yes.

9 Q. And this would include physical evidence?

10 A. Yes.

11 Q. Forensic evidence?

12 A. Yes.

13 Q. Sometimes medical evidence?

14 A. Yes.

15 Q. And from your training and experience, you know this
16 type of evidence may be left at the scene, right?

17 A. Yes.

18 Q. And this type of evidence can tell you what happened,
19 right?

20 A. Yes.

21 Q. How it happened, right?

22 A. Yes.

23 Q. Why it happened?

24 A. Yes.

25 Q. And you search for this type of evidence as soon as you

OFFICER DAVID GIBSON - CROSS BY MR. DELANEY

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1 begin an investigation, correct?

2 A. Yes.

3 Q. And also from the academy you learned the importance of
4 collecting evidence, right?

5 A. Yes.

6 Q. Preserving evidence?

7 A. Yes.

8 Q. Processing evidence?

9 A. Yes.

10 Q. And, of course, your training has taught you to locate
11 witnesses or bystanders, right?

12 A. Yes.

13 Q. To talk, interview them, right?

14 A. Yes.

15 Q. Obtain statements?

16 A. Yes.

17 Q. Written statements?

18 A. Yes.

19 Q. And it's preferable to talk to a witness or a bystander
20 right after an accident takes place, right?

21 A. Yeah.

22 Q. It's preferably when it's still fresh in their mind,
23 right?

24 A. Yes.

25 Q. But if that's not possible, you can get contact

1 information, right?

2 A. Yes.

3 Q. And when you are investigating at an accident scene,
4 you want to know whether alcohol and/or drugs were involved,
5 right?

6 A. Yes.

7 Q. Because alcohol and/or drugs can cause an individual to
8 operate a vehicle recklessly, right?

9 A. Yes.

10 Q. Driving under the influence of alcohol and/or drugs can
11 cause a person's judgment to be affected, right?

12 A. Yes.

13 Q. Cause a person's perception to be affected?

14 A. Yes.

15 Q. Can cause a person's reflexes to be affected?

16 A. Yes.

17 Q. And it's against the law?

18 A. Yes, sir.

19 Q. And while at the Criminal Justice Academy, you also
20 learned the importance of filling out reports, right?

21 A. Yes.

22 Q. And your training has taught you to be as accurate and
23 detailed as possible when you are filling out these reports,
24 right?

25 A. Yes.

1 Q. And when you are dispatched to an accident scene, these
2 reports can include incident reports, right?

3 A. Yes.

4 Q. Supplemental reports?

5 A. Yes.

6 Q. Accident reports?

7 A. Yes.

8 Q. And that would be the South Carolina Collision Report
9 Form, right?

10 A. The TR-310, is that what you are -- yeah.

11 Q. Yeah, the TR-310, yes, sir.

12 And included in the South Carolina Traffic Collision
13 Report form, you can -- there is areas where you -- sections
14 where you can do drawings, right?

15 A. Yes.

16 Q. You can do sketches, right?

17 A. Yes.

18 Q. And your training has taught you the importance of
19 these drawings and these sketches when you are trying to
20 determine what happened at an accident scene, correct?

21 A. Yes.

22 Q. And your training has taught you how important it is to
23 take pictures when you are trying to determine what happened
24 at an accident scene, right?

25 A. Yes.

1 Q. And all this training and experience that you have
2 assists you when you arrive at an accident scene, correct?

3 A. Yes.

4 Q. Now, trooper, June 7th, 2010, we have already heard you
5 were dispatched -- you received a dispatch that an accident
6 occurred on Gold Hill Road in Tega Cay, right?

7 A. Yes.

8 Q. And this was a little after two p.m.?

9 A. Yes, sir.

10 Q. And per this call from dispatch you responded to 1838
11 Gold Hill Road, right?

12 A. Yes, sir, I believe that was the nearest address.

13 Q. And this area of Gold Hill Road is a heavily traveled
14 road, right?

15 A. Yes.

16 Q. There are -- this is four lanes -- branches out into
17 four lanes, right?

18 A. Yes.

19 Q. There are businesses located on the side of the road,
20 right?

21 A. Yes.

22 Q. There is many residential communities near this area,
23 is that right?

24 A. Yes.

25 Q. And this is the only way in and out of Tega Cay, right?

1 A. Yes.

2 Q. And you testified that when you arrived there was Tega
3 Cay police officers there?

4 A. Yes.

5 Q. And upon arrival at 1838 Gold Hill Road, it was your
6 job to determine who was involved in this accident, right?

7 A. Yes.

8 Q. It was your job to determine how this accident
9 happened, right?

10 A. Yes.

11 Q. Your job to determine why this accident happened,
12 right?

13 A. Yes.

14 Q. And when you arrived, you had a conversation with Eddie
15 Mullins, correct?

16 A. Yes.

17 Q. And you asked him some questions, right?

18 A. Yes.

19 Q. And he was able to speak with you, right?

20 A. Yes, he did speak.

21 Q. And you understood what he was saying, right?

22 A. Yes. If I remember correctly, yes.

23 Q. When had you this conversation, you didn't learn he had
24 any broken bones, right?

25 A. No.

1 Q. Any fractures?

2 A. No, sir.

3 Q. You didn't observe any broken bones, right?

4 A. No, sir.

5 Q. Any fractures?

6 A. No, sir.

7 Q. He was not having difficulty, problems breathing,
8 right?

9 A. Not to my knowledge, no. I couldn't remember that.

10 Q. It was not a life threatening situation, correct?

11 A. Not that I know of.

12 Q. In fact, you learned just prior to your arrival that
13 Eddie Mullins was up walking around before you came, right?

14 A. I did not know that, no.

15 Q. You didn't know that?

16 A. No, sir.

17 Q. And when you had this conversation with Eddie Mullins,
18 you never learned about his reckless driving that day, did
19 you?

20 A. No.

21 Q. Never learned about his changing lanes that day, did
22 you?

23 MR. SPRINGS: I'm going to object. He's injecting
24 facts into evidence that aren't in evidence.

25 THE COURT: I'll overrule the objection. Go

1 ahead.

2 BY MR. DELANEY:

3 Q. Eddie Mullins --

4 THE COURT: Well, wait just a minute. I sustain
5 the objection. Let's stick to what he knows, not what he
6 doesn't know.

7 MR. DELANEY: Okay.

8 BY MR. DELANEY:

9 Q. Trooper, in this case you didn't prepare an incident
10 report, correct?

11 A. No, I was not the investigating officer..

12 Q. Didn't prepare a supplemental report, correct?

13 A. No, sir.

14 Q. Or a South Carolina Traffic Collision Report form,
15 correct?

16 A. No.

17 Q. And that would be the TR-310?

18 A. Yes.

19 Q. And the TR-310 is a very detailed report, right?

20 A. Yes.

21 Q. It's a report that can contain a lot of information,
22 correct?

23 A. Yes.

24 Q. And it can tell you about time, right?

25 A. Yes.

1 Q. Date, who was involved.

2 There is a special section in here, as we talked about,
3 where drawings and sketches can be done, right?

4 A. Yes.

5 Q. There is a -- VIN numbers can be put in here, correct?

6 A. Yes.

7 Q. The estimated speeds could be put in here, correct?

8 A. Yes.

9 Q. Are you telling this jury that you prepared no report
10 of what happened that day, correct?

11 A. Yes.

12 Q. How it happened that day, right?

13 A. No.

14 Q. Trooper Gibson, it appears that you were on the scene
15 for approximately one hour and 17 minutes. Does that sound
16 right?

17 A. Yes, sir.

18 Q. Okay. And you didn't take any pictures of the scene?

19 A. No, sir.

20 Q. You didn't take any pictures of what you looked at --
21 or those aren't pictures that you took, right?

22 A. No, sir.

23 Q. Do you have any idea who took those pictures?

24 A. No.

25 Q. And you didn't take any video of the scene, right?

1 A. No, sir.

2 Q. And your car is equipped with an in-car recording
3 system, correct?

4 A. Yes.

5 Q. And we don't have any video here today, right?

6 A. No.

7 Q. And you testified you didn't do a drawing, right?

8 A. No, sir.

9 Q. Didn't do a sketch?

10 A. No.

11 Q. And, trooper, you took no pictures of these gouge
12 marks, right?

13 A. No.

14 Q. It's 75 to a 100 yards of these gouge marks you didn't
15 take any photographs, right?

16 A. No.

17 Q. And the pictures that we saw up here earlier, they
18 didn't show any gouge marks, did they?

19 A. No. They are not close enough, no.

20 Q. The only thing we saw going across the road is either a
21 shadow or reflections of the wires above, correct?

22 A. Yeah, I reckon. I don't know. I didn't see that at
23 the scene.

24 Q. And Trooper Gibson, there is a specialized unit within
25 the highway patrol that has specialized training in

1 determining what happens in an accident, right?

2 A. Yes, sir.

3 Q. They have specialized training to determine how an
4 accident happened, right?

5 A. Yes, sir.

6 Q. Who may have been at fault in the accident, right?

7 A. Yes, sir.

8 Q. And this is the MAIT team, correct?

9 A. That is correct.

10 Q. And that stands for the multi-disciplinary accident
11 investigation team, correct?

12 A. Yes.

13 Q. And members of this unit are trained in accident
14 investigation, right?

15 A. Yes.

16 Q. Trained in accident reconstruction, right?

17 A. Yes.

18 Q. And the MAIT team, they have state of the art equipment
19 to reconstruct an accident, right?

20 A. Yes, sir.

21 Q. They have the latest technology, right?

22 A. Yes, sir.

23 Q. And MAIT team investigations are thorough, right?

24 A. Yes, sir.

25 Q. Detailed, right?

1 A. Yes.

2 Q. And Trooper Gibson, you were not a member of the MAIT
3 team, correct?

4 A. I am actually a MAIT associate.

5 Q. You are a MAIT associate?

6 A. Yes, sir.

7 Q. And you contacted no one from this specialized unit to
8 come out to the scene on June the 7th of 2010, correct?

9 A. No.

10 Q. During your conversations with Mr. Mullins you didn't
11 learn he was drinking alcohol?

12 A. No.

13 Q. Didn't learn he was using cocaine?

14 MR. SPRINGS: I'm going to object. There is no
15 facts in evidence.

16 THE COURT: I sustain it. Again, I'm going to ask
17 you to ask him questions about what he does know.

18 BY MR. DELANEY:

19 Q. And I asked you earlier, that combination of drugs and
20 alcohol can affect one's level of impairment, right?

21 MR. SPRINGS: It's been asked and answered, Your
22 Honor.

23 THE COURT: I'll let him ask it one more time.
24 Go ahead and answer the question.

25 A. Yes.

1 THE COURT: He's asking you if drugs and alcohol
2 can affect your ability.

3 THE WITNESS: Yes.

4 BY MR. DELANEY:

5 Q. Even if it's a small amount of alcohol, that's still an
6 intoxicating mix, correct?

7 A. Yes.

8 Q. And you never received information from the York County
9 sheriff's office --

10 MR. SPRINGS: Objection to what he doesn't know.

11 THE COURT: Well, he can ask -- he can ask him
12 whether he received information. I will allow him that. He
13 knows whether what he received information or not.

14 BY MR. DELANEY:

15 Q. Trooper, did you receive any information from the York
16 County sheriff's office about any drugs in Mr. Mullins
17 system?

18 A. No.

19 Q. Alcohol in Mr. Mullins system?

20 A. No, sir.

21 Q. And trooper, you never went to the hospital -- or did
22 you go to the hospital to find out if there were any drugs
23 in his system?

24 A. No, sir, I -- I passed the scene on to him as part of
25 the investigation.

1 Q. Trooper, this is a picture that you testified what the
2 moped looked like that day?

3 A. Yes.

4 Q. On that picture there is no bent frame on that moped,
5 right?

6 A. Frame, no.

7 Q. The wheels are not bent, right?

8 A. No, sir.

9 Q. The handlebars don't appear to be mangled and bent up,
10 right?

11 A. It's a little scratched, but not bent.

12 Q. You said it was scratched?

13 A. Yeah, they are roughed up on the edge right there.

14 There is another picture I actually took.

15 Q. The moped wasn't crumbled up in that picture, right?

16 A. No.

17 Q. The moped is not broken in half, right?

18 A. No, sir.

19 Q. And am I right that there is no structural damage to
20 that moped, other than some scratches, right?

21 A. For the most part, yes, sir.

22 Q. Thank you.

23 MR. DELANEY: I have no further questions.

24 THE COURT: Redirect?

25 MR. SPRINGS: Thank you, Your Honor.

1 REDIRECT EXAMINATION BY MR. SPRINGS:

2 Q. Trooper, the defense attorney kept asking you why you
3 didn't do this report and that report and the other report.
4 Was it a highway patrol case?

5 A. No.

6 Q. Would it be typical for the highway patrol to do
7 reports on some other agency's case?

8 A. No, sir.

9 Q. And he asked you about this being a heavily traveled
10 road. To your knowledge, other than the victim, Mr.
11 Mullins, were there any eyewitnesses to this crash?

12 A. Not at the scene that I saw.

13 Q. Now, the defense attorney asked you if Mr. Mullins had
14 life threatening injuries, no broken bones. Did it look
15 like Mr. Mullins was having a good day?

16 A. No.

17 MR. DELANEY: Your Honor, I object. He's leading
18 at this point.

19 THE COURT: Rephrase the question.

20 MR. SPRINGS: I will just withdraw the question.

21 THE COURT: Disregard the question and answer.

22 BY MR. SPRINGS:

23 Q. Alcohol, did you see beer cans or liquor bottles out at
24 the scene?

25 A. No.

1 Q. Did Mr. Mullins smell like alcohol?

2 A. No, sir.

3 Q. Did you see any indications with your own eyes that he
4 had been drinking?

5 A. No, sir.

6 Q. Or drugging?

7 A. No, sir.

8 MR. SPRINGS: That's all I have.

9 THE COURT: Recross?

10 MR. DELANEY: No, Your Honor.

11 THE COURT: All right. We are going to stop.

12 You can step down and be excused. We appreciate
13 your time. Thank you.

14 We are going to stop for the day. I'm going to
15 ask you to be back by -- we will try to start at 9:30 in the
16 morning. The bailiff will tell you how to get in and out
17 while you are serving as a juror.

18 Keep in mind what I told you about not trying to
19 make up your mind or not trying to discuss the case, not
20 doing any research, not going to the scene, not receiving
21 any news coverage, if there is any. So have a pleasant
22 evening and we will see you back -- we'll try to start --
23 please be back by 9:30 in the morning and we will try to
24 start as promptly at that time as we can. Have a pleasant
25 evening.

1 Honor.

2 THE COURT: Bring in the jury.

3 (The following takes place in the presence of the
4 jury panel)

5 THE COURT: All right. Call your next witness.

6 MR. SPRINGS: Thank you, Your Honor.

7 We call Mr. Anthony Valenti.

8 ANTHONY VALENTI, having been first duly sworn,
9 testified as follows:

10 MR. SPRINGS: Come up here, Mr. Valenti, and open
11 up those swinging doors. Take a seat, sir.

12 This built-in amplification doesn't work. I'm
13 going to ask you to speak into that so everybody can hear
14 you.

15 DIRECT EXAMINATION BY MR. SPRINGS:

16 Q. What is your name, sir.

17 A. Anthony Valenti.

18 Q. And are you retired or disabled? What is your job
19 status?

20 A. I'm disabled.

21 Q. Okay. All right. And I believe you were in the
22 military?

23 A. Yes, sir.

24 Q. What branch were you in?

25 A. Marine Corps.

1 Q. I want to ask you about things that happened in the
2 first part of June of this year.

3 Where were you living the first part of June of this
4 year, what part of the county?

5 A. Tega Cay.

6 Q. Okay. What was your address?

7 A.

8 Q. Okay. Let me show you a couple of pictures. They have
9 been marked State's Exhibit 1 and 2. Do you recognize those
10 houses?

11 A. Yes, the round one is mine and the one next door is
12 Jason Franks.

13 Q. Both of them show basically the same thing?

14 A. Yes.

15 Q. Okay. Are they accurate pictures of your house and
16 Jason Franks house next door to yours?

17 A. Yes, sir.

18 MR. SPRINGS: We do offer State's 2 and 1 into
19 evidence, Your Honor.

20 MR. DELANEY: No objection, Your Honor.

21 THE COURT: In without objection.

22 BY MR. SPRINGS:

23 Q. So do you know Jason Franks?

24 A. Yes, sir.

25 Q. And you just said he was a neighbor of yours?

1 A. Yes, sir.

2 Q. Did he also do some business with you?

3 A. Yes, sir, I hired him to do some odd jobs around the
4 house.

5 Q. Okay. All right. And as he did odd jobs for you, did
6 you pay him?

7 A. Yes, sir.

8 Q. Were you nice to him?

9 A. Yes, sir.

10 Q. And did he ever come into your house to do odd jobs?

11 A. Yes, sir.

12 Q. And do you know Edward Mullins?

13 A. Yes, sir.

14 Q. How long have you known Mr. Mullins?

15 A. About -- I had known him about two years.

16 Q. Okay. And has Mr. Mullins ever been over to your house
17 on Winward Drive?

18 A. Yes.

19 Q. And did Mr. Mullins get in some trouble last year
20 driving your car with a revoked license?

21 A. My truck, yes, sir.

22 Q. He went to prison for it?

23 A. Yes, sir.

24 Q. Now, has Mr. Mullins ever been in your house over on
25 Winward Drive in Tega Cay the same time that Jason Franks

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1 has?

2 A. Yes, sir.

3 Q. How many times?

4 A. Just once they were together.

5 Q. Okay. And did they have words?

6 A. Yes, sir.

7 Q. And were you present when they had words?

8 A. No, sir.

9 Q. How do you know that they had words?

10 A. Yes, sir.

11 Q. Let me start over. Did you hear them have words?

12 A. No, sir.

13 Q. Did you see them have words?

14 A. Yes, sir.

15 Q. Okay. Could you tell there was some unpleasantness?

16 A. Yes, sir.

17 Q. How many times, to your knowledge, did Edward Mullins
18 meet Jason Franks, to your knowledge?

19 A. At my house, once.

20 Q. Do you know of any other time that Edward Mullins met
21 up with Jason Franks, that you know of?

22 A. No, sir.

23 Q. Other than that one time that they had words, do you
24 know of any other time they had words?

25 A. No.

1 Q. Have you ever heard Edward Mullins threaten Jason
2 Franks?

3 A. No, sir.

4 Q. Have you ever heard Jason Franks threaten Edward
5 Mullins?

6 A. Yes, sir.

7 Q. Tell us about that. What did Jason Franks do and say
8 that you heard and saw?

9 A. Well, on the day after their words that they had, Jason
10 Franks came over to my house with an improvised baseball
11 bat, a small club, and he told me that he was going to beat
12 the brakes off of him and he was going to stick it in him.

13 Q. And it may be rude and ugly and profane, but what
14 exactly did he say he was going to do with the bat?

15 A. He said he was going to stick it up his ass.

16 Q. Now, was Mr. Mullins around when Mr. Franks --

17 A. No, sir.

18 Q. -- said these things.

19 Did you hear Mr. Franks threaten Mr. Mullins a second
20 time?

21 A. Yes, sir.

22 Q. What did he say then?

23 A. He just said he was going to get him and he was going
24 to beat the brakes off of him.

25 Q. Did he threaten him a third time or say anything about

1 Mr. Mullins to you a third time?

2 A. Yes.

3 Q. Tell me about that. What did he say?

4 A. Well, he -- he was still angry and he said he was still
5 going to get Mr. Mullins, and I tried to talk him out of it
6 and I said, you know --

7 Q. Okay. Okay. Now, let's talk about June 7th of this
8 year. Were you aware Mr. Mullins got hurt badly on June
9 7th?

10 A. Yes, sir.

11 Q. Okay. Right before he got hurt was Mr. Mullins at your
12 house?

13 A. Yes, sir.

14 Q. And about what time of day was this? Was it in early
15 morning, late afternoon, mid day? About what time was it?

16 A. Two'ish.

17 Q. Okay. In the afternoon?

18 A. Yeah, between one and two.

19 Q. Okay. And how did Mr. Mullins get over to your house
20 that day, June 7th?

21 A. On his moped.

22 Q. Okay. Did you and Mr. Mullins make some plans for that
23 afternoon?

24 A. Yes.

25 Q. What were you planning on doing, you and Mr. Mullins,

1 that afternoon?

2 A. Well, he was going to come back to my house because he
3 owed me some money. He was going to stop at the bank and I
4 had a doctor's appointment and he was going to come back to
5 my house and we were just going to hang out a little bit.

6 Q. Okay. All right. This was about two?

7 A. Uh-huh.

8 Q. Okay. You had a doctor's appointment?

9 A. Yes.

10 Q. Whereabouts? In the county, or Charlotte, what?

11 A. Rock Hill.

12 Q. Your doctor is in Rock Hill?

13 A. Yes.

14 Q. So you are going to go to the doctor and Mr. Mullins
15 was going to go to the bank, did you say?

16 A. Yeah, and the gas station.

17 Q. And the gas station?

18 A. Yeah.

19 Q. And he was riding a moped?

20 A. Yes.

21 Q. Did you have a vehicle?

22 A. Yes, sir.

23 Q. What kind of vehicle do you have?

24 A. A black truck, Tacoma truck.

25 Q. Okay. So about two did you guys leave your house?

1 A. Yes, sir.

2 Q. Tell us about leaving the house what you saw and what
3 happened. As Mr. Mullins left and as you left, what
4 happened?

5 A. Well, Mr. Mullins asked me to follow him as far as the
6 gas station or the bank, because he was afraid he might run
7 out of gas.

8 Q. Okay.

9 A. So I was in my truck and he was on his moped.

10 Q. Okay.

11 A. And as he was leaving the driveway, I was turning
12 around to follow him.

13 Q. Let me stop you. So he's leaving on his moped?

14 A. Yeah.

15 Q. And you were getting in your truck?

16 A. Yes.

17 Q. You had both gone out of your house at the same time,
18 it sounds like?

19 A. Yes.

20 Q. Okay. Then take this step by step. What is the next
21 thing that happened after he leaves on his moped?

22 A. As I was approaching to leave the driveway, I saw Mr.
23 Franks jump off his front porch and run to his wife's SUV
24 and he got in it and started it. By the time I got to turn
25 out of the driveway, he had cut me off to follow Mr.

1 Mullins.

2 Q. Okay.

3 A. And I --

4 Q. Let me stop you, because I want to take this in slow
5 motion.

6 So Mr. Mullins has left on his moped. Mr. Franks jumps
7 in the white SUV and he leaves before you do?

8 A. Yes.

9 Q. He gets on the highway behind Mr. Mullins?

10 A. Right.

11 Q. Okay.

12 A. Now, he was -- he lived next door to me, so he was
13 farther away from -- he was one house to the left and we
14 were turning right.

15 Q. Okay.

16 A. If you know that -- if I can explain that right.

17 Q. Sure. Sure.

18 In fact, we will put the picture of your house up on
19 this big screen in just a minute and talk about it some
20 more.

21 A. All right.

22 Q. So Mr. Mullins left.

23 Jason Franks leaves in the white SUV?

24 A. Right.

25 Q. And then you pull out in your truck?

1 A. Yeah, I nearly hit him.

2 Q. Okay.

3 A. As I was pulling out of my driveway he quick cut me
4 off.

5 Q. All right. Can you see that, Mr. Valenti?

6 A. Yes, sir.

7 Q. This is my right hand. This is my left. Which one of
8 these houses is yours, the left or the right?

9 A. The left.

10 Q. That's your house?

11 A. Yes.

12 Q. 'Who lives here?

13 A. Mr. Franks.

14 Q. Okay. Right next door?

15 A. Right.

16 Q. Okay. Did you head on down the road after them in your
17 truck?

18 A. Yes.

19 Q. And you were alone in your truck?

20 A. Yes.

21 Q. As you went down the road in your truck, did you see
22 either Mr. Mullins on his moped or Mr. Franks in the white
23 SUV?

24 A. Yes, both.

25 Q. How -- did you get up behind them?

1 A. Yes.

2 Q. And were they on Tega Cay Drive, the boulevard?

3 A. Yes.

4 Q. The boulevard going out?

5 A. Yes, sir.

6 Q. Let me -- I'm showing you what's been marked State's 9
7 and 11 for identification. Do you recognize that boulevard?

8 A. Yes, sir.

9 Q. Is that Tega Cay Drive?

10 A. Yes, sir.

11 Q. Both these pictures?

12 A. Right.

13 Q. Accurate pictures?

14 A. Yes.

15 Q. Okay.

16 MR. SPRINGS: We do offer into evidence State's 9
17 and 11, Your Honor.

18 MR. DELANEY: No objection, judge.

19 THE COURT: In without objection.

20 MR. SPRINGS: And we would ask to publish these to
21 the jury.

22 Just have them pass them around.

23 BY MR. SPRINGS:

24 Q. Was it raining or was it a clear day?

25 A. It was a clear day.

1 Q. Okay. It was about two o'clock?

2 A. Yes, sir.

3 Q. Okay. How fast would you say Mr. Mullins was going on
4 the moped?

5 A. 25.

6 Q. Okay. Where was Jason Franks in the white SUV in
7 relation to Mr. Mullins? Ahead of him, behind him?

8 A. Right behind him.

9 Q. Right behind him?

10 A. Yes, sir.

11 Q. Was Mr. Mullins on the moped in the center -- which
12 lane was he in, first of all?

13 A. The right lane.

14 Q. Was he in the center of the right lane?

15 A. No, far right of the right lane.

16 Q. Over on the curb on the far right?

17 A. Right.

18 Q. Okay. So he's doing about 25?

19 A. Yes, sir.

20 Q. Jason Franks is behind him. How fast was he going at
21 that point?

22 A. 25.

23 Q. Okay. And was the left lane clear?

24 A. Yes.

25 Q. Could cars pass him?

1 A. Yes, sir.

2 Q. Could the white SUV have passed Mr. Mullins moped?

3 A. Oh, yeah.

4 Q. How long -- how many miles or how many blocks did you
5 follow them, in your best guess?

6 A. Approximately two miles.

7 Q. Okay. And at some point did you need to get to the
8 doctor and you passed them?

9 A. Yes.

10 Q. Do you remember about what point on Tega Cay Drive it
11 was that you passed them?

12 A. People were passing us all the time. I passed Mr.
13 Mullins and Mr. Franks just before a B.P. station, a gas
14 station.

15 Q. Let me show you a couple of pictures that I need to
16 show these fellows first.

17 I'm showing you what's been marked as State's Exhibit 5
18 and 7. Do those look familiar to you?

19 A. Yeah, this is -- I believe it's the little place called
20 Steve's.

21 Q. That's a little bar and grill?

22 A. Yeah, as is that. That's the veterinarian and --

23 Q. And this is out on Tega Cay Drive, is it not?

24 A. Yes, sir.

25 Q. Okay. Is this before where you went around them to get

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1 to the doctor and passed them, or was it after, or is it
2 about the point where you passed them?

3 A. No, it was past that. I was way past that when I went
4 around.

5 Q. Okay. All right.

6 MR. SPRINGS: We do offer State's 5 and 7 into
7 evidence.

8 MR. DELANEY: No objection, judge.

9 THE COURT: In without objection.

10 BY MR. SPRINGS:

11 Q. As you passed -- let me back up.

12 You followed these fellows for a couple of miles?

13 A. Yeah.

14 Q. Why did you follow them? Why didn't you go ahead and
15 pass them right away?

16 A. Well, like I said before, Mr. Mullins was afraid he
17 might run out of gas.

18 Q. Okay.

19 A. And I was very concerned about the fact that Mr. Franks
20 was following him at a slow speed when everybody was passing
21 us.

22 Q. Okay.

23 A. And I had a bad feeling about it.

24 Q. Okay. Mr. Mullins, as he's riding his moped over on
25 the right --

1 A. Yes.

2 Q. -- was he staring straight or was he weaving?

3 A. He was straight.

4 Q. Did you ever see him weave?

5 A. No, sir.

6 Q. Okay. At some point you did -- you had to get to the
7 doctor and you passed him, is that a fair statement?

8 A. Yes, sir.

9 Q. Okay. Did you say anything to Mr. Mullins?

10 A. Well, no, I was in my truck, but I motioned to him to
11 look behind him to see who was behind him.

12 Q. Okay.

13 A. But he didn't -- I don't think he understood me and he
14 just waved to me like I was waving to him.

15 Q. Okay.

16 A. Actually I was saying, you know, look behind you, and
17 he thought I was waving to him, so he just waved and kept
18 going.

19 Q. Okay. Did you go on towards your doctor?

20 A. I did.

21 Q. So did you ever see any indication from Mr. Mullins on
22 the moped that he knew Jason Franks was behind him? Did you
23 see him looking back?

24 A. No, sir.

25 Q. Later were you called and told that there had been bad

1 stuff?

2 A. Yes, shortly after I made a right turn on route 160, I
3 was probably a mile or two down the road and my phone rang.

4 Q. Don't tell us what anybody said, because they have to
5 speak for themselves, but you found out bad stuff had
6 happened?

7 A. Yes, sir.

8 Q. Okay. And did the police come and interview you?

9 A. Yes, they did.

10 Q. And did the police meet with you the same day that --

11 A. Yes.

12 Q. -- we were just talking about?

13 A. Yes.

14 Q. And did you tell the police what you knew about this?

15 A. Yes, sir.

16 Q. And did you give a written statement for them?

17 A. I did.

18 (Voluntary Statement marked as State's Exhibit No.
19 114 for identification)

20 BY MR. SPRINGS:

21 Q. I'm showing you a paper that's been marked State's
22 Exhibit 114. Is that the statement that you gave to the
23 police?

24 A. Yes, sir.

25 Q. Okay. Were you truthful when you talked to the police?

1 A. Yes, sir.

2 Q. These are marked State's Exhibit 8, 10 and 3. You live
3 in Tega Cay, so I'm going to ask you if you recognize those
4 roads.

5 A. Yes, sir, that's Tega Cay Drive.

6 Q. And Tega Cay, does it become Gold Hill Road?

7 A. Yeah.

8 Q. Okay. Are these accurate pictures of the road?

9 A. Yes.

10 Q. Okay.

11 MR. SPRINGS: Your Honor, we do offer State's 10,
12 3 and 8 into evidence.

13 MR. DELANEY: No objection, judge.

14 THE COURT: In without objection.

15 BY MR. SPRINGS:

16 Q. After all this happened and after you talked to the
17 police and told them what happened, have you, yourself,
18 gotten into a bunch of trouble?

19 A. Yes, sir.

20 Q. Okay. All right. These fellows are going to want to
21 ask you some questions now. If you would, answer any
22 questions that they have for you.

23 A. Yes, sir.

24 CROSS EXAMINATION BY MR. DELANEY:

25 Q. Mr. Valenti, as you have testified, you gave a

1 statement to the police in this case, correct?

2 A. Yes, sir.

3 Q. You gave that statement on June the 7th?

4 A. Yes, sir.

5 Q. And you gave a statement to the police at McHale's
6 Restaurant?

7 A. Yes, sir.

8 Q. In Tega Cay?

9 A. Yes, sir.

10 Q. When you gave that statement, were you high?

11 A. No, sir.

12 Q. You didn't smoke any marijuana that day?

13 A. No, sir.

14 Q. You smoke a lot of marijuana?

15 MR. SPRINGS: Objection. This is irrelevant and
16 improper.

17 THE COURT: I sustain the objection.

18 BY MR. DELANEY:

19 Q. You weren't under the influence of alcohol when you
20 gave that statement?

21 A. No, sir.

22 Q. And you gave that statement to the police because you
23 wanted to help them with their investigation, right?

24 A. Yes, sir.

25 Q. But you also gave that statement to the police because

1 you wanted to help yourself, right?

2 A. How would I do that? I don't understand, no.

3 Q. Two days after you gave that statement you had a court
4 appearance, right?

5 A. I refuse to answer that.

6 Q. You refuse to answer if you had a court appearance two
7 days later?

8 A. Oh, yeah, I did.

9 Q. Okay. And you went to court that day, right, June the
10 9th?

11 A. I believe so.

12 Q. And you actually appeared in the courtroom next door,
13 correct?

14 A. Yes, sir.

15 Q. And that was for resisting arrest?

16 A. Yes, sir.

17 Q. Section B, right?

18 A. Yes, sir.

19 Q. Assaulting a police officer?

20 A. Yes, sir.

21 Q. And you were convicted of resisting arrest, section B,
22 assaulting a police officer, correct?

23 A. That's right.

24 Q. On June the 9th, 2010, correct?

25 A. That's correct.

1 Q. According to your testimony here today, you didn't see
2 the accident, correct?

3 A. Correct.

4 Q. You didn't see any impact or the point of impact
5 between the moped and my client's vehicle, right?

6 A. That's correct.

7 Q. You don't know what happened when you passed them when
8 you turned on Highway 160, correct?

9 A. I didn't know at the time, no.

10 Q. You didn't see anything, right?

11 A. No, that's correct.

12 Q. And Mr. Valenti, do you remember meeting me and several
13 people from my office a week or so ago?

14 A. I do.

15 Q. And during that meeting you said that Mr. Mullins had
16 just left your house, right, and that you were on your way
17 to the bank, correct?

18 A. Yeah. No, I wasn't on my way to the bank. Mr. Mullins
19 was on his way to the bank.

20 Q. You didn't tell me and several other people from my
21 office that you were meeting Mr. Mullins at the bank, is
22 that right?

23 A. That's right. I said I was following him to the bank
24 and to the gas station, if I recall.

25 Q. You told us that Mr. Mullins owed you money, right?

1 A. Yes.

2 Q. And you were collecting that money, right?

3 A. Yes, later that afternoon.

4 Q. And that was the story that you told us, right?

5 A. Yes.

6 MR. SPRINGS: Objection. That's argumentative.

7 THE COURT: No, I overrule the objection. Go
8 ahead.

9 BY MR. DELANEY:

10 Q. On June the 7th you told a story that you were on the
11 way to the doctors, correct?

12 A. That's correct.

13 Q. You had a doctor's appointment?

14 A. That's correct.

15 Q. In your written statement it says nothing about you
16 going to the bank, correct?

17 A. I guess not. I believe not.

18 Q. You didn't want the police to know why Mr. Mullins owed
19 you money, correct?

20 A. I don't see why not. I loaned him some money.

21 MR. DELANEY: Your Honor, may I approach?

22 THE COURT: Yes.

23 BY MR. DELANEY:

24 Q. Mr. Valenti, Mr. Springs had asked you --

25 Is that the statement that you gave to the police on

1 June the 7th?

2 A. Yes.

3 Q. Okay. And you signed that statement, is that correct?

4 A. I did.

5 Q. Okay. And it's dated June the 7th, right?

6 A. Yes.

7 Q. It has a time on there of 6:35, is that right?

8 A. Yes.

9 Q. And what -- and right above your signature --

10 Let me see that for a second. What does this last
11 sentence say, starting right here?

12 A. "I am signing my name in the space below to show that
13 it is my statement and it is the truth."

14 Q. Okay. Mr. Valenti, nowhere in your statement does it
15 mention that Jason Franks pulled out in front of you and cut
16 you off, right?

17 A. No.

18 Q. Nowhere in your statement does it say Jason Franks
19 jumped off his front porch, right?

20 A. Right.

21 Q. Nowhere in your statement does it say that you nearly
22 hit Mr. Franks, right?

23 A. Right.

24 Q. But that is what you are testifying to today --

25 A. That's correct.

1 Q. -- correct?

2 Nowhere in your statement that you gave to the police
3 does it say that Jason Franks came over your house and I
4 believe you said with an improvised baseball bat, is that
5 correct?

6 A. That's correct.

7 Q. And he said he was going to stick that bat up Mr.
8 Mullins ass, is that right?

9 A. Yes, sir.

10 Q. Okay. And, again, Mr. Valenti, that's nowhere in your
11 statement?

12 A. No, it isn't.

13 Q. You talk about three different --

14 A. It's a pretty short -- it's a short page there and I
15 was being brief.

16 Q. Okay. Nowhere in this brief statement you mentioned
17 anywhere these three different threats that you testified to
18 this jury, correct?

19 A. No.

20 Q. Nowhere in that statement do you say that Jason Franks
21 said he's going to get him and he's going to beat the brakes
22 off of him. That's nowhere in your statement, right?

23 A. No, it isn't.

24 Q. And Mr. Valenti, you just testified that you passed Mr.
25 Franks and Mr. Mullins at the BP gas station, right?

1 A. Before the BP gas station, as far as I testified. Just
2 before.

3 Q. Just before?

4 A. Yes.

5 Q. Okay. And you know where Steve's is at, right?

6 A. Yes.

7 Q. And from Steve's to the BP gas station, you said you
8 are familiar with that area?

9 A. I am.

10 Q. Approximately one and a half miles to -- about a mile
11 and a half, right, two miles from Steve's to the BP?

12 A. Maybe a mile.

13 Q. Okay. In your statement to the police on June the 7th
14 you stated that you passed them right after Steve's,
15 correct?

16 A. After Steve's, yes.

17 Q. Not just before the BP gas station, correct?

18 A. There is only a mile there, and, yes, after Steve's and
19 before McHale's.

20 Q. Okay. And that's nowhere in your statement, correct?
21 Nothing about the PP gas station, correct, that that's where
22 you passed them?

23 A. No.

24 Q. Okay. And Mr. Valenti, you don't like Jason Franks,
25 isn't that right?

1 A. No, I don't.

2 Q. Jason Franks is the victim in a case where you have
3 been charged with intimidating a State's witness, correct?

4 A. I refuse to -- I prefer not to answer that because that
5 case is still under investigation.

6 Q. And Eddie Mullins is a good friend, right?

7 A. Yes.

8 Q. He's such a good friend, you have lied to the police
9 for him before, right?

10 A. Well, yes, I did.

11 Q. You lied to the police when he was driving your truck
12 and he crashed and ran when he was drinking, right?

13 A. Yes.

14 Q. Mr. Springs had asked you about getting in some
15 trouble, right?

16 A. Yes.

17 Q. Mr. Valenti, you are hoping for some consideration from
18 the State for your testimony here today for that trouble
19 that you got into, right?

20 A. No, sir.

21 Q. You are getting special treatment from the State,
22 aren't you?

23 A. No, sir.

24 Q. You didn't have to wait in the holding cell today?

25 A. Yes, sir.

1 Q. You didn't come out from the holding cell, though, did
2 you?

3 A. Excuse me?

4 Q. You came in this courtroom not from the holding cell,
5 right?

6 A. Yes, I came from the holding cell to the courtroom.

7 Q. When you walked in this courtroom, where did you walk
8 in from?

9 A. That door there.

10 Q. What door?

11 A. Oh, the door -- the door downstairs.

12 Q. Okay. But what door in this courtroom did you walk in
13 from? That door?

14 A. No, that one there.

15 Q. That door?

16 A. Yes.

17 Q. Okay. And obviously you don't have any handcuffs on,
18 right?

19 A. Right.

20 Q. No shackles, right?

21 A. Right.

22 Q. You are hoping the State gives you some consideration
23 for your testimony, because you have eight pending charges
24 against you right now, right?

25 A. I prefer not to answer that because the charges are

1 under investigation.

2 Q. My question -- Mr. Valenti, I'm not asking you any
3 details about the charges. What I'm asking you is do you
4 have eight pending charges right now?

5 A. I prefer not to answer that as the charges are under
6 investigation.

7 Q. Again, Mr. Valenti, I'm not going to go into any
8 details --

9 MR. SPRINGS: It's been asked and answered.

10 THE COURT: I'll let him ask it one more time.

11 BY MR. DELANEY:

12 Q. I'm going to ask you -- you have been charged --

13 (Off the record)

14 (Back on the record)

15 BY MR. DELANEY:

16 Q. And I understand, Mr. Valenti, you want to take the
17 Fifth, but warrants have been served against you, correct?
18 The investigation has been closed, correct? You have been
19 served with warrants, right?

20 A. Yes.

21 Q. Okay. You have been served with a warrant for exposure
22 of private parts in a lewd manner, right?

23 A. I plead the Fifth on that.

24 Q. Again, my question --

25 A. As I said --

1 Q. My question --

2 A. As I said, I plead the Fifth --

3 Q. My question is --

4 A. -- on the grounds that the answer may incriminate me.

5 THE COURT: You have got to let him finish.

6 BY MR. DELANEY:

7 Q. My question, Mr. --

8 MR. SPRINGS: Objection. It's been asked and
9 answered.

10 THE COURT: You don't even know what he's going to
11 ask. He said my question. Let's hear what the question is.
12 I'm not clairvoyant.

13 BY MR. DELANEY:

14 Q. You have been served a warrant --

15 MR. SPRINGS: Objection. It's been asked and
16 answered.

17 BY MR. DELANEY:

18 Q. -- for exposure of private parts in a lewd manner,
19 right?

20 You have been charged with criminal solicitation of a
21 minor, right?

22 A. You asked me that question before and I answered it.

23 Q. I asked you if you had been served a warrant for
24 exposure of private parts in a lewd manner.

25 A. You asked me if I was served with warrants --

1 Q. Okay.

2 A. -- period.

3 Q. Have you been served with a warrant -- four warrants --

4 A. I refuse to answer -- as I said previously, I refuse to
5 answer this question as the charges are still under
6 investigation. I plead the Fifth Amendment again.

7 Q. Well, Mr. Valenti, you say the charges are still under
8 investigation?

9 A. Correct.

10 Q. And I have already asked you and you have answered that
11 you have been served with warrants. The investigation is
12 done, right?

13 A. No, sir.

14 Q. You have a lawyer, right?

15 A. Yes, sir.

16 Q. You have been charged, right?

17 A. Yes, sir.

18 Q. You are incarcerated here at the Moss Justice Center,
19 right?

20 A. Yes.

21 Q. You have been served a warrant for criminal sexual
22 conduct with a minor under eleven years old, first degree,
23 right?

24 A. Again I refuse to answer these questions.

25 Q. And you have testified that you have a lawyer, right?

1 A. In the Fifth Amendment.

2 MR. SPRINGS: Objection. He's badgering now.
3 Asked and answered.

4 THE COURT: Yeah, let's move on. He's already
5 answered that question.

6 BY MR. DELANEY:

7 Q. And your lawyer has told you --

8 MR. SPRINGS: Objection. It's been asked and
9 answered.

10 THE COURT: That goes into confidentiality also.
11 I sustain the objection. He doesn't have to tell you what
12 his lawyer told him.

13 BY MR. DELANEY:

14 Q. Mr. Valenti, you know that criminal sexual conduct with
15 a minor under 11 years old, first degree, carries a minimum
16 25 years, the maximum of life in prison, right?

17 A. I have no idea.

18 Q. No idea.

19 Do you have any idea -- let me rephrase that.

20 Do you know that committing a lewd act on a minor
21 carries up to 15 years, right?

22 A. That's what I hear.

23 Q. And it's your testimony to this jury that you are not
24 looking for any help from the State in this case?

25 A. That's correct.

1 Q. And it's your testimony that you haven't already
2 received special treatment from the State in this case?

3 A. That's correct.

4 MR. DELANEY: No further questions, Your Honor.

5 THE COURT: All right.

6 Redirect.

7 REDIRECT EXAMINATION BY MR. SPRINGS:

8 Q. Mr. Valenti, I'm the State. Have you made a deal with
9 me?

10 A. No, sir.

11 Q. Have I given you any kind of a deal?

12 A. No, sir.

13 Q. Are you getting anything from --

14 MR. DELANEY: I object to the leading at this
15 time.

16 THE COURT: You are leading and also you are
17 getting a little loud.

18 BY MR. SPRINGS:

19 Q. Are you getting anything for testifying in this trial?

20 A. No, sir.

21 Q. Have you testified truthfully?

22 A. Yes, sir.

23 MR. SPRINGS: Your Honor, we offer into evidence
24 the statement of Mr. Valenti, No. 114.

25 THE COURT: Any objection?

1 MR. DELANEY: No objection, Your Honor.

2 THE COURT: In without objection.

3 MR. SPRINGS: Nothing further.

4 THE COURT: Recross?

5 MR. DELANEY: No, judge.

6 THE COURT: All right. You can step down. Thank
7 you.

8 You can call your next witness.

9 MR. SPRINGS: Thank you. Would you ask Taylor to
10 come in?

11 THE COURT: While that witness is coming in I
12 apologize. I very rudely did not say good morning to you.

13 THE JURY: Good morning.

14 MR. SPRINGS: Good morning. Please come up here.

15 Ms. J. [REDACTED] put your right hand here and raise your left
16 and take the oath.

17 TAYLOR J. [REDACTED] having been first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION BY MR. SPRINGS:

20 Q. We are going to ask you to speak into that microphone
21 so everybody can hear you. I'm getting old and I can't hear
22 very well.

23 A. Okay.

24 Q. I'm Mr. Springs. I'm the prosecutor.

25 Tell us your name, please.

1 A. Taylor J. [REDACTED]

2 Q. And what's your mother's name?

3 A. Angela Johnson.

4 Q. Is your grandmother's name Pat Johnson?

5 A. Yes, sir.

6 Q. And who is your mother's boyfriend? What's his name?

7 A. Jason Franks.

8 Q. Okay. And I'm going to show you a picture. Here it
9 is. This picture has been marked State's Exhibit 1. Do you
10 recognize those houses?

11 A. Yes. That was my old house and that was our neighbor
12 Tony's house.

13 THE COURT: You need to speak up. I can't hear
14 you, so I know the jury can't hear.

15 BY MR. SPRINGS:

16 Q. Just try and speak right into the microphone.

17 So you lived at that house next to Mr. Valenti. And
18 your mom lived there?

19 A. Yes, sir.

20 Q. And Jason Franks lived there?

21 A. Yes, sir.

22 Q. And I want to ask you about things that happened on
23 June 7th of this year, the day of the trouble.

24 Were you home that day?

25 A. Yes, sir.

TAYLOR [REDACTED] - DIRECT BY MR. SPRINGS

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1 Q. And do you remember a man on a moped?

2 A. No, sir.

3 Q. Okay. Do you remember who was in the house with you
4 there about two o'clock that afternoon on June 7th?

5 A. I believe it was my mom and Jason.

6 Q. Okay. And about two o'clock what did Jason do and say
7 that you saw and heard?

8 A. I'm not really sure what time it was, but he had gone
9 outside and was standing on the porch and he came back in
10 and he said he was leaving to go to the gas station.

11 Q. Okay. Do you remember him leaving in a hurry about two
12 o'clock?

13 A. No, sir.

14 Q. Do you remember him actually running out of the house
15 and saying "I'm going to get him"?

16 A. No.

17 Q. You don't remember that, Taylor?

18 A. Not really. I didn't think about it. I don't remember
19 that day much, because I didn't know what was going on and I
20 wasn't aware of anything until the day after.

21 Q. Taylor, your mom is Jason's boyfriend?

22 A. Girlfriend, yes, sir.

23 THE COURT: Her mom would not be the boyfriend.

24 BY MR. SPRINGS:

25 Q. I'm sorry, Jason is your mom's boyfriend.

1 MR. SPRINGS: Thank you, Judge Hayes.

2 A. Yes.

3 BY MR. SPRINGS:

4 Q. Has your mom told you what to say here today?

5 A. No.

6 Q. Do you remember talking to your grandmother Pat Johnson
7 about that day and Jason and you being in the house? Do you
8 remember talking to her on the telephone after it happened?

9 A. Yes.

10 Q. Do you remember telling your grandmother Pat Johnson
11 that Jason saw a man on the moped, left, ran out of the
12 house and said that "I'm going to get him" and jumped in
13 your mom's car? Do you remember saying that?

14 A. I remember when he came back in, he said that he had
15 seen him leaving and he was going to wait a few minutes so
16 he didn't run into him to leave.

17 Q. Taylor, Jason Franks didn't say that, did he?

18 A. Yes, sir, I think he did.

19 Q. Who told you to say that, Taylor?

20 A. Nobody.

21 MR. BARROWCLOUGH: I'm going to object to that.
22 First of all, he's already asked and answered that question.

23 And second of all, that question --

24 THE COURT: That was leading. You can rephrase
25 it, though.

TAYLOR J. [REDACTED] - CROSS BY MR. BARROWCLOUGH

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1 BY MR. SPRINGS:

2 Q. How old are you, Taylor?

3 A. I'm 14.

4 MR. SPRINGS: That's all the question that I have
5 for this little girl.

6 MR. BARROWCLOUGH: May it please the court, Your
7 Honor?

8 THE COURT: Yes.

9 CROSS EXAMINATION BY MR. BARROWCLOUGH:

10 Q. How are you?

11 A. I'm good.

12 Q. Taylor, as you just testified to, to the best of your
13 recollection that day Jason Franks was going to the gas
14 station to get gas, correct?

15 A. I believe so.

16 Q. And he needed gas for a lawnmower, right?

17 A. Uh-huh.

18 Q. Because he had a job cutting grass that afternoon?

19 A. Yes, sir.

20 Q. And you said he went outside, right?

21 A. (Shaking head yes).

22 Q. And then he came back inside, right?

23 A. Uh-huh.

24 Q. He came back inside because he saw Mr. Mullins?

25 A. Uh-huh.

1 Q. And he wanted to avoid a confrontation, right?

2 MR. SPRINGS: I'm going to object. He's assuming
3 facts not in evidence.

4 THE COURT: I agree. You can ask what he said,
5 but you can't have her interpret what was in Mr. Franks mind
6 as to why he said something.

7 You can't ask her why he did something. You can
8 ask what he did.

9 MR. BARROWCLOUGH: Okay.

10 BY MR. BARROWCLOUGH:

11 Q. But he came back inside, right?

12 A. Yes, sir.

13 Q. And he said that he saw Mr. Mullins out there?

14 A. I think so, yes.

15 Q. And that he was going to wait until Mr. Mullins left?

16 A. Yes.

17 Q. And he went back out the door a good three or four or
18 five minutes later, right?

19 A. I think so. I really don't remember that much.

20 Q. Okay. All right. Thank you, Taylor.

21 MR. BARROWCLOUGH: No further questions.

22 MR. SPRINGS: Nothing further.

23 THE COURT: Taylor, put that microphone down.

24 Thank you very much.

25 Ms. Taylor, you can be excused. We appreciate

PATRICIA JOHNSON - DIRECT BY MR. SPRINGS

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1 your time.

2 MR. SPRINGS: Come up here please, ma'am. Here is
3 the Bible. Raise your right hand.

4 PATRICIA JOHNSON, having been first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION BY MR. SPRINGS:

7 Q. I'm going to ask you to use that microphone so
8 everybody can hear you.

9 A. Okay.

10 Q. What is your name, ma'am?

11 A. Patricia Johnson.

12 Q. And what is your daughter's name?

13 A. Angela.

14 Q. Okay. Johnson?

15 A. Yes.

16 Q. Okay. And does your daughter Angela have a boyfriend?

17 A. Yes, she does.

18 Q. And what is his name?

19 A. Jason Franks.

20 Q. Back in May of this year and the first part of June of
21 this year were your daughter and Jason Franks living
22 together?

23 A. Yes.

24 Q. And is Taylor [REDACTED] your granddaughter?

25 A. Yes, she is.

1 Q. Did you see her leaving the courtroom?

2 A. Yes, I did.

3 Q. And so Angela is Taylor's mother?

4 A. Yes.

5 Q. Back in May and the first part of June of this year
6 Taylor and your daughter were living with who?

7 A. They were all living together; Jason, Angela, and my
8 granddaughter.

9 Q. Okay. In Tega Cay?

10 A. Yes.

11 Q. Did you ever go over to your daughter's house where she
12 lived with Jason Franks and Taylor and visit and spend time
13 there at the house?

14 A. Yes, I did periodically, yeah.

15 Q. Do you live in Tega Cay yourself?

16 A. Yes, I do.

17 Q. How often would you say that you would go over and
18 visit Taylor and Angela at their house?

19 A. Oh, well, I would say at least maybe once a week,
20 sometimes a couple of weeks -- a couple of times a week.

21 Q. All right. Are you aware of the incident where a man
22 named Mullins was run over on a moped on June 7th?

23 A. Yes, I am.

24 Q. Do you know -- at this point let me ask you just yes or
25 no if Jason Franks knew Edward Mullins, the man that got run

1 over.

2 MR. DELANEY: Object at this time.

3 THE COURT: I sustain the objection. What's in
4 his mind. We're going back into whether --

5 MR. SPRINGS: I'll rephrase it.

6 BY MR. SPRINGS:

7 Q. Did Jason Franks ever indicate to you that he knew
8 Edward Mullins?

9 A. Yes.

10 Q. Did you ever hear Jason Franks say anything about
11 Edward Mullins?

12 A. Yes, I did.

13 Q. And did he say these things before Mr. Mullins got run
14 over on the moped?

15 A. Yes.

16 Q. What did Jason Franks -- were you present when Jason
17 Franks said things about Mr. Mullins?

18 A. Yes.

19 Q. What did Jason Franks say about Edward Mullins as to
20 how he felt about him?

21 A. Well, I was over visiting at their house one day. I
22 had gone over there to visit my daughter, and Mr. Franks
23 proceeded to tell me about a conversation that he had had
24 with Mr. Mullins. He had apparently gone over to his
25 neighbor's house when Mr. Mullins showed up.

1 Q. Yes.

2 A. And he started to tell me of a conversation that took
3 place between the two of them. And he said that -- I don't
4 know all the circumstances of what brought, you know, the
5 conversation up, but he -- Mr. Franks said that Mr. Mullins
6 made the comment to him that "if you had of been in a prison
7 when I was, you would have been my bitch."

8 Well, Jason didn't take this too well. He was pacing
9 up and down as he was telling me this, and he said that the
10 first thought that came to his mind when Mr. Mullins made
11 that remark to him was that he was going to slice his belly.
12 And then he said the second thought that came to his mind
13 was that he was going to go for his throat. But he said he
14 decided against it, because he thought of my daughter and my
15 granddaughter.

16 So while he was telling me this, he was pacing up and
17 down, and my daughter Angela was sitting on the sofa --

18 Q. Don't tell us anything Angela said.

19 A. Oh, okay.

20 Q. Tell us how that incident wound up. What did Mr.
21 Franks finally say, if anything?

22 A. He made the comment that "that's okay, I'll get him."

23 And after he said that, I said "well, you know, you
24 really just need to drop it, because it's not worth getting
25 into trouble over."

1 Q. Okay. Did you ask your granddaughter Taylor what had
2 happened after the incident after?

3 A. Yes, I did. Yes, I did.

4 Q. What --

5 A. It was probably -- it was several weeks after the
6 incident had happened. It was quite awhile before I even
7 knew that this had taken place and so I called over and
8 asked my granddaughter Taylor. I said "were you at home
9 when this happened," and she said "yes, I was."

10 And I said "well, can you --

11 MR. DELANEY: Objection.

12 MR. SPRINGS: This is impeachment, Your Honor.

13 THE COURT: Ask her -- what's the question again?

14 MR. SPRINGS: She -- Taylor denied certain things
15 and I'm asking Ms. Johnson what Taylor told her.

16 THE COURT: All right. Let me let the jury go to
17 the jury room for just one minute. We will take a break at
18 this time.

19 (The following takes place outside the presence of
20 the jury panel)

21 THE COURT: Under Rule 613, is that --

22 MR. SPRINGS: I was trying to find it, Your Honor.

23 THE COURT: Prior statements of witnesses.

24 Extrinsic evidence of prior inconsistent statement of a
25 witness.

1 MR. SPRINGS: Yes, that would be 613 (b).

2 THE COURT: All right. Did you ask Ms. Taylor?

3 Is that her name?

4 MR. SPRINGS: Yes.

5 THE COURT: Whether or not she made that statement
6 to this witness?

7 MR. SPRINGS: I did. I told her -- I asked her --
8 I laid the foundation who she made the statement to, when
9 she made the statement to, and what the statement was, and
10 now I'm impeaching that response.

11 MR. DELANEY: My actual recollection is he didn't
12 lay the foundation as far as the time and place.

13 THE COURT: I don't recall that either.

14 We will take a break and I'll let you find it with
15 the court reporter, because I don't remember. I remember
16 you asking about basically didn't you say this and she
17 denied it, but I don't recall -- the witness had to be
18 advised of the substance of the statement, time and place it
19 was allegedly made, the person to whom it was made, and had
20 to be given the opportunity to explain or deny it, and she
21 denied it.

22 MR. SPRINGS: Yes.

23 THE COURT: So we got that.

24 A witness does not admit that he had made the
25 prior inconsistent statement, extrinsic evidence is

1 admissible. So that's where we are. So let's see what you
2 can find, as far as the foundation.

3 We are just going to take a little break and you
4 can step down and use the restroom and get some water, if
5 you wish. It won't be too long on this. It would be a few
6 minutes.

7 THE WITNESS: Okay.

8 MR. SPRINGS: You don't get to talk to anyone.

9 THE COURT: Yeah, don't talk to anybody about it.

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: Take your seats.

13 The witness can come back and have a seat, please.

14 All right, what did we find out?

15 MR. SPRINGS: I would let the court reporter read
16 it, if you would like.

17 THE COURT: I would.

18 (Whereupon, the court reporter read the requested
19 testimony).

20 MR. SPRINGS: We are looking for time and place.
21 I said on the telephone. I said after the incident.

22 THE COURT: Yes. Real quick, let me hear from
23 you.

24 MR. BARROWCLOUGH: Judge, our position is that's
25 not a specificity. On the phone at some point after the

1 incident. That could be a day, a week, a month, six months.

2 THE COURT: I find that under 613 (b) that that's
3 sufficient. I don't know that they have to say it happened
4 at 11:15 on a certain date. I think the time and place,
5 time would be the time of the phone call, and the place
6 would be the telephone, so I find that that suffices.

7 All right.

8 MR. SPRINGS: Thank you.

9 THE COURT: Bring the jury back in.

10 MR. SPRINGS: We are under a sequestration order,
11 Your Honor.

12 THE COURT: Uh-huh.

13 MR. SPRINGS: Which means people waiting outside,
14 potential witnesses, should not hear what testimony has
15 been. I hate to be cynical, but it appears that this blond
16 headed lady is running a telegraph service to people out in
17 the hall.

18 THE COURT: If we find that out -- if somebody is
19 relaying information about what the witness has testified to
20 to other people, the relayer would be held in contempt of
21 court and would be spending Christmas in jail.

22 UNKNOWN PERSON: I have not.

23 (The following takes place in the presence of the
24 jury panel)

25 THE COURT: All right, you may proceed.

1 BY MR. SPRINGS:

2 Q. Ms. Johnson, did you ask young Taylor on the telephone
3 what had happened that day?

4 A. Yes, I did.

5 Q. And what did Taylor tell you?

6 A. I asked her if she was at home the day of the incident,
7 you know, before it happened, and she said yes. And I said
8 "well, can you tell me what happened?" And she said that
9 Mr. Franks saw Mr. Mullins leave from his neighbor's house
10 and get on his moped. And she said when Jason saw that
11 happen, he said "I'm going to get him."

12 Q. Did she say what Jason did after he said that?

13 A. She just said that after he said that, he went out of
14 the house.

15 Q. All right. That's all the questions that I have for
16 you. The defense attorney may have a question for you.

17 A. Okay.

18 MR. BARROWCLOUGH: May it please the court, Your
19 Honor?

20 THE COURT: Yes.

21 CROSS EXAMINATION BY MR. BARROWCLOUGH:

22 Q. Now, Ms. Johnson --

23 A. Uh-huh.

24 Q. -- you never gave a statement in this case to the
25 police, correct?

1 A. No.

2 Q. You never met with the lead investigator in this case
3 to relay any information you had about this case?

4 A. No.

5 Q. And you never talked to us about this case?

6 A. No.

7 Q. You never met with us about this case?

8 A. No.

9 Q. And the information that you have just testified to,
10 this is the first time this information is being brought
11 into this case, correct?

12 A. Yes.

13 Q. This the first time that the parties involved in this
14 case, other than perhaps Mr. Springs, is hearing about this
15 information?

16 A. Right.

17 Q. From six months ago?

18 A. Yes.

19 Q. And you are talking about conversations that you had
20 with Jason Franks. Jason Franks told you on more than one
21 occasion that this was an accident, right?

22 MR. SPRINGS: Objection. That's hearsay. There
23 is no hearsay exception for that.

24 THE COURT: He's talking about --

25 MR. SPRINGS: Jason Franks, somebody else's

1 statement.

2 THE COURT: I thought this was Jason Franks.

3 MR. SPRINGS: It is, and he doesn't have a special
4 hearsay exception, not for Mr. Barrowclough. He can't be
5 his own party opponent.

6 MR. BARROWCLOUGH: Your Honor, under the rule
7 where Mr. Springs elicited testimony from Mr. Franks, I
8 think I'm allowed to bring out the full testimony.

9 MR. SPRINGS: I disagree.

10 THE COURT: We will let the jury go to the jury
11 room again.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: Mr. Springs, what rule are you relying
15 on?

16 MR. SPRINGS: He's asking the lady what Jason
17 Franks said. That's a statement by somebody else. It's
18 hearsay. He has no hearsay exception.

19 If he had asked what Jason Franks said concerning
20 the statement she gave to Jason Franks said as a party
21 opponent, he's entitled to go into that under the rule of
22 completeness. He's not entitled to go other places, because
23 it's hearsay, and he has no -- Mr. Franks has no hearsay
24 exception. It's an out-of-court statement offered for the
25 truth of the matter and he has no hearsay exception. It

1 doesn't have anything to do with the conversation, the
2 statement, she spoke by him as a party opponent.

3 MR. BARROWCLOUGH: And, Your Honor, my -- I have a
4 number of additions.

5 One, that under the rule of completeness, that if
6 she's talking about things that Mr. Franks said about this
7 incident, that I should be allowed to question her about
8 everything Mr. Franks said about this incident with Mr.
9 Mullins, including the fact that he told her it was an
10 accident. That's the first thing.

11 The second thing is, Your Honor, I would say that
12 the substance of the statement can be interpreted as an
13 admission, since he certainly admits to being involved in an
14 incident for which he's on trial. It's not saying "huh, I
15 was worn out that day," or "somebody hit Mr. Mullins," or "I
16 didn't hit Mr. Mullins," or whatever. It does implicate him
17 in this incident.

18 And Your Honor, also --

19 Well, I'll leave it at those two.

20 THE COURT: What do you have to say about that,
21 Mr. Springs?

22 MR. SPRINGS: I think he's wrong. I think just
23 because I got one conversation as a party opponent involved
24 this, Mr. Barrowclough doesn't get to go anywhere he wants
25 with self-serving hearsay. It's hearsay. He has no hearsay

1 exception. None. He wants to create one out of whole
2 cloth, out of the thin air that he gets to whatever his
3 self-serving hearsay offered for the truth of the matter
4 that it was an accident, and there is no such hearsay
5 exception for him.

6 MR. BARROWCLOUGH: Your Honor, clearly I'm not
7 going to enter what I want. I'm not asking what he said. I
8 mean, we are talking about incident which she's here to
9 testify about what Mr. Franks had to say about this
10 incident. And Mr. Springs wants to be able to pick and
11 choose, "well, this part is really bad where he says that he
12 wants to slice Mr. Mullins belly," or whatever, "but this
13 part over here where he says that the wreck was an accident
14 should be kept out."

15 I mean, the rules are not drafted that unfairly.
16 I mean, the entire statement of Mr. Franks through this
17 witness, if he's going to have part of it, we should be able
18 to explore the other part of it.

19 MR. SPRINGS: That's not the law. Where is the
20 law of that?

21 I do get to pick and choose. I do get to use his
22 statement to benefit my case. And if he wants to get his
23 self-serving hearsay in, he needs to say it himself on that
24 witness stand.

25 It's self-serving hearsay. I'll go get some case

1 law on it. I'll be glad to. He doesn't have an exception
2 here.

3 THE COURT: Go ahead and make a proffer while I'm
4 looking at the law. Go ahead and ask the witness and let's
5 see.

6 BY MR. BARROWCLOUGH:

7 Q. So Ms. Johnson, you have already testified that you
8 have had conversations with Jason Franks, correct?

9 A. Pertaining to what?

10 Q. Pertaining to this incident.

11 A. The one that I just told you about, yes.

12 Q. Yes, ma'am. And --

13 A. Prior to that happening.

14 Now, I never had a conversation with Mr. Franks after
15 the incident with the moped. I -- he -- I never discussed
16 it with him. It was several -- probably several weeks after
17 before I was even aware that that had even happened. He had
18 already been arrested and had been bonded out before I even
19 know. They kept it from me. They never -- my daughter
20 never even told me about it.

21 Q. So you are saying, if I'm clear, under oath, that after
22 this happened you never talked to him about it?

23 A. No. I didn't discuss it with him, no.

24 Q. And he never told you it was an accident?

25 A. No.

1 THE COURT: That takes care of that.

2 MR. BARROWCLOUGH: Well --

3 THE COURT: All right, bring in the jury.

4 MR. BARROWCLOUGH: Your Honor, just for
5 clarification, could I ask her that and let her say that
6 that never happened?

7 THE COURT: No.

8 MR. BARROWCLOUGH: All right.

9 THE COURT: Again we keep going into wanting to
10 ask about things that didn't happen. If they didn't happen,
11 there is no reason -- that they got no business in this
12 case, for the most part.

13 All right, bring the jury back in.

14 (The following takes place in the presence of the
15 jury panel)

16 THE COURT: You may continue, Mr. Barrowclough.

17 MR. BARROWCLOUGH: Thank you, Your Honor.

18 BY MR. BARROWCLOUGH:

19 Q. And Mrs. Johnson, also you were upset with Jason
20 getting in this trouble, correct?

21 A. Well, yes.

22 Q. And, of course, at the time your daughter was pregnant,
23 right?

24 A. Yes.

25 Q. And they were going to have a baby together?

1 A. Yes.

2 Q. And so you were mad that he got in this trouble?

3 A. Well, yes, I was upset.

4 Q. Of course, on June 7th, you weren't there that day,
5 right?

6 A. No.

7 Q. And so you didn't see anything that happened?

8 A. No.

9 Q. And of your own personal knowledge you don't know
10 whether this is an accident or not, right?

11 A. Well, no. Not really, no.

12 Q. Thank you. That's all the questions that I have.

13 REDIRECT EXAMINATION BY MR. SPRINGS:

14 Q. The defense attorney asked you if you ever gave a
15 statement before. Did the police ever come to you and ask
16 you about this?

17 A. No.

18 MR. SPRINGS: That's all. Thank you.

19 THE COURT: Anything else?

20 RECROSS EXAMINATION BY MR. BARROWCLOUGH:

21 Q. Well, of course, Ms. Johnson, you never went to them,
22 right?

23 A. Went to who?

24 Q. The police.

25 A. No.

1 Q. And also we did come to you, didn't we? We made calls,
2 right?

3 A. I don't quite understand what you are asking me. You
4 made calls to who?

5 Q. To you, and we tried to set up meetings with you and
6 you refused to talk with us?

7 A. You did?

8 Q. Right.

9 A. My daughter had told me that she had been talking to
10 Jason's attorney and that he wanted to speak with me and ask
11 me a few questions, and I -- I declined. I just said I
12 really got nothing to say, that I was going to be in court,
13 and if you had any questions for me, you could ask me.

14 Q. Okay. So it would be fair to say, though, that we did
15 reach out to you to try to ask you about this?

16 A. I guess, yeah.

17 Q. Okay. Thank you.

18 MR. BARROWCLOUGH: That's all I have, Your Honor.

19 THE COURT: You may step down and be excused. We
20 appreciate your time.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 MR. SPRINGS: Call Deputy Scurlock.

24 Your Honor, may Ms. Johnson leave or stay, if she
25 pleases?

1 THE COURT: Well, she's been excused, which means
2 she's not on the sequestration order, so she can stay in, if
3 she wishes.

4 MR. SPRINGS: You may stay, if you want.

5 DEPUTY MICHAEL SCURLOCK, JR., having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. SPRINGS:

8 Q. I'm going to ask you to hold that microphone, deputy,
9 and speak up nice and loud so everyone can hear you.

10 What is your name, sir?

11 A. Michael Lee Scurlock, Jr..

12 Q. Who do you work for?

13 A. York County sheriff's department.

14 Q. And you are a sworn law enforcement officer?

15 A. Yes, sir.

16 Q. Were you on duty on the afternoon of June the 7th of
17 this year?

18 A. Yes, sir.

19 Q. And about two o'clock in the afternoon were you
20 dispatched to the 1800 block of Gold Hill Road?

21 A. Yes, sir.

22 Q. What was the nature of the call? Do you remember what
23 the dispatcher said was the reason they wanted you to take
24 your police car out there?

25 A. Yes, I believe it was assault and battery.

1 Q. When you arrived, was there another law enforcement
2 officer already on the scene?

3 A. Yes, sir.

4 Q. Who was that?

5 A. Officer Gibson, highway patrol.

6 Q. Was the injured person still there?

7 A. No.

8 Q. And what was your understanding of where the injured
9 person had been taken?

10 A. Piedmont Medical.

11 Q. By ambulance?

12 A. Yes, sir.

13 Q. Did you -- was this out in York County outside the city
14 limits of Tega Cay?

15 A. I believe so, yes, sir.

16 Q. Did you take the case?

17 A. I did.

18 Q. Did you talk to the highway patrolman and find out what
19 he had seen and learned? Don't tell us what he said, but
20 did you talk to him?

21 A. Yes, sir.

22 Q. And did he fill you in on some things?

23 A. He did.

24 Q. Did you, yourself, look around the scene and do your
25 own eyeball and investigating and talking?

1 A. Yes, sir.

2 Q. As a result of your own eyeballing, looking around,
3 talking to people, did you determine how many vehicles had
4 been involved in this incident?

5 A. Yes, sir.

6 Q. How many?

7 A. Two.

8 Q. And did you determine what type of vehicles; I mean
9 trucks, motorcycles? What kind of vehicles, the two?

10 A. Eventually I got to that point it was a moped and a
11 small SUV, or SUV I should say.

12 Q. Okay. Was the moped there when you arrived?

13 A. Yes, sir.

14 Q. And the small SUV, was it there when you arrived?

15 A. Negative. No, sir.

16 Q. Was the driver of the small SUV there on the scene?

17 A. I'm sorry, the driver?

18 Q. Was the driver of the sport utility vehicle that wasn't
19 there?

20 A. Right.

21 Q. Was the driver there?

22 A. No.

23 Q. Did you -- as you looked around, investigated, talked
24 to people, saw things, did you come to a conclusion of where
25 you thought the point of impact, the initial impact and

1 crash had taken place?

2 A. Yes, sir.

3 Q. I'm showing you what's been marked as State's Exhibit
4 14. Look at that photo. Do you recognize that scene?

5 A. Yes, sir.

6 Q. Is the point of the initial crash in that picture?

7 A. Yes.

8 Q. Okay. Let me have it and I'm going to put it on this
9 overhead projector.

10 MR. SPRINGS: Could we get the lights, please?

11 BY MR. SPRINGS:

12 Q. If you would, Deputy Scurlock, come on down and bring
13 the microphone with you.

14 (Witness off the witness stand)

15 BY MR. SPRINGS:

16 Q. And there is a pointer. Go over to the photo and point
17 out where you thought --

18 A. The photo or --

19 Q. The photo up on the board there, does it show where you
20 think the initial crash happened?

21 A. Yes, myself and Officer Gibson, right about in this
22 area here. Somewhere in here.

23 Q. Okay. In front of that sign, or about --

24 A. It's going to be right around within that area where
25 the sign and telephone pole. This telephone pole here is

1 and this sign right around that area.

2 Q. Okay. And the initial point of impact was in the
3 highway?

4 A. Yes, sir, the right lane here.

5 Q. All right. If you would go ahead and retake your seat.
6 Thank you.

7 (Witness back on the witness stand)

8 BY MR. SPRINGS:

9 Q. I'm showing you what's been marked as State's Exhibit
10 16. Do you recognize what that is?

11 A. Yes, sir, that's the red moped.

12 Q. It was still there?

13 A. Yes, sir, it was.

14 Q. And had somebody sat it up, or was it still laying on
15 the ground?

16 A. When I got up there, I believe it was setting up, just
17 as we see it here in the picture.

18 Q. All right. Did you, as part of your investigation,
19 determine where the final resting point for the moped was?

20 A. That's correct.

21 Q. You did determine what you thought was the final
22 resting point?

23 A. Yes, sir.

24 Q. Let me ask you another question.

25 A. Yes.

1 Q. The final resting point for the moped, where was it in
2 relation to where the moped was parked when you arrived on
3 the scene?

4 A. It was -- the moped was located in front of the I
5 believe McHale's Restaurant. Not directly in front, but if
6 you were to look across the street or into the median,
7 that's where the moped was located.

8 Q. Okay. Let me show you State's Exhibit 13. Do you
9 recognize that picture?

10 A. Yes, sir.

11 Q. Did you actually take these pictures yourself?

12 A. I did.

13 Q. And does that show the moped?

14 A. I'm sorry, say that again.

15 Q. Does that show the moped?

16 A. Oh, yes, sir, the moped is, yes.

17 Q. Is that where it was when you drove up and found it?

18 A. Yes.

19 Q. Okay. And does this picture show the place where you
20 thought the moped came to its final resting point after the
21 crash?

22 A. Yes.

23 Q. Okay. All right. And I'm going to put this up on the
24 screen and ask you to come down one more time. Sorry to run
25 you back and forth.

1 (Witness off the witness stand)

2 BY MR. SPRINGS:

3 Q. Point out -- point out the moped first.

4 A. The moped is here by my patrol vehicle. The moped is
5 positioned right here in the median.

6 Q. Okay. Where do you think it came to a rest on its own
7 before somebody set it back up, the final resting point for
8 the moped subject to the crash? Where did that --

9 A. That I can't tell you exactly. However, I know that
10 the direction of the gouge marks or the skid marks were in
11 the area of this moped, so I'm not sure exactly where the
12 resting point was, but it was not further from where the
13 moped is standing.

14 Q. Okay. And indicate how the gouge marks ran.

15 A. The gouge marks, what we observed, and I talked to
16 Gibson, went from that pole, from the telephone pole and
17 that sign, almost at an angle to where the moped was resting
18 now.

19 Q. And how far would you estimate that is in yards, the
20 gouge marks?

21 A. Approximately 75, I believe, to a 100 yards.

22 Q. And how long is a football field, a standard football
23 field?

24 A. 300 feet, a 100 yards.

25 Q. A 100 yards.

1 Thank you. If you would retake your seat.

2 (Witness back on the witness stand)

3 BY MR. SPRINGS:

4 Q. Was there any blood on the roadway?

5 A. Yes, sir.

6 Q. Now, as you looked around the scene out there, did you
7 talk to folks on the scene?

8 A. Only Officer Gibson.

9 Q. All right. Did you become aware at any time of any
10 eyewitnesses, other than the victim, people that actually
11 saw the crash? Did you find any eyewitnesses?

12 A. No.

13 Q. Did you, as you investigated, determine the name of who
14 you believed was driving that white SUV?

15 A. At the time -- I'm not sure what the time frame, but,
16 yes, eventually I did.

17 Q. At some point --

18 A. Yes.

19 Q. -- did you come up with a suspect name?

20 A. Yes, sir.

21 Q. And who was that?

22 A. Jason Ray Franks.

23 Q. And did you eventually meet Jason Franks face to face?

24 A. I did.

25 Q. Is he in this courtroom?

1 A. Yes, sir.

2 Q. Point him out, please?

3 A. Right here in the middle next to the African American
4 gentleman there.

5 Q. Okay.

6 MR. SPRINGS: Let the record show he's pointed to
7 Jason Franks.

8 BY MR. SPRINGS:

9 Q. Does he look exactly today the way he did when you met
10 him back at the time?

11 A. I'm guessing, however, I believe he had a tattoo on one
12 of the -- below one of the eyes.

13 Q. Okay. Does he still have it?

14 A. From here I can't tell, but no, I don't think he does.

15 Q. Now, did you make contact with Jason Franks?

16 A. Yes.

17 Q. And did you make contact by going and finding him and
18 meeting him face to face, or talk to him on the telephone
19 the first time that you talked to him?

20 A. I spoke with him on the telephone.

21 Q. And did he tell you some things on the phone?

22 A. He did.

23 Q. Do you recall what he told you on the phone?

24 A. He was basically stating to me what took place. And I
25 can't really say verbatim what he said, but he was just

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1 explaining to me his side of the story, and I encouraged him
2 to come in.

3 Q. Okay. You wanted him to meet with you?

4 A. Yes, sir.

5 Q. Where did you ask him to meet with you?

6 A. At the Tega Cay Police Department.

7 Q. Okay. Did you threaten him to make him come meet with
8 you?

9 A. No.

10 Q. Did he come meet with you?

11 A. Yes, sir.

12 Q. Did he meet with you the same day?

13 A. He did.

14 Q. About what time was the moped run over, what time of
15 day?

16 A. I'm guessing it's going to be anytime before I was
17 dispatched to that, which was at 2:13, I believe I have
18 documented. That's going to be sometime before that.

19 Q. Okay. About two o'clock?

20 A. I would say that's correct.

21 Q. Okay. And do you recall about what time Jason Franks
22 came to see you at the Tega Cay police station?

23 A. I'm guessing --

24 Q. I don't want you to guess.

25 A. Yeah, I don't --

1 Q. Was it that same day?

2 A. It was the same day.

3 Q. Okay. All right. And when he came to the police
4 station, was he under arrest? Had you arrested him?

5 A. No.

6 Q. Did you threaten him?

7 A. No.

8 Q. Make him any promises?

9 A. No.

10 Q. Did you read him his Miranda Warnings?

11 A. I did.

12 Q. And do you have a copy of the Miranda Warnings exactly
13 as you gave them to him?

14 A. Yes, sir.

15 Q. Would you tell the jury the Miranda Warnings that you
16 gave?

17 A. I will. I normally keep them in my pocket, which --

18 Q. Okay.

19 A. -- I have here. This is the same card that I normally
20 keep with me for -- while I'm on duty.

21 Q. Was it the one that you used for Jason Franks?

22 A. The same card, yes, sir.

23 Q. Tell the jury what you told him, the Miranda Warnings.

24 A. The Miranda Warnings? Would you like for me to read
25 it?

1 Q. Please.

2 A. Okay. Miranda Warnings.

3 "You have the right to remain silent.

4 Anything you say can and will be used against you in a
5 court of law.

6 You have the right to talk to an attorney and have him
7 present with you while you are being questioned.

8 If you cannot afford to hire an attorney, one will be
9 appointed to represent you before any questioning, if you
10 wish.

11 You can decide at any time to exercise these rights and
12 not answer any questions or make any statements.

13 Do you understand each of these rights I have explained
14 to you."

15 Q. Okay. Did he understand his rights?

16 A. Yes, sir.

17 Q. Did he agree to talk to you?

18 A. Yes, sir.

19 Q. Now, you hadn't arrested him?

20 A. Right.

21 Q. Did you even have to give him Miranda Warnings?

22 A. No.

23 Q. But you did?

24 A. I did.

25 Q. Okay. Did you ask him to give a written statement?

1 A. I did.

2 Q. And did he give one?

3 A. Yes.

4 Q. Did he write it out himself or did you write it for
5 him?

6 A. He wrote it out himself.

7 Q. Okay. Let me back up to when he arrived at the Tega
8 Cay police station to talk to you. Were you already there
9 waiting on him when he arrived?

10 A. Yes.

11 Q. And as he came into the station, did you notice
12 anything about the way he came in?

13 A. Yes. He came in -- I'm not sure exactly who drove him
14 there. I want to say there was a mother. I don't know if
15 it's the mother-in-law. I know it's a mother, I believe.
16 There were three individuals, just put it that way.

17 Q. Were they women or men with him?

18 A. Two women and one man.

19 Q. Okay. And how did Jason Franks act as he came into the
20 police station?

21 A. As he exited the vehicle, I believe he and several of
22 the people who brought him to the station, they all stepped
23 out of the vehicle I believe with him and he embraced each
24 one of them with a firm good hug for a period of time.

25 Q. Before he came in?

1 A. Yes.

2 Q. You said he wrote out a statement. Did you promise him
3 anything to get him to give you the statement?

4 A. No.

5 Q. Did you or any other police officer threaten him in any
6 way to get him to give the statement?

7 A. No.

8 Q. Did he give it freely and voluntarily?

9 A. Yes, sir.

10 Q. I'm showing you what's been marked State's Exhibit 112,
11 and do you recognize that statement?

12 A. I do.

13 Q. Is that Jason Franks statement as he wrote it out for
14 you?

15 A. Yes, sir, it is.

16 MR. SPRINGS: Your Honor, we do offer State's
17 Exhibit 112 into evidence.

18 MR. BARROWCLOUGH: No objection, Your Honor.

19 THE COURT: In without objection.

20 BY MR. SPRINGS:

21 Q. We are going to come back to that in just a minute.

22 All right. If you would go ahead, deputy, pick up the
23 that statement and tell the jury what it says. If you would
24 read the first sentence.

25 A. On the first page?

1 Q. We are going to go sentence by sentence.

2 A. Okay.

3 Q. Start at the beginning, the first sentence.

4 A. Okay. "I, Jason Franks, know and understand my rights.
5 Having decided to answer questions at this time, I now make
6 the following statement."

7 Q. First sentence.

8 A. Keep going?

9 Q. The next sentence.

10 A. Okay. "I Jason Franks got in my fiance's Angela
11 Johnson's 2002 Mazda Tribute at around two something and
12 went to get gas for my lawnmower when I noticed Eddie at my
13 neighbor's house pulling out of my neighbor's driveway."

14 Q. All right. Stop.

15 The next sentence. What does it say in the next
16 sentence?

17 A. "I met Eddie a month ago while cleaning my neighbor's
18 house. Eddie called me a bitch picking a fight. I ignored
19 him and he left. Two to three weeks later I was cleaning my
20 neighbor's truck for side money to help save money for my
21 future child in which my fiance is pregnant with now."

22 Q. Okay. Go to the next sentence.

23 A. "He, Eddie, showed up and began calling me names and
24 further picking a fight. So my seeing Eddie leaving my
25 neighbor's house I waited three to five minutes to give him

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1 a head start so to avoid confrontation. As I left I drove
2 about two miles or so when I seen him on his scooter. He
3 seen me and began slowing down, so I was" --

4 Q. Is that basically I think, basically?

5 A. I think -- "so I was briefly" --

6 Q. "Briefly."

7 A. -- "pinned in the right lane due to cars in the left.
8 I rode behind him for about a block or so. He slowed down
9 again looking back smiling like he was enjoying his game so
10 I came up beside him and asked what he wanted to do, fight
11 or play games. He made a comment that I took as him wanting
12 to fight so I pulled in front of him and pulled over and got
13 out of my vehicle preparing for confrontation. He drove on
14 running his mouth so I got back in my truck and he repeated
15 the process of not letting me pass by - by staying in front
16 so I tried" -- "by staying in front so I tried to fake him
17 out and swerve into the left lane when he swerved at the
18 same time I did and slowed as I sped up and I hit him in his
19 rear. I did not purposely hit him. After that I panicked
20 and went to the gate and sat for a good five to seven
21 minutes to calm down. I drove back to the scene and seen
22 ambulances and really panicked and went to my mom's and
23 explained what happened. I then called Lieutenant Vince
24 Holland as he was calling me and explained what happened."

25 Q. Let me stop you. Where does Vince Holland work?

1 A. Vince Holland works at the Tega Cay Police Department.

2 Q. Okay. Go ahead with what he wrote, what Mr. Franks
3 wrote here.

4 A. "As he was calling me and explained what happened. He
5 told me to come up and turn myself in. I did and this is
6 where I am writing this. When I hit him I looked into my
7 rearview" mirror -- I'm sorry, "my rearview and he seemed
8 fine, standing up walking around flipping me off" --
9 "flippin me off. I'm very sorry this took place! I truly
10 did not mean to hit this guy with my vehicle. I do not have
11 a license and shouldn't have been driving. I'm truly sorry
12 for this and will cooperate by all means necessary."

13 Q. Let me take you back to the second page. About five
14 lines down where he says -- he made a comment that "I took
15 as him wanting to fight so I pulled in front of him and
16 pulled over." Do you see that?

17 A. Yes, sir.

18 Q. And he says -- Mr. Franks then says he did what after
19 he got -- he pulled in front of him and did what?

20 A. Let me make sure I'm on the same -- "in front of him
21 and pulled over and got out of my vehicle preparing for
22 confrontation."

23 Do you want me to keep going?

24 Q. No. No.

25 And on that same page, coming down -- let's go up from

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1 the bottom one, two, three, four, five, six, seven, eight --
2 see where he starts out "I got back in my truck"?

3 A. Yes.

4 Q. He says he got back in his truck and then what
5 happened?

6 A. And prepared -- "repeated the process of not letting me
7 pass by -- by staying in front, so I tried to fake him out
8 and swerve into the left lane when he swerved at the same
9 time I did and slowed as I sped up and I hit him in his
10 rear."

11 Q. Okay. Thank you.

12 Now, when you talked to the defendant, Mr. Franks, have
13 you as yet been to the hospital to see Mr. Mullins?

14 A. I'm sorry, could you --

15 Q. Did you talk to Mr. Franks before --

16 Let me start over. Did you go to the hospital to see
17 how Mr. Mullins was?

18 A. I did.

19 Q. Did you go to the hospital to see Mr. Mullins before
20 you talked to the defendant or after?

21 A. After.

22 Q. So you talked to the defendant. Did you arrest him
23 that day?

24 A. No, I did not.

25 Q. You arrested him later for attempted murder?

1 A. Yes, sir.

2 Q. When you saw the victim, Mr. Mullins, in the hospital,
3 how did he look? How would you describe the way he looked,
4 just in plain English?

5 A. When I walked in, he had a large gash over the top, I
6 believe his right -- above his right eye. He had a lot of
7 facial abrasions. His arms had been bandaged for the most
8 part from finger to his shoulder. And -- is that
9 sufficient? Is that what you are looking for?

10 Q. It is. Thank you.

11 In other words, he was hurt?

12 A. Yes.

13 Q. I'm showing you what's been marked State Exhibit 56.
14 Do you recognize that?

15 A. I do.

16 Q. Who is that laying there?

17 A. That's Mr. Mullins.

18 Q. Okay. And is that what he looked like at the hospital?

19 A. Yes, sir.

20 Q. Is that a true and accurate picture?

21 A. Yes.

22 Q. Did you take that picture?

23 A. I did.

24 Q. Okay.

25 MR. SPRINGS: Your Honor, we do offer State

1 Exhibit 56 into evidence.

2 MR. BARROWCLOUGH: No objection, Your Honor.

3 MR. SPRINGS: We would ask to publish it to the
4 jury.

5 Just pass it around and it comes back to you.

6 BY MR. SPRINGS:

7 Q. Did you at some point see the white SUV that did this?

8 A. I did.

9 Q. Did you take a picture of it?

10 A. I did.

11 Q. I'm showing you what's been marked as State's Exhibit
12 54 for identification. Do you recognize that car?

13 A. I do.

14 Q. What car is that?

15 A. That is the white SUV that was involved in the
16 accident.

17 Q. Okay. Is that --

18 A. The incident.

19 Q. Is that an accurate picture of what it looked like?

20 A. That's correct.

21 Q. Okay.

22 MR. SPRINGS: We do offer State's Exhibit 54 into
23 evidence, Your Honor.

24 MR. BARROWCLOUGH: No objection, Your Honor.

25 THE COURT: In without objection.

1 BY MR. SPRINGS:

2 Q. Did you talk at length with Mr. Mullins in the
3 hospital?

4 A. No, I did not.

5 Q. And was that due to his injuries, or why didn't you go
6 into detail with him?

7 A. He was in the process of being treated and just what
8 appeared to be just in a great deal of pain.

9 Q. Now, as you went through this investigation at the
10 scene, talking to various people, did you become aware of
11 someone else that had been out there on the highway with Mr.
12 Mullins and Mr. Franks about the same time?

13 A. Yes.

14 Q. Who was that?

15 A. Anthony Valentine. Valentine, Valentin.

16 Q. Valenti?

17 A. Valenti.

18 Q. Okay. And did you interview Mr. Valenti?

19 A. I did.

20 Q. And did he give you a statement, a written statement,
21 about what he knew?

22 A. He did.

23 Q. How was his demeanor as he talked to you? How would
24 you describe his candor?

25 A. Calm. He was very calm and straightforward.

1 Q. And I believe I asked the highway patrolman, but let me
2 ask you, deputy. These streets we have been talking about -
3 Tega Cay Drive, Gold Hill Road, the accident scene, the
4 crash scene where the impact happened and where the moped
5 ended up - all of it in York County?

6 A. Yes, sir.

7 Q. Please answer any questions that the defense attorneys
8 have for you, sir.

9 MR. BARROWCLOUGH: May it please the court, Your
10 Honor?

11 THE COURT: Yes.

12 CROSS EXAMINATION BY MR. BARROWCLOUGH:

13 Q. Good morning, deputy.

14 A. Good morning.

15 Q. So Deputy Scurlock, you were the lead investigator in
16 this case, right?

17 A. Yes.

18 Q. So you were in charge of this investigation?

19 A. Yes.

20 Q. And, of course, as a law enforcement officer, you have
21 been at the police academy, right?

22 A. I have.

23 Q. You received training?

24 A. I did.

25 Q. Training on how to interview people?

1 A. Yes, sir.

2 Q. Taking statements from people?

3 A. Yes, sir.

4 Q. You have had training on how to fill out reports?

5 A. Yes.

6 Q. And in filling out reports, you want to make sure those
7 reports are accurate, right?

8 A. Yes.

9 Q. And detailed?

10 A. Yes, sir.

11 Q. And you want to make sure they contain the correct
12 information?

13 A. Yes, sir.

14 Q. Okay. And, of course, in doing your investigation, you
15 want to do it in a manner that's fair, right?

16 A. Say that again.

17 Q. You want to conduct your investigation in a manner
18 that's fair, right?

19 A. Yes.

20 Q. Because ultimately you are trying to get to the bottom
21 of things, right?

22 A. Right.

23 Q. Trying to figure out the truth of what happened in a
24 given situation, right?

25 A. Yes.

1 Q. And as the lead investigator, it would be your decision
2 as far as what witnesses were talked to, right?

3 A. Yes.

4 Q. Or not talked to?

5 A. That's correct.

6 Q. What evidence might be collected?

7 A. Yes.

8 Q. And what evidence might be left behind?

9 A. Yes.

10 Q. And ultimately it was your decision to obtain the
11 charges in this case, right?

12 A. Yes.

13 Q. And you are the one who went to the magistrate and
14 obtained warrants, correct?

15 A. That's correct.

16 Q. And that was on the 8th, right?

17 A. That's correct.

18 Q. A day after June 7th?

19 A. Yes.

20 Q. And you obtained the warrant in this case that we are
21 here for today?

22 A. No, during that time it was ABWIK.

23 Q. Right.

24 A. Assault and battery with intent to kill.

25 Q. Basically the same charge, though, right?

1 A. Yes. The same charge, yes.

2 Q. And although you have received training at the police
3 academy, have you received any specialized training in
4 accident reconstruction?

5 A. No.

6 Q. And you, yourself, are not a part of the MAIT Team,
7 right?

8 A. No, sir.

9 Q. Okay. And as the jury already heard yesterday, the
10 MAIT Team is a specialized branch of the highway patrol,
11 right?

12 A. I believe that's correct.

13 Q. Okay. And their specialty is accident reconstruction?

14 A. That's a possibility.

15 Q. Okay. And you have them as a resource, right?

16 A. I'm unaware of that.

17 Q. So as a law enforcement officer, you are not aware of
18 whether or not you could call them in?

19 A. No, I'm not aware of that.

20 Q. Okay. But you did have Trooper Gibson on the scene?

21 A. I did.

22 Q. And Trooper Gibson, though, is not part of the MAIT
23 team either, right?

24 A. That I don't know.

25 Q. Okay. And he was on the scene before you, right?

1 A. That's correct.

2 Q. And you conferred with him, right?

3 A. If you can be a little bit more --

4 Q. I mean, when you got to the scene, you talked to him,
5 right?

6 A. Yes, sir.

7 Q. Because he had been there first, right?

8 A. Yes.

9 Q. And he had done some things, right?

10 A. Yes.

11 Q. Okay. And so when you got there, you were briefed by
12 him, right?

13 A. Yes.

14 Q. Okay. And is it true that no one with any specialized
15 training in accident reconstruction was called to this scene
16 on Gold Hill Road?

17 A. I believe that's correct.

18 Q. Okay. No one with any advanced degree in engineering
19 was brought to the scene?

20 A. Not to my knowledge.

21 Q. Okay. No experts were brought to the scene?

22 A. Not to my knowledge.

23 Q. Okay. And, of course, the MAIT Team wasn't called?

24 A. Not to my knowledge.

25 Q. Okay. And you testified that there was a determination

1 made as to the point of origin, right?

2 A. Yes, sir.

3 Q. And some gouge marks, right?

4 A. Yes.

5 Q. Okay. And, of course, there is no picture in evidence
6 of any gouge marks, right?

7 A. No.

8 Q. Okay. And there were no swabs taken of those gouge
9 mark, right?

10 A. No.

11 Q. To determine whether or not any compound on the streets
12 were consistent with any compounds found on the moped,
13 right?

14 A. That's correct.

15 Q. Or whether or not any rubber from the street may have
16 matched any rubber from the moped, right?

17 A. That's correct.

18 Q. That these gouge marks -- it was basically an
19 assumption that these gouge marks had something to do with
20 this accident, right?

21 A. I think it was a pretty good guess.

22 Q. Okay. A good guess?

23 A. A good guess.

24 Q. And when you arrived on the scene, as you have already
25 testified to, the moped -- the moped was standing up like

1 this, right?

2 A. That's correct.

3 Q. Okay. And you didn't set it up like this?

4 A. No, sir.

5 Q. And do you know who set it up like that?

6 A. I do not.

7 Q. Okay. And it would be your position that after the
8 accident, that was not the position the moped was in after
9 the accident, right?

10 A. I would say that was -- that would be accurate.

11 Q. Okay. Clearly somebody moved the moped?

12 A. That's correct.

13 Q. And clearly somebody sat it up, right?

14 A. That's correct.

15 Q. On its kickstand, right?

16 A. Possibly, yes.

17 Q. So it had been moved, right?

18 A. Yes.

19 Q. And it would also be fair to say that these gouge marks
20 in question did not terminate where the moped was set up at?

21 A. They were in the same direction of the moped, probably
22 within a foot or two away from those gouge marks.

23 Q. Okay. But my question is the gouge marks didn't end
24 where the moped was located?

25 A. No.

1 Q. And the gouge marks that you talked about, would it be
2 fair to say that they factored into the determination made
3 as far as where the point of origin was?

4 A. Yes.

5 Q. Okay. So based on those gouge marks, that's the
6 determination as far as point of origin was, right?

7 A. I'm sorry, could you rephrase it?

8 Q. I'm saying like you already testified, you made a
9 pretty good guess about the gouge marks, right?

10 A. Yes, sir.

11 Q. It's based on that that you and Trooper Gibson came up
12 with the point of origin, right?

13 A. Yes.

14 Q. And there were no measurements taken, right?

15 A. No.

16 Q. And I believe, as you have already testified to on
17 direct examination, there were no witnesses that you talked
18 to?

19 A. No, none other than Valetine. Hopefully I'm
20 pronouncing the name right.

21 Q. I mean -- but I mean witnesses to the accident itself.

22 A. No, sir.

23 Q. Right.

24 So that was not used to factor into where the point of
25 origin was, right?

1 A. That's correct.

2 Q. And also the speed estimates, those were just
3 estimates, right?

4 A. I believe so, yes.

5 Q. And did you make those estimates, or did Trooper Gibson
6 make those estimates?

7 A. Trooper Gibson.

8 Q. And you -- would it be fair to say you don't know how
9 he came up with those estimates?

10 A. I would say yes.

11 Q. Okay. And would it be fair to say that there was no
12 expert determination made as to how the accident occurred?

13 A. None, other than Trooper Gibson.

14 Q. Okay. Now, as an investigator, a criminal
15 investigator, of course, interviewing witnesses is an
16 important part of an investigation, right?

17 A. Very.

18 Q. They can be talked to, right?

19 A. Pardon?

20 Q. Can be interviewed?

21 A. Yes, sir.

22 Q. And statements can be obtained from them?

23 A. Yes.

24 Q. And in this case you said there were no witnesses to
25 the accident?

1 A. That's correct.

2 Q. Okay. But there were bystanders standing around,
3 right?

4 A. That I don't know.

5 Q. Okay. Is that because you don't remember?

6 A. No, that was because there were actually no one there
7 on the scene other than myself and Trooper Gibson.

8 Q. So there were no bystanders when you got there?

9 A. That's correct.

10 Q. Okay. Were you there when the EMS worker was there?

11 A. No.

12 Q. Okay. So you don't know whether there had been
13 bystanders?

14 A. That's correct.

15 Q. Okay. And did you make any efforts to determine
16 whether or not there had been bystanders?

17 A. No, I did not.

18 Q. And, of course, you responded to the scene based on a
19 911 call?

20 A. I'm not sure if it was -- I got a call from dispatch
21 telling me where I needed to go.

22 Q. Okay. So you received a call from dispatch?

23 A. That's correct.

24 Q. Did you ever investigate to see whether or not anyone
25 had ever called 911 about this accident?

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1 A. No.

2 Q. Whether any calls were made to the Tega Cay police?

3 A. No.

4 Q. Whether any calls were made to the sheriff's department
5 where you work?

6 A. No.

7 Q. Whether or not any calls were made to the highway
8 patrol dispatch?

9 A. No.

10 Q. Now, as an investigator, though, you are aware that
11 records are kept, as far as who called 911, right?

12 A. That's correct.

13 Q. And those records might include their contact
14 information, right?

15 A. Yes, sir.

16 Q. Including a phone number?

17 A. Yes, sir.

18 Q. An address?

19 A. Uh-huh.

20 Q. And those people that called 911, they are potential
21 witnesses, right?

22 A. That's correct.

23 Q. And would it be fair to say that you did not make an
24 effort to determine whether or not any witnesses called 911?

25 A. If I can comment, making an effort I wouldn't say.

1 However, dispatch normally would inform me if there was a
2 911 call that came in pertaining to the incident; however, I
3 didn't receive one. But on the other side, I didn't look
4 into it after the fact.

5 Q. Okay. So you didn't check the 911 records?

6 A. No.

7 Q. All right. And was it also your decision to not take
8 the moped into evidence?

9 A. Yes, I believe so.

10 Q. Okay. And as we already talked about, there was no one
11 out there that day with an engineering degree or any
12 advanced training in accident reconstruction, right?

13 A. Yes.

14 Q. And the moped was not taken into evidence, right?

15 A. I didn't see a need for it, no.

16 Q. So then there is no possibility of the moped being able
17 to be examined later by someone who had training or someone
18 with a degree?

19 A. That would be correct.

20 Q. Okay. But you did take the pictures, right?

21 A. I did.

22 Q. And, again, looking at this picture that's been
23 published to the jury and is in evidence as No. 16, you
24 could see that the frame of that moped is not bent, right?

25 A. Other than -- no.

1 Q. And the wheels of the moped are not bent, right?

2 A. No.

3 Q. The moped itself has not been flattened, right?

4 A. No.

5 Q. Or crumpled up?

6 A. No.

7 Q. Broken in half?

8 A. No.

9 Q. Handlebars are not bent out of shape?

10 A. Just the left one. That's the brake -- I believe the

11 brake or clutch, whatever it would be on the moped --

12 Q. Okay.

13 A. -- was bent.

14 Q. And one side of that moped has a lot of scratches and

15 marks on it, correct?

16 A. Yes, sir.

17 Q. And that would be consistent with it sliding on a

18 pavement, right?

19 A. That -- I would guess that would be correct, yes.

20 Q. And would it be fair to say that a moped sliding on the

21 pavement would really shed no light on whether or not it was

22 struck accidentally, right?

23 A. I'm sorry, say that one more time.

24 Q. I'm saying the scratches that are on that moped?

25 A. Yes.

1 Q. You already said they are consistent with it sliding?

2 A. I don't remember saying it sliding, but it was
3 consistent with where the moped ended up.

4 Q. Okay.

5 A. The gouge marks.

6 Q. But those scratches, they would really shed no light on
7 whether that moped was struck accidentally or intentionally,
8 right?

9 A. That's correct, I believe.

10 Q. Okay. And you have already testified that you did go
11 to the hospital, right?

12 A. Yes, sir.

13 Q. Okay. And you did talk with Mr. Mullins?

14 A. Not a great deal. I just -- Mr. Mullins did more of
15 the talking when I came in and he saw me also.

16 Q. And at some point Mr. Mullins told you he was struck
17 intentionally, right?

18 A. That's correct.

19 Q. By Mr. Franks?

20 A. That's correct.

21 Q. Okay. Well, Mr. Mullins didn't give you a whole bunch
22 of detail, correct?

23 A. No.

24 Q. Just that he was hit intentionally?

25 A. Yes.

1 Q. And you didn't take a written statement from Mr.
2 Mullins, right?

3 A. His hands were bandaged.

4 Q. Okay. You didn't take a written statement, a sworn
5 statement, from Mr. Mullins that day, or any day?

6 A. No.

7 Q. You didn't take a notarized statement from Mr. Mullins?

8 A. No.

9 Q. Okay. And as far as Mr. Mullins account of what
10 happened, that's not memorialized in any of the paperwork
11 filed in this case, right?

12 A. Rephrase it, please.

13 Q. I'm saying Mr. Mullins version, if you will, of what
14 happened --

15 A. Okay.

16 Q. -- is not memorialized in writing anywhere in this case
17 with details and the time line and things like that?

18 A. I wouldn't say in detail, but just in the gist of what
19 he stated to me when I got to the hospital, it's documented
20 in my report.

21 Q. Okay. And that would be that he was hit intentionally?

22 A. Yes, sir.

23 Q. Okay. But he doesn't talk where he was leaving from,
24 or where he was going, or how it transpired? Any of those
25 things are not contained in your report from Mr. Mullins?

1 A. No, sir.

2 Q. Okay. And, again, that was on the 7th, but you are
3 aware that Mr. Mullins was discharged from Piedmont on the
4 7th?

5 A. I'm unaware of that.

6 Q. Okay. And Mr. Mullins did not come to see you on the
7 8th, right?

8 A. That's correct.

9 Q. Or the 9th?

10 A. No.

11 Q. Or the 10th?

12 A. That's correct.

13 Q. Or any day?

14 A. No.

15 Q. He never came, met with you about this incident after
16 the 7th --

17 A. No.

18 Q. -- when you went to see him?

19 A. No.

20 Q. Okay. And as you have already testified, though, it
21 was part of your training to try to get a detailed
22 statement, right?

23 A. That's correct.

24 Q. Because, of course, anybody could point a finger,
25 right?

1 A. That's correct.

2 Q. Anybody can make an allegation?

3 A. Yes, sir.

4 Q. And details are things that can be investigated, right?

5 A. I agree.

6 Q. Okay. And details can be investigated to help you
7 determine whether or not an allegation is true, right?

8 A. Depends on the details, yes, sir.

9 Q. Right, or false?

10 A. Right.

11 Q. Right.

12 And in this case Mr. Mullins didn't give any details,
13 right?

14 A. That's correct.

15 Q. Okay. Now, of course, Valenti did give you a
16 statement, right?

17 A. He did.

18 Q. And you have testified that you took that statement
19 from Valenti, right?

20 A. Yes, sir.

21 Q. And that you took that statement from Valenti at
22 McHale's, right?

23 A. That's correct.

24 Q. Not at his house, right?

25 A. No.

1 Q. He preferred you not to go to his house, right?

2 A. That's not true.

3 Q. Okay. But he wanted you to meet him at McHale's?

4 A. I actually told him "what would be a good site for you?
5 How about McHale's? Would that work?"

6 Q. Okay. So you ended up at McHale's?

7 A. Yes, sir.

8 Q. And he gave you the statement that we have already --

9 A. That's correct.

10 Q. And in that statement, of course, he did not claim to
11 see the accident?

12 A. That's correct.

13 Q. And in the statement that you obtained, he said that
14 he --

15 MR. SPRINGS: I'm going to object. It's hearsay.

16 MR. BARROWCLOUGH: Judge, it's in evidence. Well,
17 it's not in evidence, but he's already identified it and
18 it's part of the information that's part of his
19 investigation, nor am I offering it for the truth of the
20 matter, because our position would be that's not even true.

21 THE COURT: What's the question?

22 BY MR. BARROWCLOUGH:

23 Q. In the statement that you obtained from interviewing
24 Mr. Valenti, according to that Mr. Valenti said that he
25 passed by him at Steve's, right?

1 MR. SPRINGS: I'm going to object. It's hearsay.

2 THE COURT: I sustain the objection.

3 He's going to ask you another question.

4 BY MR. BARROWCLOUGH:

5 Q. You are aware of where Steve's is, correct?

6 A. No, I'm not.

7 Q. Okay. Are you aware of where the BP station is?

8 A. No.

9 Q. On Gold Hill Road?

10 A. No.

11 Q. I'm going to hand you what has been entered into
12 evidence as State's Exhibit 13, right?

13 A. Uh-huh.

14 Q. And I believe that's a picture that you took, right?

15 A. Yes, sir.

16 Q. And do you see in that picture McHale's?

17 A. No, I do not. I'm not sure, sir. I'm not sure if
18 McHale's sits back here. Is this -- is this it here?

19 Q. And do you see up the road a gas station?

20 A. I do.

21 Q. Okay. In that gas station -- observing that picture of
22 that gas station --

23 A. Yes.

24 Q. -- does that help you recollect whether or not that's a
25 BP station?

1 A. No.

2 Q. That would be right across from the Gold Hill Y?

3 A. No, the BP station for me is normally green and yellow.
4 This one here is red, and I can't tell what the exact
5 writing of it is, but it's red in color.

6 Q. Okay. Would you agree with me that that gas station is
7 actually past the accident site?

8 A. That's correct.

9 Q. And would you agree with me that if that were the gas
10 station that Valenti passed these people by, that he then
11 would have been in the position to see the accident?

12 A. I can't -- I can't agree with you. Is that what you
13 are asking?

14 MR. SPRINGS: That's speculative.

15 THE COURT: I agree. I sustain the objection.

16 MR. BARROWCLOUGH: Okay.

17 BY MR. BARROWCLOUGH:

18 Q. And so you interviewed Valenti?

19 A. Yes, sir.

20 Q. And after -- and that was in the evening time on the
21 7th, correct?

22 A. That's correct.

23 Q. Okay. And it was the next day that you went and got
24 the warrant, right?

25 A. That's correct.

1 Q. And you have heard testimony that in the past Valenti
2 had lied for Mullins?

3 A. Yes, sir.

4 MR. SPRINGS: Objection. That's an improper
5 question of this witness.

6 THE COURT: I'll allow the question. Go ahead.

7 MR. BARROWCLOUGH: Thank you, Your Honor.

8 BY MR. BARROWCLOUGH:

9 Q. You have heard that?

10 A. Yes.

11 Q. And at the time that you interviewed Valenti you did
12 not know that?

13 A. No.

14 Q. And at the time that you obtained -- made the decision
15 to obtain the warrant, you did not?

16 A. No.

17 Q. All right. So Jason Franks, though, gave you a
18 statement, as you have testified to?

19 A. That's correct.

20 Q. And Jason Franks said that he would go to the Tega Cay
21 Police Department?

22 A. Yes.

23 Q. And Jason Franks, of course, did leave the scene of
24 this accident, right?

25 A. Yes.

1 Q. No question, right?

2 A. In his statement, yes.

3 Q. Right. And also in your investigation?

4 A. Right.

5 Q. Okay. And, of course, that in and of itself is
6 illegal? It's illegal for him to do that?

7 A. Illegal, yes, sir.

8 Q. Okay. Not long after leaving the scene, though, he did
9 contact law enforcement, right?

10 A. I'm not sure who contacted who, but I know that he had
11 conversation with Vince Holland.

12 Q. All right. And as a result of that you spoke to him,
13 right?

14 A. Spoke to?

15 Q. To Jason Franks.

16 A. Yes, sir.

17 Q. In fact, I believe he was on the phone with Lieutenant
18 Holland and Lieutenant Holland handed you the phone?

19 A. That I would have to say yes, but it was at the police
20 department, if that's what you are asking.

21 Q. Right.

22 A. Yes.

23 Q. And pursuant to you talking with Jason Franks you asked
24 him to come into the Tega Cay Police Department?

25 A. Yes.

- 1 Q. Okay. And he said he would?
- 2 A. Yes.
- 3 Q. And he did?
- 4 A. He did.
- 5 Q. He kept his word to you?
- 6 A. He did.
- 7 Q. And he went there and you interviewed him?
- 8 A. Yes.
- 9 Q. With Lieutenant Holland present?
- 10 A. Yes.
- 11 Q. And he gave you a statement?
- 12 A. He did.
- 13 Q. He cooperated with your investigation?
- 14 A. That's correct.
- 15 Q. And, of course, he didn't have to do that, right?
- 16 A. No.
- 17 Q. And as you have already testified to, you didn't force
- 18 him?
- 19 A. That's correct.
- 20 Q. You didn't intimidate him?
- 21 A. No.
- 22 Q. You were nice to him?
- 23 A. I agree.
- 24 Q. And, of course, he was nice to you?
- 25 A. Professional. I would probably say -- me being a

1 professional, rather than nice I would say --

2 Q. You were professional to him?

3 A. Yes.

4 Q. And, of course, he was nice to you?

5 A. I think respectful.

6 Q. Respectful.

7 And he told you what happened?

8 A. Briefly, and then he documented. I asked him to go
9 ahead and put it on paper.

10 Q. Okay. And as you have already read, he did give you
11 details, right?

12 A. From his statement, yes.

13 Q. Okay. And ultimately those details did go into a
14 written statement, into the written statement?

15 A. It went into the written statement, is that what you
16 are asking?

17 Q. Yeah, the details went into the written statement?

18 A. Yes.

19 Q. And that statement is already in evidence. You got it
20 right there. Okay.

21 So, for the record, it's State's Exhibit 112, is the
22 statement that you obtained from Jason Franks?

23 A. That's correct.

24 Q. All right. And that's your signature at the bottom as
25 a witness, right?

1 A. Yes.

2 Q. And you signed at the bottom of page one?

3 A. Yes.

4 Q. And page two?

5 A. Yes.

6 Q. And page three?

7 A. That's correct.

8 Q. And that statement was obtained at 4:43 p.m.?

9 A. That's what's documented here, yes.

10 Q. So it's a relatively short period of time later after
11 the accident?

12 A. That's correct.

13 Q. And the calls back and forth to Lieutenant Holland and
14 talking to you and making arrangements and coming in, that
15 all happened between the accident and 4:43 p.m.?

16 A. I'm sorry, if you could back up? Lieutenant Holland
17 talking --

18 Q. I'm saying Mr. Franks talking to Lieutenant Holland and
19 talking to you and the arrangements being made to come into
20 the Tega Cay Police Department, all that occurred between
21 the accident time and 4:43 p.m., right?

22 A. No, let me clear it up.

23 Q. Right.

24 A. When I was at the Tega Cay Police Department --

25 Q. Yes, sir.

1 A. -- after the event of the incident --

2 Q. Yes, sir.

3 A. -- Mr. Vince Holland, we were there together.

4 Q. Uh-huh.

5 A. And he was -- I guess he must have had some type of
6 phone conversation with Mr. Franks. And then that's how the
7 interaction took place. I just want to make sure it's
8 spelled out correctly.

9 Q. Absolutely. Absolutely.

10 And my only thing was just for the time line for the
11 jury to understand. That happened in the time period
12 between the accident and when the statement was signed at
13 4:43, right?

14 A. That's correct.

15 Q. Okay. So looking at the statement, it begins that
16 Jason Franks got into his fiance's 2002 Mazda Tribute around
17 two something, right?

18 A. Yes.

19 Q. And that he went to get gas for his lawnmower, right?

20 A. That's correct.

21 Q. Okay. And according to the statement, he noticed Eddie
22 at his neighbor's house pulling out of his neighbor's
23 driveway, right?

24 A. That's correct.

25 Q. And he says he met Eddie two months ago while cleaning

1 his neighbor's house, right?

2 A. Yes.

3 Q. And he said that Eddie called him a bitch and picked a
4 fight with him, right?

5 A. Yes.

6 Q. But he ignored Eddie and he left, right?

7 A. Yes.

8 Q. And two or three weeks later he was cleaning his
9 neighbor's car for side money, right?

10 A. Yes.

11 Q. To help save money for his future child, right?

12 A. Yes.

13 Q. Because his fiance was pregnant?

14 A. That's correct.

15 Q. And his fiance is Angela Johnson, right?

16 A. That is correct.

17 Q. And he said that Eddie showed up and began calling him
18 names and further picking a fight with him, right?

19 A. Yes.

20 Q. Okay. And then he said so seeing Eddie leaving his
21 neighbor's house, he waited three to five minutes to give
22 him a head start, right?

23 A. Yes.

24 Q. And avoid a confrontation, right?

25 A. Yes.

1 Q. So Jason Franks told you those things, right?

2 A. Yes.

3 Q. And while you were talking to him -- or actually I
4 should say while he was talking to you, Lieutenant Vince
5 Holland was sitting there too, right?

6 A. No.

7 Q. No, he wasn't?

8 A. Most -- most of the conversation, like I said, with
9 Jason he had was over the phone. And when he got to the
10 police station at Tega Cay Police Department, my comments to
11 Jason as he wanted to explain, so it wasn't like it was a
12 conversation. He wanted to explain and I told him rather
13 than explain, I need for him to document it, which he did.

14 Q. Okay. But just so I'm clear, because do you remember
15 testifying at a prior hearing in this case? I think I asked
16 you who was present when Jason was giving the statement and
17 my understanding was you said you and Lieutenant Holland.

18 A. Lieutenant Holland, yes.

19 When you are saying a statement, I'm thinking written
20 statement, not verbal. Are you saying written statement?

21 Q. So Lieutenant Holland was there when he was giving the
22 written statement?

23 A. Written statement, yes, sir.

24 Q. And, of course, that's when he wrote about both -- the
25 two prior confrontations, correct?

1 A. Yes.

2 Q. As well as trying to avoid this confrontation, right?

3 A. Yes.

4 Q. And as part of your investigation, did you investigate
5 the allegations about two prior confrontations?

6 A. No, I just spoke with whatever Valenti had shared with
7 me.

8 Q. Okay. And did you find out that after the second
9 confrontation, that it was actually Mr. Franks who called
10 the police?

11 MR. SPRINGS: I'm going to object. That's
12 assuming facts not in evidence.

13 MR. BARROWCLOUGH: It's not assuming. I'm just
14 asking him if he knew it as part of his investigation or
15 not.

16 THE COURT: Well, I sustain the objection.

17 BY MR. BARROWCLOUGH:

18 Q. Well, right out of the gate in obtaining this
19 statement, at the beginning of the statement, you are
20 presented with information that Mullins created a
21 confrontation with Franks, right?

22 A. Yes, sir.

23 Q. And Franks walked away, left?

24 A. Well --

25 MR. SPRINGS: I'm going to object. It's

1 argumentative. That's what Mr. Franks was saying in his
2 statement. The deputy can't corroborate.

3 THE COURT: Well, just ask him what's in the
4 statement. That's --

5 MR. BARROWCLOUGH: Judge, I am. I'm --

6 THE COURT: Go ahead and let's hear the next
7 question.

8 MR. BARROWCLOUGH: Okay.

9 BY MR. BARROWCLOUGH:

10 Q. And from the statement --

11 A. Yes.

12 Q. -- you were presented with information --

13 A. Yes.

14 Q. -- that two times prior to the 7th there was a
15 confrontation, right?

16 A. Mr. Franks statement?

17 Q. Yes, what we just read.

18 A. Yes.

19 Q. And that those confrontations were brought on by Mr.
20 Mullins?

21 A. Yes.

22 Q. And Mr. Franks did not respond with violence?

23 A. That's correct.

24 Q. And then, of course, this incident too, the statement
25 says that Mr. Franks acted to avoid the confrontation?

1 A. That's correct.

2 Q. He said that he waited three to five minutes to give
3 Mullins a head start and avoid a confrontation?

4 A. Yes.

5 Q. Okay. And then it says he left, right?

6 A. He, as in Mr. Franks?

7 Q. He as in Franks left, right?

8 A. Yes.

9 Q. And drove for not a mile or two miles, or so, and then
10 saw him, meaning Mullins, right?

11 A. I believe that's correct.

12 Q. On the scooter, right?

13 A. Yes.

14 Q. Okay. And said "he seen me and began slowing down,"
15 right?

16 A. Yes.

17 Q. Okay. He says "I briefly stayed in the right lane,"
18 right?

19 A. Yes.

20 Q. "Due to the cars on the left"?

21 A. Yes.

22 Q. "And I rode behind him for a block or so," right?

23 A. Yes.

24 Q. And he says "he slowed down again," meaning Mullins,
25 "and looked back smiling like he was enjoying his game,"

1 right?

2 A. Yes.

3 Q. And, of course, Mr. Mullins was on a moped, right?

4 A. That's correct.

5 Q. And according to this statement, then Mr. Mullins was
6 slowing down his moped, right?

7 A. Yes.

8 Q. And smiling at him, right?

9 A. Yes.

10 Q. And basically trying to obstruct Mr. Franks path down
11 the road, right?

12 A. Yes.

13 Q. And would it be fair to say that that's not safe
14 driving?

15 MR. SPRINGS: Objection. That's argumentative.

16 THE COURT: I sustain the objection. That's
17 argumentative.

18 BY MR. BARROWCLOUGH:

19 Q. Then it says "I," Jason Franks, "came up beside him and
20 asked him what he wanted to do, fight or play games," right?

21 A. Yes.

22 Q. And then it says "he made a comment that I took as him
23 wanting to fight, so I pulled in front of him, pulled over
24 and got out of my vehicle preparing for a confrontation,"
25 right?

1 A. Yes.

2 Q. Okay. And then it says "he," Mullins, "drove on by
3 running his mouth, so I got back in my truck and repeated
4 the process of not letting me pass by," right?

5 A. Yes.

6 Q. And this whole statement, as far as how this all
7 happened, detective, did you make a determination as far as
8 where this all could have taken place?

9 A. When you say where all, do you mean just meaning within
10 residences or --

11 Q. Right.

12 A. Roadway, or --

13 Q. Right, within -- from where Mr. Franks said that he
14 left from on Winward Drive, right?

15 A. Yes.

16 Q. Up to where the moped was located by that storage place
17 that you indicated from the pictures.

18 A. Right.

19 Q. Okay. And did you familiarize yourself with that
20 route?

21 A. Not greatly, but looked it over.

22 Q. And did you have that mileage of that route?

23 A. I did not.

24 Q. And would it be fair to say that where Mr. Franks left
25 from on Winward Drive is a small residential street?

1 A. I would say, yes.

2 Q. Okay. And that turning on Tega Cay Drive, that would
3 be a more heavily traveled street than Winward Drive?

4 A. Tega Cay Drive being more heavily traveled, is that
5 what you are saying?

6 Q. Yes, sir.

7 A. Yes.

8 Q. And then coming out of Tega Cay, Tega Cay Drive turns
9 into Gold Hill Road, would it be fair to say that's an even
10 more heavily traveled road?

11 A. I would agree.

12 Q. And as far as your investigation goes, did you make any
13 attempt in interviewing Mr. Franks or any other attempt to
14 determine where some of these events that Mr. Franks
15 statement might have taken place at? For example, where Mr.
16 Franks caught up to Mr. Mullins at?

17 A. No.

18 Q. And during what stretch of road Mr. Franks might have
19 been driving on when he claims Mr. Mullins blocked him in?

20 A. No.

21 Q. And where Mr. Franks pulls in thinking there was going
22 to be a confrontation?

23 A. No.

24 Q. Okay. So -- and what about -- with regard to Valenti's
25 statement, did you make any attempt to track or figure out

1 where these events could have taken place from Valenti's
2 statement on the route?

3 A. No.

4 Q. And then looking back at the statement, on line 14 of
5 page two, it says "I did not purposely hit him," right?

6 A. If you are looking at page two, line 14, it reads "as I
7 sped up and I hit him in the rear."

8 Q. Right.

9 A. And then -- okay. "I did not purposefully hit him,"
10 line 15. "After that I panicked and went" --

11 Q. To the Gate gas station?

12 A. To the Gate.

13 Q. Okay. And are you familiar with the Gate gas station
14 that is up on the corner of Gold Hill and 160?

15 A. No, I know there is a gas station there, but I'm
16 unfamiliar with the name.

17 Q. Okay. And then it says that he drove back to the
18 scene, saw ambulances, really panicked and went to his mom's
19 and explained what happened, right?

20 A. Yes, that's correct.

21 Q. Then it said he called Lieutenant Vince Holland,
22 correct?

23 A. Yes.

24 Q. And, of course, that's the same Vince Holland who is
25 with you when he was writing the statement?

1 A. That's correct.

2 Q. Okay. And going back to the statement, it says "I
3 called Lieutenant Vince Holland as he was calling me and
4 explained what happened. He told me to come up and turn
5 myself in," right?

6 A. Yes.

7 Q. "I did and this is where I'm writing this."

8 A. That's correct.

9 Q. Okay. And it says "when I looked up into my rearview
10 he seemed fine," right?

11 A. Yes.

12 Q. "Then he was up walking around flippin me off."

13 A. That's correct.

14 Q. And during your investigation did you determine whether
15 or not that fact was true?

16 A. No.

17 Q. Okay. Were you able to determine whether or not Mr.
18 Mullins was ambulatory immediately following the accident?

19 A. I'm sorry?

20 Q. Did you -- through your investigation were you able to
21 determine whether or not Mr. Mullins was ambulatory, walking
22 around after the accident?

23 A. No.

24 Q. And then it says "I truly did not mean to hit this guy
25 with my vehicle."

1 A. Yes.

2 Q. Okay. Then he said "I'm truly sorry for this and will
3 cooperate by all means necessary," right?

4 A. Yes.

5 Q. And he did cooperate, as far as giving you a statement,
6 right?

7 A. That's correct.

8 Q. Okay. And would it be fair to say then that the gist
9 of the statement to you is that this collision was an
10 accident?

11 A. You are asking me if it was an accident?

12 MR. SPRINGS: Objection. That calls for a
13 conclusion and it's argumentative.

14 THE COURT: I sustain the objection.

15 BY MR. BARROWCLOUGH:

16 Q. All right. What is contained in this statement --

17 A. Right.

18 Q. -- as far as Mr. Franks version would not be
19 inconsistent with the damage that you observed on the moped,
20 correct?

21 A. That is a broad question, if you can narrow it down for
22 me a little bit.

23 Q. Okay. Well --

24 A. Because his statement is a statement the moped -- you
25 know, that's two separate -- if you can -- like I say, if

1 you can narrow it down for me, hopefully I can answer it.

2 Q. Well, what you observed and what you have testified
3 to --

4 A. Yes.

5 Q. -- as far as the damage to the moped?

6 A. Yes.

7 Q. Okay. That damage would not be inconsistent, would not
8 contradict the version that Jason Franks gave you in the
9 statement, right?

10 A. I would say yes.

11 Q. Okay. And so you went to the Piedmont Medical Center
12 on the 7th?

13 A. Yes.

14 Q. And as you have already testified to, you noted that
15 Mr. Mullins had bandages, right?

16 A. Yes.

17 Q. And abrasions, right?

18 A. Yes.

19 Q. And a cut on his head?

20 A. Yes.

21 Q. Okay. And you never -- did not ever obtain the
22 medicals from Piedmont Medical Center in this case, right?

23 A. No.

24 Q. The medicals that would have been Mr. Mullins medicals?

25 A. No.

1 Q. And you did not obtain the EMS records?

2 A. No.

3 Q. From the treatment that he would have received on the
4 scene from EMS?

5 A. No.

6 Q. And did you investigate to see if Mr. Mullins received
7 any followup care?

8 A. No.

9 Q. Or whether or not he needed to see a physical therapist
10 as a result of this?

11 A. No.

12 Q. Or any type of rehabilitation?

13 A. No.

14 Q. Or whether or not he needed any type of ongoing medical
15 care?

16 A. No, sir.

17 Q. Okay. But we do know he was discharged the same night,
18 right?

19 A. I don't know that.

20 Q. Okay. And we don't know -- you don't know whether or
21 not he ever had to see a doctor again?

22 A. I don't know that either.

23 Q. For any of the abrasions that resulted from him being
24 in this accident?

25 A. That's correct.

1 Q. Okay. And, deputy, you are in law enforcement, right?

2 A. That's correct.

3 Q. And as someone who is in law enforcement, you have had
4 dealings with people who were under the influence of
5 cocaine, correct?

6 A. Yes.

7 Q. Okay. And as part of your training in law enforcement,
8 as well as your experience in law enforcement, you know that
9 cocaine can give a person feelings of euphoria, right?

10 A. Yes.

11 Q. Can make them feel stronger than they are?

12 A. Yes.

13 Q. Can make them braver than they are?

14 A. Yes.

15 Q. Can bring out feelings of invincibility?

16 A. That's correct.

17 Q. And also you know that it's illegal to operate a motor
18 vehicle under the influence of drugs, right?

19 A. Yes.

20 Q. Have you ever made a charge for driving under the
21 influence of drugs?

22 A. No.

23 Q. But you know it is illegal?

24 A. Yes, sir.

25 Q. And it would be illegal to drive under the influence of

1 cocaine?

2 A. Yes.

3 Q. And in your experience would it be fair to say that
4 person's under the influence of cocaine might drive
5 recklessly?

6 A. Yes.

7 Q. Okay. Might swerve?

8 A. Yes.

9 Q. Might cut somebody off?

10 A. Possibly, yes.

11 MR. SPRINGS: I'm going to object to the relevance
12 of this.

13 THE COURT: I sustain the objection.

14 MR. BARROWCLOUGH: Okay.

15 BY MR. BARROWCLOUGH:

16 Q. And when you said that you did not obtain the medicals
17 in this case --

18 A. Yes.

19 Q. -- specifically you did not review the toxicology
20 report from Mr. Mullins in this case, right?

21 A. No.

22 Q. And you would be unaware of what that says?

23 A. That's correct.

24 Q. Thank you, deputy.

25

1 REDIRECT EXAMINATION BY MR. SPRINGS:

2 Q. Deputy, would a moped being pushed 75 yards down the
3 road be more consistent with an intentional act or an
4 accident?

5 A. (No response) 5.

6 Q. Do you want me to ask it again?

7 MR. BARROWCLOUGH: Your Honor, I object to that.
8 There is no foundation for that question.

9 THE COURT: Well, there may be a foundation for it
10 as far as the length, but I sustain the objection. That's
11 up to the jury to determine.

12 BY MR. SPRINGS:

13 Q. The defense attorney asked you over and over again
14 about the MAIT Team, accident investigation. Pursuant to
15 your investigation, was this an accident or an intentional
16 act?

17 A. Intentional.

18 Q. What was the intentional act that your investigation
19 showed you happened?

20 A. That a vehicle struck another vehicle and for the most
21 part didn't return to the scene and there was a victim that
22 was involved.

23 Q. But your investigation showed the striking of the
24 vehicle, was it intentional or accidental?

25 MR. BARROWCLOUGH: Objection, asked and answered.

1 THE COURT: I sustain the objection.

2 BY MR. SPRINGS:

3 Q. Now, Mr. Mullins, after you saw him in the hospital, he
4 did not speak to you after that, is that right?

5 A. When you say --

6 Q. Mr. Mullins, you saw him in the hospital?

7 A. Yes.

8 Q. The defense attorney asked you if he ever spoke to you
9 later after you saw him at the hospital?

10 A. That's correct.

11 Q. You said no, he didn't?

12 A. He did not.

13 Q. Did you ever go to Mr. Mullins and ask him to talk to
14 you?

15 A. No.

16 Q. So he wasn't hiding from you? You just didn't ask him?

17 A. That's correct.

18 Q. In the defendant's statement, the written statement
19 that he gave you, when he told you he was going to get gas
20 for his lawnmower, do you know of your own knowledge whether
21 that's true or he made that up?

22 A. I have -- I would not know if that was true or made up.

23 Q. Okay. When he said in his statement "I met Eddie about
24 two months ago," do you know if that was true of your own
25 knowledge or do you know if he made that up?

1 A. I wouldn't know if that was true or if it's made up.

2 Q. When he said "Eddie showed up, started calling me names
3 and picking a fight," do you know if that was true or he
4 made it up?

5 A. I would not know if that was true or if it was made up.

6 Q. And when he said in his statement "I saw Eddie leaving
7 my neighbor's house and I waited three to five minutes to
8 give him a head start to avoid a confrontation," do you know
9 of your own knowledge whether that is true or he made it all
10 up?

11 A. That's correct.

12 Q. And when he says "he saw me -- in the statement from
13 the defendant says in his statement "he saw me and began
14 slowing down, I was pinned in the right lane due to cars in
15 the left lane," do you know if that's true of your own
16 knowledge, or if he just made that up?

17 A. I would not know if that's true or if he made it up.

18 Q. And when he says "I rode behind him for about a block
19 or so and he slowed down again looking back smiling like he
20 was enjoying the game," do you know if that's true or if the
21 defendant made that up?

22 A. I would not know if that was true or if it was made up.

23 Q. And when he said "I came up beside him and asked him
24 what do you want to do, fight or play games," do you know if
25 that actually happened, if it's true, or if the defendant

1 made that up?

2 A. I would not know that.

3 Q. When he says in his statement "I pulled around him and
4 I pulled over and I got out of my vehicle preparing for a
5 confrontation," do you know if that actually happened and
6 that's true, or if he made it up?

7 A. I would not know that.

8 Q. Okay. And when he said in his statement "he drove on,
9 running his mouth, so I got back in my vehicle and he
10 repeated the process of not letting me pass by by staying in
11 front of me," do you know if that actually happened or if he
12 made all of that up?

13 A. I would not know if that was true.

14 Q. So when he says in his statement "I tried to fake him
15 out by swerving into the left lane, when he swerved into the
16 left lane at the same time that I did and slowed as I sped
17 up and I hit him in the rear," do you know if that really
18 happened or if the defendant made all of that up?

19 A. I would not know if that was true or made up.

20 Q. When he said "I did not purposely hit him," do you know
21 if that's true or he made that up?

22 A. I would not know if that's true or made up.

23 Q. Okay. Pursuant to what you saw out there on the
24 roadway, 75 yards and gouges and the moped at the end you
25 said about a foot from the ending of 75 yards --

1 A. That's correct.

2 Q. -- of gouges, and you said 75 yards at the most of a
3 football field?

4 A. That's correct.

5 Q. Those 75 yards, most of a football field of gouges,
6 pursuant to what you saw, your training, your experience,
7 were they put there by a crash that knocked it, or was the
8 moped pushed for 75 yards?

9 A. It was --

10 MR. BARROWCLOUGH: Your Honor, I object.

11 THE COURT: I sustain the objection.

12 MR. SPRINGS: That's all I have.

13 MR. BARROWCLOUGH: Just briefly, Your Honor.

14 THE COURT: Recross.

15 RECROSS EXAMINATION BY MR. BARROWCLOUGH:

16 Q. Deputy, I know you went through line by line Mr. Franks
17 statement saying you don't whether that's true or made up,
18 right?

19 A. That's correct.

20 Q. But it basically means that it could be true?

21 A. That's correct.

22 Q. And also with regards to Mr. Valenti's statement, you
23 don't know if any of that is true or made up, right?

24 A. That's correct.

25 Q. And with regards to Mr. Mullins saying this was an

1 intentional act, you don't know whether that's true or made
2 up?

3 A. That's correct.

4 Q. And you said that -- on Mr. Springs questioning, you
5 said the MAIT Team wasn't called. This wasn't an accident,
6 it was intentional, right?

7 A. That this was an intentional act?

8 Q. Right. That's why the MAIT Team wasn't called, I
9 believe you said when Mr. Springs questioned you.

10 A. I can't say that's why the MAIT Team wasn't called. I
11 can just tell you that I was there because investigating a
12 criminal offense.

13 Q. Okay. But as you have already testified to, after Mr.
14 Franks gave a statement, you let him go, right?

15 A. That's correct.

16 Q. So no charging decision had been made at that point --

17 A. Yes, that's correct.

18 Q. -- as to whether it would have been an intentional act
19 or not?

20 A. Right.

21 Q. When the MAIT Team would have been called would have
22 been prior to that, right, during the investigative phase?

23 MR. SPRINGS: I'm going to object. This goes
24 beyond --

25 THE COURT: This is speculative. I sustain the

1 objection.

2 MR. BARROWCLOUGH: All right.

3 I don't have any other questions then. Thank you.

4 THE COURT: You may step down. Thank you.

5 Members of the jury panel, this is a quarter to
6 one, so we are going to break until two o'clock. Have a
7 pleasant lunch. Try to stay warm. We will see you back at
8 two o'clock.

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT: All right, let's just see where we
12 are, as far as timing. You still got three, as I count
13 them, three witnesses left?

14 MR. SPRINGS: We will only have one more witness,
15 Mr. Mullins. He was going to be our last witness.

16 THE COURT: All right. So you are not calling
17 Holland or Angela Johnson?

18 MR. SPRINGS: No, sir.

19 THE COURT: All right. So we will have Mr.
20 Mullins when we get back, and we will get through with Mr.
21 Mullins, take a rest, and then we will start with Mr. Franks
22 and go from there.

23 MR. BARROWCLOUGH: Yes, sir, Your Honor.

24 THE COURT: Have a pleasant lunch.

25 (Whereupon, proceedings were recessed).

EDWARD RAY MULLINS - DIRECT BY MR. SPRINGS

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1 DIRECT EXAMINATION BY MR. SPRINGS:

2 Q. What is your name, sir?

3 A. Edward Ray Mullins.

4 Q. How old are you, Edward?

5 A. I'm 46.

6 Q. And were you living in York County back the first part
7 of June of this year?

8 A. Yes, sir, I was.

9 Q. And do you know a fellow named Anthony Valenti?

10 A. Yes, I do.

11 Q. Do you call him Tony?

12 A. Yes, sir.

13 Q. And are you friends or relatives, what?

14 A. We are just good friends.

15 Q. Okay. How long have you known him about?

16 A. Approximately two years.

17 Q. And do you know where Mr. Valenti was living back in
18 May and in June of this year?

19 A. Yes, sir, I do.

20 Q. Did you ever go to visit Mr. Valenti at his house?

21 A. Yes, sir, I did.

22 Q. And back around May of this year did you bump into
23 somebody named Jason Franks?

24 A. Yes, sir, I did.

25 Q. When did you bump into Jason Franks?

1 A. I was over to Mr. Valenti's house about a week before
2 the accident and Mr. Franks was out in Mr. Valenti's yard
3 washing his truck.

4 Q. Okay.

5 A. And --

6 Q. Let me ask you -- let me ask questions. I'm a lawyer.
7 That's what I do.

8 So you were at Mr. Valenti's and you saw Jason Franks
9 in the yard?

10 A. Yes, sir.

11 Q. Is that the first time that you had seen him?

12 A. That's the first time I ever seen him.

13 Q. That was about how long before you got run over on the
14 moped?

15 A. Approximately a week.

16 Q. All right. And did you have some words with Jason
17 Franks?

18 A. Yes, sir, I did.

19 Q. What were the words?

20 A. He had a tattoo under his eye and I made a comment
21 about didn't that mean he was queer and he said no.

22 And then so I made a comment about he had some
23 earrings. I made a comment about that, and I asked him
24 didn't that mean he was queer and he said no.

25 What I was saying, I told him if he ever been locked up

1 with me, he would have got all the chocolate candy bars he
2 wanted.

3 Q. So you teased him?

4 A. And he said --

5 Q. Let me stop you. Let me ask question.

6 When you teased him, called him a queer, how did he
7 take that? Did he like it?

8 A. He really didn't say anything. He said that he would
9 stab me, and I told him he wouldn't do nothing and he went
10 home.

11 Q. And this was at that time about a week before you got
12 run over?

13 A. Yes, sir.

14 Q. Did those words, you teasing him, him coming back, did
15 he get physical, or was it just words?

16 A. It was just words. I mean, he left.

17 Q. Okay.

18 A. I stayed probably another 30 minutes. He never came
19 back. Then I eventually left. I was --

20 Q. Well, let me ask a question. Don't blabber. Let me
21 ask a question.

22 Did you threaten to hurt him?

23 A. No, sir.

24 Q. Did you lay a finger on him --

25 A. No, sir.

1 Q. -- out there when you teased him?

2 A. No, sir.

3 Q. Did you -- did you go over to Mr. Valenti's on the day
4 that you got run over?

5 A. Yes, sir, I did.

6 Q. Okay. And did you and Mr. Valenti make some plans that
7 day?

8 A. Yes, sir, we did.

9 Q. What were your plans for that afternoon?

10 A. Well, I had found out when I got there that he had a
11 doctor's appointment, so I wasn't there but maybe ten
12 minutes or so and we both left. He was going to the doctor.
13 I was going to get gas and go by the bank.

14 Q. Slow down. Slow down. Are you nervous?

15 A. Yes.

16 Q. Okay. I want you to just listen to my question.

17 Did you guys, you and Mr. Valenti, Tony, did you make
18 some plans for the afternoon?

19 A. Yes, sir.

20 Q. So I'm going to ask you in a minute what all happened,
21 but what were your plans to do? What was that?

22 A. He was going to the doctor and I was going to go to the
23 gas station and by the bank, and then we were going to meet
24 back at his house later.

25 Q. Okay. Now, how were you getting around? What were you

1 using for transportation?

2 A. I had a moped.

3 Q. Okay. And what kind of transportation did Mr. Valenti
4 have?

5 A. He had a Toyota Tacoma truck.

6 Q. Okay. So when it came time to leave the house, about
7 what time did you leave his house?

8 A. Approximately two o'clock.

9 Q. Okay. And the day you got run over was June 7th?

10 A. Yes, sir.

11 Q. Okay. Did you fellows walk out of the house together,
12 or you go first, or he goes first? Tell me about that.

13 A. We went out of the house together.

14 Q. Okay. Did you get on your moped?

15 A. Yes, sir, I got on my moped.

16 Q. And did you head on down the road?

17 A. Yeah, I proceeded out of the driveway and he got in his
18 truck and was turning around.

19 Q. And you were -- you said that you were going to go to
20 the bank?

21 A. I was going to the gas station and to the bank, yes,
22 sir.

23 Q. Okay. And to get there, did you have to get on the
24 Tega Cay Drive, the big boulevard going out of Tega Cay?

25 A. Yes, sir.

1 Q. Okay. When you got on your moped and started riding,
2 did you put a helmet on?

3 A. Yes, sir.

4 Q. Did you put your strap on the helmet?

5 A. No, I didn't fasten my strap.

6 Q. Okay. And as you headed on down the road going out
7 Tega Cay Drive -- let's make sure we are talking about the
8 same road. I'm showing you what's been marked State's
9 Exhibit 11 and 9. Is that Tega Cay Drive?

10 A. Yes, sir.

11 Q. Four-lane road?

12 A. Yes, sir.

13 Q. Okay. Going out of Tega Cay.

14 How were you riding your moped? Describe what lane you
15 were in and how you were steering. Does that make sense?

16 A. I was in the right-hand lane and I always ride near the
17 white line on the right side of the road.

18 Q. Okay. Were you steering straight or were you weaving?

19 A. I was steering straight.

20 Q. Okay. Your moped, what year is it?

21 A. It's a 2009.

22 Q. Pretty new?

23 A. Yes, sir. I bought it brand new.

24 Q. I'm showing you what's been marked as State's Exhibit

25 16. Do you recognize that?

1 A. Yes, sir.

2 Q. Whose is that?

3 A. That's mine.

4 Q. Is that your moped?

5 A. Yes, sir.

6 Q. All right. As you are going down the road over on the
7 right side or the right lane, about how fast were you going
8 on your moped?

9 A. Approximately 25 miles an hour.

10 Q. Okay. Do you go -- do you ever go faster than that on
11 your moped?

12 A. Yes, sir.

13 Q. How fast do you go when you go faster?

14 A. It the will run about 34.

15 Q. This day, June 7th, before you got run over, tell me
16 again how fast were you going.

17 A. 25 miles an hour.

18 Q. Okay.

19 A. It slows way down going up hills.

20 Q. Okay. As you got out on Tega Cay Drive going towards
21 Gold Hill Road, the gas station that you were headed for,
22 was it up on the Gold Hill Road area?

23 A. It was at Gold Hill Road and 160.

24 Q. Okay. Which is up at the entrance, the outer part of
25 Tega Cay?

1 A. Yes, sir.

2 Q. Okay. As you are heading out that way, were you
3 looking behind you wondering if anybody was following you?

4 A. I looked in my mirror. I check my mirrors frequently,
5 yes.

6 Q. Did you see anything that worried you?

7 A. Not that worried me. I seen a white vehicle behind me,
8 but it didn't concern me. I knew everybody else was passing
9 me. I couldn't figure out why this vehicle wasn't passing
10 me, but --

11 Q. Okay.

12 A. -- I really didn't pay no attention to it.

13 Q. Okay. At some point did you see Mr. Valenti again?

14 A. Yeah, Mr. Valenti came around me right after Steve and
15 Kelly's and he -- I thought he waved, so I just waved at him
16 and --

17 Q. Okay.

18 A. I found out later he was trying to tell me that Mr.
19 Franks was behind me.

20 MR. BARROWCLOUGH: Objection. That calls for
21 hearsay.

22 THE COURT: I sustain the objection.

23 BY MR. SPRINGS:

24 Q. Don't tell us what Mr. Valenti said.

25 After Mr. Valenti went around you, did he head on up

1 the road?

2 A. Yes, sir.

3 Q. Okay. And that was right past Steve's bar?

4 A. Yes, sir.

5 Q. What's the next thing that happened?

6 Let's take it in slow motion, just like a slow motion
7 football playback. What's the next thing that you remember
8 that happened?

9 A. The white vehicle came up beside of me and rolled down
10 the window and it was Jason Franks and he was hollering and
11 screaming. Then he whips in front of me. He pulls to the
12 side of the road. He jumps out with a baseball bat. I just
13 kept going.

14 Q. Okay. All right. You kept going?

15 A. Yes, sir.

16 Q. And as you went down the road, at that point were you
17 conscious -- were you paying attention to behind you?

18 A. Yes, sir.

19 Q. What's the next thing that happened?

20 A. I seen him coming in my rearview mirror and I was just,
21 you know, in the right lane and then all the sudden I looked
22 back again and -- I mean, I just said oh, my God, because I
23 knew he was going to hit me. I mean, he was just coming so
24 fast and he hit me and the next thing I remember was I was
25 laying on the side of the road and some lady said she was a

1 nurse and --

2 Q. Okay.

3 A. -- I was bleeding.

4 Q. Whoa, whoa. I know that you are nervous. Slow down.

5 When you saw the white car coming up at you, could you
6 hear anything?

7 A. I heard the engine revving high.

8 Q. And when you saw the white car coming behind you, was
9 it coming -- let's get this clear for this jury. Was it
10 coming slow or fast?

11 A. It was coming fast.

12 Q. Okay. And did you see it coming at you by looking
13 back, or were you looking in your rearview mirror?

14 A. I was looking in my rearview mirror.

15 Q. Okay. Did the car hit you?

16 A. Yes, it hit me from behind.

17 Q. Okay. What's the next thing that you remember?

18 A. The next thing I remember was I was laying on the
19 sidewalk, or the road, wherever it was, and some lady said
20 she was an RN and they were putting towels and stuff on me
21 because I was bleeding real bad.

22 Q. Okay. Were you laying on your belly or were you laying
23 on your back?

24 A. I was laying on my back.

25 Q. Were you completely flat down or were you sitting up?

1 What --

2 A. I was completely flat.

3 Q. The time that had passed between looking in your
4 rearview mirror and thinking oh, my God, and then the lady
5 is saying she's an RN and she's trying to help you, the time
6 in between, is it gone? Do you remember it?

7 A. I don't remember, no.

8 Q. Okay. Were you in pain?

9 A. Tremendous pain.

10 Q. Did an ambulance come?

11 A. Yes, sir.

12 Q. And did they load you in the ambulance?

13 A. Yes, sir.

14 Q. To get you in the ambulance, did they have you get up
15 and walk to the ambulance?

16 A. No, sir, they put me on a backboard and then a
17 stretcher and then put me in the ambulance.

18 Q. Okay. Did they take you to the hospital?

19 A. Yes, sir.

20 Q. And did the doctors and nurses at the hospital treat
21 you?

22 A. Yes, sir.

23 Q. I'm showing you what's been marked as State's Exhibit
24 91 and 56. Do you recognize the person in that picture,
25 those two pictures?

1 A. Yes, sir.

2 Q. Who is that?

3 A. That's me.

4 Q. And where was that taken?

5 A. That was taken at Piedmont, at the hospital.

6 Q. Okay. What's that thing laying behind you over there?

7 A. That was the helmet that I was wearing.

8 Q. Okay. Hold on one second.

9 By the way, did you take some cocaine before this
10 happened?

11 A. Not before it happened. I had been to a party on
12 Saturday night and I had done a line of cocaine, yes, sir.

13 Q. Okay. When you got run over by Jason Franks, had you
14 been drinking?

15 A. No, sir.

16 Q. If you would, put your microphone on that black bag
17 right there and I want you to come down here and show the
18 jurors some of your injuries.

19 (Witness off the witness stand)

20 BY MR. SPRINGS:

21 Q. Will you take your shirt off?

22 A. Yes.

23 Q. Turn around and show the jury your back.

24 Was this scarring here before --

25 A. No, sir.

1 Q. -- this accident.

2 What put all this scar on your back?

3 A. The road.

4 It's here on my arms.

5 Q. Show the jury.

6 A. Here on my arms. All my hands here, here, here, here.

7 Here.

8 Q. Was there --

9 A. Right here.

10 Q. Was there a tattoo here?

11 A. Yes.

12 Q. It's gone?

13 A. Yeah, it's gone.

14 Here. Also on my knees.

15 Q. Come on back so everybody on the jury can see.

16 Show the jury your knees.

17 A. My knees and my legs.

18 Q. Show them the other leg.

19 Were your knees like that before you got run over by

20 Jason Franks?

21 A. No. Whenever it's cold they turn purple, my skin does,
22 where I was injured. Even on my arms you can see how in the
23 cold this skin discolors.

24 Q. Okay. Take your time.

25 A. And my shoulder is out of joint permanently.

1 Q. I saw the pictures with injuries to your face. How are
2 your teeth? Are they all right?

3 A. No, I lost my two front teeth.

4 And I also have nightmares and bad dreams and it causes
5 me problems in the jail because of my roommate complaining
6 about me making noises all night long.

7 Q. Go back up there. Don't trip.

8 (Witness back on the witness stand)

9 BY MR. SPRINGS:

10 Q. In here are a lot of pictures.

11 A. Yes, sir.

12 Q. I want you to lay the microphone down. I want you to
13 take all the time that you need to. Take a look at each one
14 and then I'm going to ask you some questions about these
15 pictures, okay?

16 A. Okay.

17 Q. So you take your time. When you are through looking at
18 all of them, tell me.

19 A. (Witness reviewing photographs).

20 Q. Okay. Let me have the folder.

21 Who is the person in all of those pictures?

22 A. That's me.

23 Q. Okay. Are they pictures of your injuries?

24 A. Yes, sir.

25 Q. Are all of them true and accurate and no funny

1 business, no trick photography?

2 A. Yes.

3 Q. Every one of them?

4 A. Yes, sir.

5 MR. SPRINGS: Your Honor, at this time we offer
6 into evidence State's Exhibits 108, 110, 105, 104, 102, 101,
7 98, 97, 94, 92, 90, 88, 87, 86, 85, 79, 80, 81, 57, 65, 63,
8 77, and 78.

9 THE COURT: Has the defense seen those?

10 MR. SPRINGS: They have seen all of them.

11 THE COURT: Any objection?

12 MR. BARROWCLOUGH: No objection, Your Honor.

13 THE COURT: In without objection.

14 BY MR. SPRINGS:

15 Q. Whose hand is that?

16 A. That's my hand.

17 Q. That's State's 90.

18 State's 88 here, is that your back?

19 That's hard to tell. Let me withdraw that question.

20 State's 85, what part of your body is that?

21 A. That's my right arm right here.

22 MR. SPRINGS: You can bring the lights up.

23 BY MR. SPRINGS:

24 Q. These pictures, do you recognize these as pictures I
25 showed you on an earlier occasion?

1 A. Yes, sir.

2 Q. They are all pictures of what?

3 A. Of my scooter.

4 Q. Okay. And that damage, State's 18, was that there
5 before you were run over?

6 A. No, sir.

7 Q. And the damage in State's 37, was that there before you
8 were run over?

9 A. No, sir.

10 Q. Let's do it up here for the jury.

11 MR. SPRINGS: Dim the lights, please.

12 BY MR. SPRINGS:

13 Q. This is State's 37. Was that damage there?

14 A. No, sir.

15 Q. Is that a result of you being run over?

16 A. Yes, sir.

17 Q. Was that there before you were run over?

18 A. No, sir.

19 Q. Was that damage there before you were run over?

20 A. No, sir.

21 Q. Was that damage to the engine there before you were run
22 over?

23 A. No, sir.

24 Q. All of these pictures of your moped, the damages, were
25 any of the damages there before you got run over?

1 A. No, sir.

2 MR. SPRINGS: Let's bring the lights up.

3 BY MR. SPRINGS:

4 Q. Do you see the man that ran you down in this courtroom?

5 A. Yes, sir.

6 Q. Point him out, please.

7 A. (Witness pointing).

8 MR. SPRINGS: Let the record show he's pointing to
9 Jason Franks.

10 BY MR. SPRINGS:

11 Q. Mr. Mullins, answer any questions that the defense has
12 for you.

13 THE COURT: Mr. Barrowclough.

14 MR. BARROWCLOUGH: May it please the court, Your
15 Honor?

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION BY MR. BARROWCLOUGH:

18 Q. Mr. Mullins, your testimony that about a week before
19 the 7th you ran into Jason Franks at Mr. Valenti's place?

20 A. Yes, sir, that is correct.

21 Q. And he was washing a car, right?

22 A. That's correct.

23 Q. Mr. Valenti's car?

24 A. Mr. Valenti's truck.

25 Q. And you said that -- you called him a queer, right?

1 A. I didn't actually call him a queer. I said about the
2 tattoo. I made a comment. I said "don't that mean that you
3 are queer?"

4 Q. Yeah.

5 And you also said that you would make him your bitch,
6 right?

7 A. No, that's not correct what was said.

8 Q. Okay. Tell me what you said.

9 A. I told him if he would have been in prison with me, he
10 would have ate all the chocolate candy bars that he wanted.

11 And then he said "what do you mean?"

12 And I said "yeah, you would be my girl."

13 And he said he would stab me up.

14 I told him he wouldn't do nothing and he went home.

15 Q. So you didn't say you would make him a bitch. You said
16 you would make him your girl, is that what you said?

17 A. (Shaking head yes.)

18 Q. I mean, I wasn't there.

19 THE COURT: Okay. Let him answer you.

20 You got to say yes or no.

21 A. Yes, sir.

22 BY MR. BARROWCLOUGH:

23 Q. Okay. And when you said that to him, does that mean --
24 did you mean some kind of sexual implication that you would
25 do something to him sexually if he was your girl?

1 A. Not literally. It was just picking.

2 Q. Just picking?

3 A. Right.

4 Q. You were trying to intimidate him a little bit?

5 A. Yes, sir.

6 Q. And he's working, right?

7 A. Yes, sir.

8 Q. Washing a car, right?

9 A. Uh-huh.

10 Q. Got a baby on the way.

11 You, not working, right?

12 MR. SPRINGS: I object. He's not giving him a
13 chance to answer.

14 THE COURT: Let him -- give him a chance to
15 answer.

16 MR. BARROWCLOUGH: Okay.

17 A. No, sir, I worked.

18 BY MR. BARROWCLOUGH:

19 Q. You weren't working there?

20 A. No, I wasn't working there, no.

21 Q. You were just hanging around?

22 A. I had came over to see my friend, yes.

23 Q. Uh-huh. That's not your home address, right?

24 A. No, sir.

25 Q. You have a home address, is it Point Clear, right?

1 A. No, sir.

2 Q. What's your home address?

3 A. [REDACTED], Clover, South Carolina.

4 Q. Clover, okay.

5 So you had come all the way over from Clover?

6 A. Yes, sir.

7 Q. And you were hanging out?

8 A. Yes, sir.

9 Q. And you made these comments to him unprovoked?

10 A. Yes, sir.

11 Q. So you would admit that you said that to him for no
12 good reason?

13 A. I had my reasons.

14 Q. Now, on the 7th you were not charged with anything,
15 right?

16 A. Correct.

17 Q. You were not charged with driving under the influence?

18 A. No, sir.

19 Q. Okay. Even though you had cocaine in your system,
20 right?

21 A. From two days earlier.

22 Q. Okay. Well, that's what you are saying today, but you
23 had cocaine in your system, right?

24 A. Yes, sir.

25 Q. Okay. And you had alcohol in your system?

1 A. No, sir.

2 Q. Okay. And you didn't want to get charged with
3 anything, right?

4 A. I didn't do anything to be charged.

5 Q. And you had been charged before for this type of
6 behavior, right?

7 MR. SPRINGS: Objection. What --

8 THE COURT: I sustain -- we don't know what -- I
9 sustain the objection. Rephrase your question.

10 MR. BARROWCLOUGH: Yes, sir, I'll rephrase.

11 BY MR. BARROWCLOUGH:

12 Q. Isn't it true, Mr. Mullins, that you were convicted of
13 felony driving under the influence --

14 A. Yes, sir.

15 Q. -- with the infliction of serious bodily injury?

16 A. No, sir, with bodily injury.

17 Q. In 2003?

18 A. No, sir, 2002.

19 Q. Well, the incident was in '02, but you were convicted
20 in '03, weren't you?

21 A. I don't recall the exact date.

22 Q. Okay. And, in fact, you were convicted of two counts
23 of felony driving under the influence with the infliction of
24 bodily injury?

25 A. One accident, two counts.

1 Q. Okay.

2 A. Because there was two --

3 Q. Two people got hurt?

4 A. Right, two people went to the hospital.

5 Q. Uh-huh. And so you know that you can get in trouble
6 for driving under the influence?

7 A. Correct.

8 Q. And you didn't want to get in trouble for driving under
9 the influence?

10 A. No.

11 Q. And, in fact, in '09 you were driving and had a wreck,
12 right?

13 A. Yeah.

14 Q. And you ran from the scene of that wreck, right?

15 A. Yes.

16 Q. Carrying two beers?

17 MR. SPRINGS: Your Honor, can Mr. Barrowclough
18 kind of keep the volume down a little bit?

19 THE COURT: Yeah, tone it down a little bit.

20 BY MR. BARROWCLOUGH:

21 Q. Isn't that true?

22 A. I wasn't carrying no beers, no.

23 Q. Well, you did run from the wreck, right?

24 A. I didn't run. I left the wreck, yeah.

25 Q. Before the police got there?

1 A. Yes.

2 Q. And the police caught you in the wood line, right?

3 MR. SPRINGS: I'm going to object. This is
4 totally collateral.

5 THE COURT: I sustain the objection.

6 BY MR. BARROWCLOUGH:

7 Q. And in this situation you weren't charged, right?

8 A. I was run over. Why would I be charged?

9 Q. Well, right. You pointed the finger at Jason Franks as
10 being the cause of the accident, right?

11 A. (Shaking head yes).

12 Q. Right.

13 And the pictures that you just looked at with Mr.
14 Springs, those were taken by Mr. Valenti, is that right?

15 A. I have no idea who they were taken by, sir.

16 Q. The pictures -- these pictures? Like, for example,
17 State's No. 104, do you see that picture?

18 A. I was under the impression these were taken by my
19 attorney Stacy Lewis.

20 Q. You have an attorney?

21 A. Yes, I have a personal injury attorney.

22 Q. Oh, okay. And is that for this matter?

23 A. It sure is.

24 Q. And so that would be a civil attorney?

25 A. Yes.

1 Q. For a lawsuit against Mr. Franks?

2 A. Correct.

3 Q. To try to get some money out of this?

4 MR. SPRINGS: Objection. It's argumentative.

5 THE COURT: I'll overrule the objection, but let's
6 move on. Go ahead.

7 He asked him if you are trying to get the money
8 out of the defendant.

9 A. I mean I didn't deserve to be run down like a dog in
10 the road, or 21 stitches in my head, my teeth knocked out,
11 my shoulder permanently dislocated. Don't you think I
12 deserve something?

13 BY MR. BARROWCLOUGH:

14 Q. Now, when you are talking about your injuries, you went
15 to Piedmont on the 7th, right?

16 A. Correct.

17 Q. And you also left Piedmont on the 7th, right?

18 A. That night, yes, sir.

19 Q. And isn't it true that right after the accident you got
20 up?

21 A. I got up?

22 Q. Uh-huh.

23 A. No, sir.

24 Q. And walked around?

25 A. Not to my knowledge, no, sir.

1 Q. And gave Mr. Franks the finger?

2 A. No, sir.

3 Q. Okay.

4 A. I was just hit at 50 miles an hour or 60. I'm not
5 Superman.

6 Q. But after you left the hospital on the 7th, you didn't
7 go see a physical therapist, right?

8 A. Not on the 7th, but, yes, I did go to Carolina Rehab.
9 They had bills there. I was seeing a doctor there and the
10 physical rehab doctor.

11 Q. And did you provide those to the prosecutor?

12 A. Sir, I'm in jail. I can't provide anything to the
13 prosecutor.

14 Q. Well, you weren't in jail when you went there, right?

15 A. Right.

16 Q. So did you provide them to Mr. Springs?

17 A. I went to jail like a couple days after that. No, I
18 did not provide them to Mr. Springs. They violated my
19 probation for not showing up because I was injured and could
20 not report.

21 Q. Well, now, that's not exactly true, is it?

22 A. Yes, sir, that's exactly true.

23 Q. After you got out of the hospital, you went to Mr.
24 Valenti's house, right?

25 A. I stayed with him a couple of days, yes, sir.

1 Q. Right next door to Jason Franks house?

2 A. Because I was unable to care for myself.

3 Q. Okay. Now, when Mr. Valenti went to jail, you left his
4 house, right?

5 A. Right, yes.

6 Q. And isn't it true that you traveled 290 miles to Clay,
7 West Virginia?

8 A. I don't know what this has to do with it.

9 THE COURT: Well, just answer. Did you go to West
10 Virginia?

11 A. Yes, I went to West Virginia.

12 BY MR. BARROWCLOUGH:

13 Q. Okay.

14 A. Not that particular day, but, yes, I went to West
15 Virginia.

16 Q. Okay. And when you went to West Virginia --

17 MR. SPRINGS: I'm going to object to what happened
18 in West Virginia.

19 THE COURT: Well, I sustain the objection, unless
20 you want to take up something outside the presence of the
21 jury.

22 MR. BARROWCLOUGH: I would, Your Honor. Yes, I
23 would.

24 THE COURT: I'll let you go to the jury room.

25 (The following takes place outside the presence of

1 the jury panel)

2 THE COURT: Go ahead and make a proffer of what we
3 are talking about in West Virginia.

4 I agree with the State. In fact, I'm surprised
5 they hadn't objected earlier. You are going pretty far
6 afield.

7 MR. BARROWCLOUGH: Well judge -- okay, I'll make
8 my -- I'll do my questioning and make my proffer.

9 THE COURT: Yeah.

10 BY MR. BARROWCLOUGH:

11 Q. So, first of all, you are talking about how you were
12 hurt so bad, right?

13 A. Right.

14 Q. Hurt so bad you had to be cared for by Mr. Valenti,
15 right?

16 A. Right.

17 Q. You say you had this rehab treatment, right?

18 A. Right.

19 Q. And you testified how serious your injuries were when
20 you went over these pictures with Mr. Springs, right?

21 A. Right.

22 Q. But you went to West Virginia, 290 miles traveled to
23 West Virginia a short time after this happened, right?

24 A. About three weeks after it happened, yes.

25 Q. Okay. And while you were in West Virginia, isn't it

1 true that you got into a physical altercation with two
2 women?

3 A. That's what I'm accused of, but what relevance is that?

4 THE COURT: Wait, wait. I'll decide that. You
5 just answer the questions.

6 THE WITNESS: Okay.

7 BY MR. BARROWCLOUGH:

8 Q. You weren't hurt too bad to get into a physical
9 altercation with two women at the same time, right?

10 A. There wasn't an altercation.

11 Q. And you weren't hurt too bad to physically drag a woman
12 up a flight of steps by her hair?

13 A. That didn't happen.

14 Q. And you weren't hurt too badly to fight off the other
15 woman, Ms. Deborah Nelson, while that was going on?

16 A. That's not true.

17 Q. And you weren't hurt too bad -- now, when the police
18 came for you, you were able to run away from the police,
19 right?

20 A. (No response)

21 THE COURT: Did you run away from the police?

22 THE WITNESS: Yes, sir.

23 BY MR. BARROWCLOUGH:

24 Q. From an officer Davis?

25 A. Right.

1 Q. And you weren't hurt too bad when they tackled you and
2 you fight him off, right?

3 A. I was never tackled.

4 Q. And you weren't hurt too bad to outrun him and escape,
5 right?

6 A. I did outrun him, yes.

7 Q. And then you weren't hurt too bad to travel another 290
8 miles back to South Carolina in your car?

9 A. I wasn't -- I didn't travel. I wasn't driving, no.

10 Q. But, I mean, you traveled?

11 A. Right.

12 Q. 290 miles up, 290 miles back?

13 A. Right.

14 Q. And that was all within two weeks of this accident,
15 right?

16 A. No, it wasn't.

17 THE COURT: All right. They want a smoke break.

18 Let them smoke. Smoke them if they got them.

19 Go ahead.

20 BY MR. BARROWCLOUGH:

21 Q. And then when you were back in South Carolina you
22 weren't hurt too bad to get in a physical altercation with
23 Sherry Mullins, right?

24 A. There was no physical altercation.

25 Q. And all those things happened --

1 A. If you read the report --

2 Q. -- in the first four weeks of this accident, right?

3 You weren't hurt too bad in engage in all that physical
4 activity, right?

5 A. I didn't say that, you did.

6 MR. BARROWCLOUGH: Your Honor, that would be my
7 questioning. And obviously my point in making that
8 question, that line of questioning, is the fact that Mr.
9 Mullins has been allowed to testify of how badly he was
10 hurt. Pictures of his injuries have been admitted. He's
11 talking about treatment for a rehab. He's talking about had
12 his teeth knocked out. And, Your Honor, if we have evidence
13 that he's engaged in various physical activity, whatever
14 that activity may be, if he ran a half marathon or if he
15 fought two women, I think that the jury is entitled to know
16 that he was capable of engaging in that behavior within two
17 weeks after this happened.

18 THE COURT: Mr. Springs?

19 MR. SPRINGS: It's absolutely irrelevant.
20 Absolutely irrelevant. He gets hurt. What happens later on
21 after this criminal incident has nothing to do with this.

22 THE COURT: I agree. I find it's irrelevant. It
23 might have something to do with his damages claim in a civil
24 trial, but the issue here is whether your client ran over
25 this man. And, if so, did he suffer any injuries from it?

1 Not the degree of injuries -- I know he went quite into
2 detail as to what injuries he had, but I find it's -- you
3 are on the record for grounds for appeal, but I find it's
4 not relevant.

5 MR. BARROWCLOUGH: Yes, sir, Your Honor.

6 THE COURT: All right. Let's -- we will take a
7 break because they are taking a smoke break.

8 MR. BARROWCLOUGH: Yes, Your Honor.

9 THE COURT: Let's take a short break.

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: Come back up here and have a seat.
13 Bring in the jury.

14 (The following takes place in the presence of the
15 jury panel)

16 THE COURT: All right, you may resume.

17 MR. BARROWCLOUGH: Thank you, Your Honor. May it
18 please the court.

19 BY MR. BARROWCLOUGH:

20 Q. So, Mr. Mullins, backing up, you told the police that
21 Jason hit you intentionally, right?

22 A. (No response).

23 Q. Right?

24 A. Yeah.

25 Q. Okay. But you never gave the police a detailed

1 statement about that, right?

2 A. They never asked for one.

3 Q. Okay. And you never talked to this officer right here
4 to tell him details about what happened, right?

5 A. He came to the hospital. That's all I recall.

6 Q. Okay. So then it would be true that you didn't give
7 him a detailed statement about what happened, right?

8 A. Correct.

9 Q. Or how it happened, right?

10 A. Correct.

11 Q. And you never gave a sworn statement under oath, right?

12 A. No, sir.

13 Q. Or a notarized statement?

14 A. No, sir.

15 Q. And you said that you talked to him on the 7th, but you
16 never sought him out on the 8th, right?

17 A. Repeat the question, please.

18 Q. I'm saying you never sought this detective out on the
19 8th, right?

20 A. Sought him out?

21 Q. Sought him out; went to find him; went to talk to him.

22 A. He never said contact him.

23 Q. Okay. So you -- of your own initiative, you didn't go
24 looking for him, right?

25 A. No, sir.

1 Q. Or on the 9th?

2 A. I wasn't in no shape to go anywhere.

3 Q. Okay. Well, you never got in touch with him, right?

4 A. Correct.

5 Q. And you never got in touch with Trooper Gibson, right?

6 A. Correct.

7 Q. And you never got in touch with Lieutenant Holland,
8 right?

9 A. I had no idea I was supposed to.

10 Q. Okay. And the rehab records that you talked about, did
11 you give those to your civil attorney?

12 A. I haven't given them to anybody. I was supposed to get
13 records of them. The only --

14 Q. Okay. That's -- you answered my question. That's
15 fine.

16 And Mr. Mullins, isn't it true that you have been
17 convicted of being a habitual traffic offender in 2003?

18 A. For driving under suspension, yes.

19 Q. Okay. And isn't it also true that you were again
20 convicted of being a habitual traffic offender in 2009?

21 A. Correct.

22 Q. And isn't it true that on June 7th you were driving
23 recklessly?

24 A. No, sir, that is not true.

25 Q. That you were swerving across the lanes?

1 A. No, sir, that is not true.

2 Q. That you cut off Jason Franks?

3 A. No, sir, that is not true.

4 Q. And that, in fact, you were messing with him
5 unprovoked, just like you had done a week earlier?

6 A. No, sir.

7 Q. And isn't it also true, Mr. Mullins, that you were
8 convicted of assault and battery of a high and aggravated
9 nature in 2000?

10 A. I have no idea.

11 Q. You don't know whether you have been convicted of
12 assault and battery of a high and aggravated nature?

13 A. I don't recall exactly when it was, but it was me and
14 my wife, yes.

15 Q. So you know that you have been convicted, but you are
16 just not sure when?

17 A. Correct.

18 Q. And isn't it also true, Mr. Mullins, that you have been
19 convicted of third degree arson in 2003?

20 A. Yes, sir.

21 Q. Thank you, Mr. Mullins.

22 MR. BARROWCLOUGH: I don't have any further
23 questions.

24 THE COURT: Redirect?

25 MR. SPRINGS: No. No redirect.

1 THE COURT: You can step down and have a seat.

2 You can step down and have a seat.

3 MR. SPRINGS: We rest our case.

4 THE COURT: All right. Members of the jury panel,
5 the State is resting; that is, the State is telling us that
6 it's presented its evidence. Under certain circumstances
7 the State may have a right later to present evidence, but
8 basically you have heard the State's case.

9 At this time I have to take up some matters of law
10 before we move forward. Even though you are only been in
11 here a few minutes, I have to let you go back. This would
12 be a short break because we are not going to take one. We
13 are going to work on some issues and then we will send for
14 you, so it won't be a long break, but you have to go to the
15 jury room at this time.

16 (The following takes place outside the presence of
17 the jury panel)

18 THE COURT: Anything from the State?

19 MR. SPRINGS: No, sir.

20 THE COURT: Anything from the defense?

21 MR. DELANEY: Your Honor, at this time the defense
22 would like -- taking the evidence in the light most
23 favorable to the State, the defense would argue for a
24 directed verdict motion at this time. As far as the
25 evidence that's been presented here in this case, we ask for

1 a directed verdict.

2 THE COURT: Well, I deny it. I don't need to hear
3 from the State. You had somebody on a moped who was hit,
4 from all the evidence was hit by your client, and it's up to
5 the jury to determine whether or not that was criminal
6 offense or whether it was an accident.

7 Anyway, I deny the motion. I find that there is
8 sufficient evidence in which a jury could find that Mr.
9 Franks intentionally ran into the back -- or ran into the
10 moped, whether it was the back or any other part of it from
11 behind and that that constitutes the offense of attempted
12 murder.

13 MR. DELANEY: Judge, we would also at this time
14 just renew any previous objections that were made.

15 THE COURT: Those are denied.

16 Now, Mr. Franks, we have reached the point in the
17 trial where you have a right to present a defense, if you
18 wish. You don't have to present a defense because you are
19 presumed innocent of this charge, but you have a right to
20 call witnesses on your behalf, if you would like.

21 You also have a right to testify and you have a
22 right to remain silent. If you testify, you will have to
23 answer truthfully, because you would be under oath, and the
24 State can ask you about your previous homicide by neglect of
25 a child, or homicide of a child by neglect. I can't tell

1 exactly how it's phrased, but they can ask you about that.

2 I will tell jury that if you take the stand and
3 testify and you are asked about that, that they cannot
4 consider that as any evidence that you committed this
5 offense, but they can only consider your past criminal
6 record on the issue of whether or not to believe you or not.

7 You would have a right to remain silent. If you
8 exercised your right to remain silent, I would tell the jury
9 that you have done so, that you have exercised your
10 Constitutional Right to remain silent. I would tell the
11 jury that they cannot use that against you in any way
12 whatsoever.

13 I would remind the jury that you are presumed
14 innocent and you do not have to prove your innocence, but
15 the State must prove your guilt beyond a reasonable doubt.

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand all that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions about it?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you exercise your right to remain
22 silent or testify?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Which one?

25 THE DEFENDANT: To remain silent.

1 THE COURT: All right.

2 THE DEFENDANT: Not testify.

3 THE COURT: Do you have any witnesses?

4 MR. BARROWCLOUGH: Yes, sir, Your Honor, we do
5 have witnesses.

6 THE COURT: All right. We will crank back up.

7 MR. BARROWCLOUGH: Your Honor, it's 3:20. Just
8 for planning purchases, Your Honor, right now we have four
9 witnesses available. We do have a couple of other witnesses
10 that are going to come in in the morning.

11 THE COURT: We will do what we have got this
12 afternoon and then stop.

13 MR. BARROWCLOUGH: Thank you.

14 THE COURT: Bring in the jury.

15 MR. SPRINGS: Your Honor, I have requested the
16 witnesses full name so I can run criminal records on those
17 witnesses. I asked for that at lunch and I never got them.

18 (Off the record)

19 (Back on the record)

20 THE COURT: All right bring in the jury.

21 (The following takes place in the presence of the
22 jury panel)

23 THE COURT: Counsel.

24 MR. BARROWCLOUGH: Thank you, Your Honor.

25 May it please the court, Your Honor, defense would

1 call Lieutenant Vince Holland.

2 LIEUTENANT VINCENT HOLLAND, having been first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. BARROWCLOUGH:

5 Q. Mr. Holland, please state your full name for the jury.

6 A. Vincent Holland.

7 Q. And where do you work?

8 A. I'm currently employed with the Tega Cay Police
9 Department, but assigned to the York County Multi
10 Jurisdictional Drug Enforcement Unit.

11 Q. And what is your rank with the Tega Cay Police
12 Department?

13 A. Lieutenant.

14 Q. All right. Okay, Lieutenant Holland.

15 Lieutenant Holland, directing your attention to June
16 7th of this year, did you have occasion to respond to an
17 accident call on Gold Hill Road?

18 A. Yes, sir, I did.

19 Q. Okay. And would you tell the jury basically what you
20 did in regard to that?

21 A. When I arrived, the gentleman was laying on the ground.
22 Myself and another lieutenant approached. There were
23 several people around him, and overheard him say -- give a
24 description of the vehicle, which was a white SUV and a
25 subject by the name of Jason. Them two had an altercation

1 and an accident happened. So I immediately called Jason and
2 got him to come to the police department and talked to the
3 county and the highway patrol about what had happened.

4 Q. And when you talked to him on the phone, was he going
5 to cooperate with you?

6 A. Yes, he was.

7 Q. And how would you describe his demeanor for this jury?

8 A. I mean, he was cooperative. A little upset. He showed
9 up and he was turned over to the county and the highway
10 patrol.

11 Q. Okay. And when you asked him to come in, did he?

12 A. Yes, he did.

13 Q. Okay. Did he do everything that you asked him to do?

14 A. Yes, he did.

15 Q. Okay. And were you aware of a prior incident involving
16 Mr. Mullins and Mr. Franks?

17 A. Yes, I was.

18 Q. How are you aware of that?

19 MR. SPRINGS: I'm going to object. This is
20 collateral to this case.

21 THE COURT: Well, there has been some testimony
22 about a prior. I don't know if this is -- I'm going to
23 allow it. Go ahead.

24 A. Mr. Franks had called me and advised he had had an
25 incident with the victim in this case, Mr. Mullins, and

1 wanted some advice on what to do to handle it. I told him
2 the best thing to do is just avoid Mr. Mullins at all costs.

3 BY MR. BARROWCLOUGH:

4 Q. Okay. Did you ever receive any calls from Mr. Mullins
5 about Mr. Franks?

6 A. No, I didn't.

7 Q. Okay. And just briefly, Lieutenant Holland, because
8 you work in Tega Cay, I just want to show you what's been
9 entered into evidence as State's No. 13. Take a look at
10 that picture and just take a moment to orient yourself to
11 that picture. Does that picture depict the accident scene?

12 A. Yes, it does.

13 Q. Okay. And in that picture, on the left-hand side can
14 you see the Tega Cay BP?

15 A. Yes. It used to be the BP. It's Quality Market now.

16 Q. Okay. And if you would -- if you would briefly just
17 step off the stand.

18 (Witness off the witness stand)

19 BY MR. BARROWCLOUGH:

20 Q. And take a moment to orient yourself to that map. If
21 you don't mind, try to not stand in the way of the jury.

22 Do you recognize that as a map of Tega Cay?

23 A. Yes, I do.

24 Q. Which is your police jurisdiction?

25 A. Yes.

1 Q. All right. And looking at that map, do you see what's
2 labeled as Gold Hill Road?

3 A. Yes, I do.

4 Q. And do you see approximately where the BP is on Gold
5 Hill Road?

6 A. Yes, I do.

7 Q. Can you indicate that for the jury?

8 A. If I'm recalling correctly, it's going to be right
9 here.

10 Q. Okay.

11 A. I could be off there.

12 Q. And which -- and which direction from your finger would
13 160 be?

14 A. This direction.

15 Q. Okay. And which direction from your finger would Tega
16 Cay be?

17 A. Here.

18 Q. And in relation to the BP station, approximately where
19 was the place that you pulled up to the accident?

20 A. Right about where the section of trees are right here.

21 Q. All right. So that would be a little bit more towards
22 Tega Cay?

23 A. Yes.

24 Q. Okay. Thank you, Lieutenant Holland.

25 MR. BARROWCLOUGH: That's all the questions that

1 I have.

2 THE COURT: You can come back up now, sir.

3 MR. SPRINGS: No questions.

4 THE COURT: All right. Well, you can put the
5 microphone down and you can be excused. Appreciate your
6 time.

7 THE WITNESS: Thank you.

8 THE COURT: Call your next witness.

9 MR. BARROWCLOUGH: Your Honor, the defense would
10 call Kevin Ford.

11 (Hospital Record marked as Defendant's Exhibit No.
12 1 for identification)

13 THE COURT: Come up and be sworn, Mr. Ford.

14 KEVIN FORD, having been first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION BY MR. BARROWCLOUGH:

17 Q. Mr. Ford, please state your full name for the record.

18 A. Kevin W. Ford.

19 Q. And Mr. Ford, where do you work?

20 A. I work for Fort Mill rescue.

21 Q. And what do you do for the Fort Mill rescue squad?

22 A. I'm a paramedic.

23 Q. And would you tell the jury what your basic
24 responsibilities are as a paramedic?

25 A. The basic treatment and care and transport of patients.

1 Q. Okay. And do you receive specialized training and
2 education to become a paramedic?

3 A. Yes.

4 Q. All right. Please tell the jury a little bit about
5 your training and education.

6 A. Two years of paramedic school. Prior to that it was
7 one year in the fire academy. Since then it's been
8 continuing education up to about 180 hours a year.

9 Q. Okay. And for how long have you worked at the Fort
10 Mill rescue squad?

11 A. I think I have been with them about five years.

12 Q. And prior to Fort Mill rescue squad, where did you
13 work?

14 A. Piedmont Medical Center.

15 Q. Okay. And how many total years of experience do you
16 have as a paramedic?

17 A. 18.

18 Q. 18 years?

19 A. Yes.

20 Q. Mr. Ford, I want to direct your attention to June 7th
21 of this year. Did you respond to a call for a traffic
22 accident on Gold Hill Road that afternoon?

23 A. Yes, I did.

24 Q. Okay. And Mr. Ford, when you respond to an accident
25 call and you provide service, do you typically fill out a

1 report?

2 A. Yes, we do.

3 Q. And when you do fill out a report, you do it while the
4 incident is fresh in your mind?

5 A. We do it that day.

6 Q. Okay. And as part of your training, are you trained to
7 fill out your reports accurately?

8 A. Yes.

9 Q. Okay. And is that what you do?

10 A. Yes.

11 Q. And Mr. Ford --

12 MR. BARROWCLOUGH: Your Honor, may I approach the
13 witness?

14 THE COURT: Yes.

15 BY MR. BARROWCLOUGH:

16 Q. I'm handing you what has been marked for identification
17 as Defendant's Exhibit No. 1.

18 Do you recognize that as a copy of your EMS report that
19 you filled out after providing service on Gold Hill Road
20 that day?

21 A. Yes.

22 Q. And did you fill that report out when the incident was
23 fresh in your mind?

24 A. Yes.

25 Q. And to the best of your knowledge, is the information

1 contained in that report accurate?

2 A. Yes.

3 Q. And Mr. Ford, independent of that report, how good is
4 your recollection of the incident that day?

5 A. My recollection is very vague without the report.

6 Q. And tell the jury why would that be.

7 A. Because of the hundreds of calls we run per year. I
8 can't remember each call.

9 Q. Okay. Okay. Mr. Ford, looking at your report, first,
10 can you tell the jury the name of the patient that you were
11 treating?

12 A. Mr. Eddie Mullins.

13 Q. Okay. And what was the incident location?

14 A. The incident location was I believe on Gold Hill Road.

15 MR. SPRINGS: I'm going to object. This is not
16 testifying from recollection. It's totally from what's on
17 this paper, Your Honor.

18 THE COURT: I sustain the objection.

19 You can use the document to refresh your memory,
20 but you can't read off of it.

21 MR. BARROWCLOUGH: Your Honor, I have a matter of
22 law.

23 THE COURT: All right. We'll let the jury go to
24 the jury room for a minute.

25 (The following takes place outside the presence of

1 the jury panel)

2 THE COURT: All right.

3 MR. BARROWCLOUGH: Your Honor, when I met with Mr.
4 Ford and even after providing him with copy of the EMS
5 report for that day, he informed me that his recollection of
6 the event was still vague.

7 Your Honor, I would be seeking to elicit the
8 testimony of what's in that report under Rule 803,
9 subsection 5, recorded recollection. I think I have laid
10 down the proper foundation where it says "a memorandum or
11 record concerning a matter about which a witness once had
12 knowledge but now has insufficient recollection to enable
13 the witness to testify fully and accurately, shown to have
14 been made or adopted by the witness when the matter was
15 fresh in the witness' memory and to reflect that knowledge
16 correctly."

17 Mr. Ford testified that at the time that matter
18 was fresh in his mind that he made that report that day,
19 that he always creates his reports to accurately reflect the
20 information. And this report does, in fact, reflect the
21 information correctly, but that now he does not have a
22 sufficient recollection to enable him to testify fully and
23 accurately, so I think I have laid the proper foundation to
24 allow him to read from that report.

25 THE COURT: Mr. Springs?

1 Could I briefly voir dire Mr. Ford?

2 THE COURT: Yes.

3 VOIR DIRE EXAMINATION BY MR. SPRINGS:

4 Q. Mr. Ford, did you -- this looks like it's computer
5 generated. Is it?

6 A. Yes, sir.

7 Q. Did you key in the material yourself?

8 A. Yes, sir.

9 Q. Everything on the paper?

10 A. Not everything on the paper. There are fields that you
11 fill out.

12 Q. Did you put the narrative?

13 A. The narrative is mine, yes.

14 Q. And when would you have put that in, how long after the
15 call?

16 A. While standing at the hospital.

17 Q. The same day?

18 A. Yes, sir.

19 MR. SPRINGS: I think it's admissible.

20 THE COURT: Okay. Bring the jury back in.

21 MR. SPRINGS: Is Mr. Barrowclough going to offer
22 the document and basically Mr. Ford is just going to read
23 from it?

24 THE COURT: I don't know what he's going to do,
25 but right now he's just using it in the same manner I

1 mentioned earlier, while to refresh his recollection. The
2 only difference is rather than just refreshing his
3 recollection, he can actually read off of it. Whether -- I
4 don't think the rules allows it to comes into evidence.

5 MR. BARROWCLOUGH: No, no, I'm not going -- I
6 understand that.

7 (The following takes place in the presence of the
8 jury panel)

9 THE COURT: All right. You may go ahead.

10 MR. BARROWCLOUGH: Thank you, Your Honor.

11 BY MR. BARROWCLOUGH:

12 Q. So, Mr. Ford, you said that this was a record for
13 treating Mr. Mullins, right?

14 A. Yes.

15 Q. On Gold Hill Road?

16 A. Yes.

17 Q. And, Mr. Ford, would you look at the narrative section
18 of your report? Did you find that page?

19 A. Yes.

20 Q. And would you please read the first sentence of the
21 narrative?

22 A. "Fort Mill 212 responded to code three in reference to
23 a MVA moped versus car. Upon arrival patient found
24 approximately 30 feet from moped. No auto involved at the
25 scene, or no auto at the scene. Per patient left scene."

1 MR. SPRINGS: I'm going to object to the next
2 sentence. It's hearsay. It's hearsay within hearsay.

3 THE COURT: All right. I sustain the objection as
4 to any hearsay. I don't have the -- I don't have the
5 document so I can't look at it.

6 MR. SPRINGS: Can I share it with the court?

7 THE COURT: If it's hearsay --

8 MR. SPRINGS: It's hearsay within the hearsay.

9 THE COURT: -- I sustain the objection.

10 BY MR. BARROWCLOUGH:

11 Q. All right. The patient you testified was found
12 approximately 30 feet from the moped, is that right?

13 A. Approximately.

14 Q. Okay. And going to the second sentence, starting with
15 "it is currently found," would you read what that says?

16 MR. SPRINGS: That is hearsay.

17 THE COURT: Somebody give me a copy of it so I can
18 follow along.

19 MR. BARROWCLOUGH: Yes, sir, Your Honor.

20 THE COURT: Where are you now? I have got the
21 narrative part, but where are you in the narrative?

22 MR. BARROWCLOUGH: The second line, Your Honor.
23 Second line of the narrative.

24 THE COURT: All right, I sustain the objection as
25 to that line.

1 MR. BARROWCLOUGH: With regard to --

2 THE COURT: With regard to what it says, that
3 whole sentence. From after the word scene down to the third
4 line where it says PR period was --

5 Let me let the jury go to the jury room for
6 another minute, please.

7 (The following takes place outside the presence of
8 the jury panel)

9 THE COURT: All right. What -- it looks like you
10 were looking at the rule. What do you want to call to my
11 attention?

12 MR. BARROWCLOUGH: Your Honor, clearly Mr. Ford
13 was there to provide medical attention to Mr. Mullins. And
14 if people on the scene told Mr. Ford that Mr. Mullins was
15 ambulatory, clearly that would be statements made for
16 purposes of medical diagnosis or treatment, which would be
17 hearsay exception to 803(4).

18 THE COURT: I find -- I don't find that. No, I
19 don't think that is. That's not a statement by the
20 individual that needs the medical treatment. That's by --
21 that's just rank hearsay. We can make an offer on it,
22 though, so you can have it for appeal.

23 BY MR. BARROWCLOUGH:

24 Q. All right. Mr. Ford, would you read the second line of
25 the narrative?

1 A. Second line of narrative "stated to have been
2 ambulatory."

3 THE COURT: Right.

4 BY MR. BARROWCLOUGH:

5 Q. Yes, sir.

6 A. Prior to that was "patient stated should have been
7 ambulatory at scene prior to EMS arrival, but is currently
8 found lying supine at roadside where bystanders asked him to
9 lie down."

10 Q. Okay. And the statement that Mr. Mullins had been
11 ambulatory, would that have been of significance to you?

12 A. It does to me, yes.

13 Q. And tell the court why that would have been significant
14 to you.

15 A. That draws a picture for the treatment that I'm going
16 to provide. I mean, it also draws a picture for the
17 physician that this report is actually written for.

18 This is a report to the physician stating how the scene
19 was found, what was found on the scene. It gives them a
20 picture of the treatment they may follow up on. It also
21 provides them with a picture of the treatment that I
22 initiated based on what I saw.

23 Q. Okay.

24 MR. BARROWCLOUGH: Your Honor, that would be
25 my proffer.

1 THE COURT: Well, that's still by a third party.
2 I think his statements for purpose of a medical diagnosis or
3 treatment has to do with the declarant's talking about their
4 need for medical diagnosis and treatment, not a third party.
5 That's my interpretation, so I stand by my earlier ruling.

6 MR. BARROWCLOUGH: Okay. We will, I, of course,
7 abide by your ruling.

8 THE COURT: I beg your pardon?

9 MR. BARROWCLOUGH: I said, I will, of course,
10 abide by doing your ruling. I just -- for the record I
11 don't see that the requirement that the statement be made by
12 the -- well, it is --

13 THE COURT: Well, you can appeal it. I mean, you
14 can -- you don't have to formulate your arguments now. You
15 can save that for when you got time to brief it. I'm just
16 making a ruling on the fly like we always have to do. And
17 if you're wrong, we can just spend the rest of the afternoon
18 debating it..

19 MR. BARROWCLOUGH: Yes, sir.

20 THE COURT: Right or wrong that's my ruling.

21 MR. BARROWCLOUGH: Yes, sir.

22 THE COURT: Now, how about anything else before we
23 get the jury back in, rather than yo-yo them? Anything else
24 in there you object to, Mr. Springs?

25 MR. SPRINGS: I'm reading.

1 (Off the record)

2 (Back on the record)

3 No, everything else seems to be fine.

4 THE COURT: Okay. Yes, sir.

5 MR. BARROWCLOUGH: Just for clarification before I
6 do something that draws an objection, without getting into
7 anything any bystander said, could I ask him based on his
8 narrative of the bystanders out there? That won't --

9 MR. SPRINGS: Bystanders what?

10 MR. BARROWCLOUGH: Out there, present.

11 THE COURT: Well, I think if he can testify to
12 that from his own recollection, sure.

13 MR. BARROWCLOUGH: Okay. That wouldn't be --

14 THE COURT: What?

15 MR. BARROWCLOUGH: That would not be hearsay.

16 THE COURT: No, that would be something that he
17 saw, as Mr. Springs already said, with his own eyes.

18 Bring in the jury.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: All right, proceed.

22 BY MR. BARROWCLOUGH:

23 Q. Mr. Ford, without testifying to anything that anyone
24 said, does your report reflect the fact that there were
25 bystanders out there when you were there?

1 A. Yes, it does.

2 Q. And moving along, will you read the next section of
3 your narrative that deals with patient was wearing a helmet?

4 A. "Patient was wearing helmet when his moped was struck
5 by a car, but admittedly did not have it strapped on.
6 Therefore, multiple abrasions, included a evisceration above
7 the right eye."

8 Q. Okay. And read the next sentence.

9 A. "Patient with multiple abrasions to both upper
10 extremities from contact with paved roadway."

11 Q. Okay. And can you read the next sentence?

12 A. "Patient denies neck or back pain, but does complain of
13 severe pain to sites of injuries."

14 Q. And if you would read the next sentence?

15 A. "Patient denies LOC," which is loss of consciousness
16 for clarification, "and/or use of any type drugs, including
17 ETOH," which is ethyl alcohol.

18 Q. Okay. So then, according to your report, Mr. Mullins
19 denied losing consciousness?

20 A. Yes.

21 Q. And that he denied using any type of drugs or alcohol,
22 right?

23 A. Yes.

24 Q. And tell the jury why would you ask him about that.

25 A. I would ask that question as part of an assessment so

1 that I could determine if there is a head injury involved or
2 if it's alcohol related, or if I don't know which one it
3 is -- I mean, it could be either, but we always ask to
4 clarify so that that doesn't reflect in our assessment.

5 Q. Okay. And just for the sake of completing, could you
6 finish out reading the narrative section?

7 A. "Patient treatment and transport initiated to hospital
8 per patient request. Upon disposition patient report given
9 and patient care transferred assigned."

10 Q. And looking at your report, Mr. Mullins injuries were
11 basically abrasions, is that right?

12 A. Yes, multiple abrasions to the extremity and a
13 evisceration above the right eye.

14 Q. And would you explain to the jury what does that mean?

15 A. Basically the abrasions are road rash, in laymen's
16 terms.

17 The evisceration would be a skin tear or a flap is what
18 we call a piece of eviscerated skin.

19 Q. Okay. And based on your report, is there any evidence
20 that Mr. Mullins suffered any broken bones?

21 A. Based on my report, had I suspected broken bones, there
22 have been splints in place.

23 Q. Okay. What about any organ damage or brain damage?

24 A. I can't ascertain that.

25 Q. And according to your report, was Mr. Mullins

1 transported to a level one trauma center?

2 A. He was not transported to a level one trauma center.

3 Q. And why would that be significant?

4 A. Given the extent of the type of injuries he had, that
5 was determined by me that those injuries didn't require a
6 level one trauma center, so he was allowed to determine his
7 own facility of choice at that point.

8 Q. And, again, looking at your report, was Mr. Mullins
9 transported with the lights and sirens off or on?

10 A. He was transported priority two, which would be without
11 lights and siren.

12 Q. And, again, why would that be significant?

13 A. Because of the types of injuries I found, I didn't, in
14 my opinion, require lights or siren.

15 Q. Okay. And, Mr. Ford, you had an opportunity to meet
16 with me before, correct?

17 A. Yes.

18 Q. And in that meeting I showed you my copies of many
19 pictures of Mr. Mullins, is that true?

20 A. Yes.

21 Q. And if you would take a moment, I'm going to hand you
22 State's 78, State's 110, State's 108, State's 92, State's
23 94, State's 97, State's 87, State's 86, State's 79, State's
24 80, State's 81, State's 85, State's 98, State's 101, State's
25 102, State's 104, State's 105, State's 88 and 90, State's

1 67, State's 65, State's 63, State's 77, and State's 91. And
2 those pictures, are they basically the same pictures that I
3 have shown you previously?

4 A. Yes.

5 Q. All right. And Mr. Ford, roughly speaking, how many
6 accident scenes have you worked in your career?

7 A. I have no idea. It would be in the thousands.

8 Q. In the thousands.

9 And Mr. Ford, based on your training and experience and
10 the information contained in your report and those pictures,
11 tell the jury how seriously would you characterize Mr.
12 Mullins injuries?

13 MR. SPRINGS: Objection. He's not qualified to
14 give an opinion like that.

15 THE COURT: I'll allow it. Go ahead.

16 A. Based on my treatment and what I have seen here, again,
17 I would say that the injuries weren't at a priority two
18 response to a hospital of his choice.

19 BY MR. BARROWCLOUGH:

20 Q. In laymen's terms what does that mean?

21 A. They would be minor to moderate injuries.

22 Q. Thank you, Mr. Ford. One last question.

23 Based on the information in your report, does your
24 report reflect any dental damage to Mr. Mullins?

25 A. No, it does not, no.

1 Q. Thank you, Mr. Ford. Please answer any questions that
2 the State may have.

3 CROSS EXAMINATION BY MR. SPRINGS:

4 Q. Good afternoon, Mr. Ford.

5 Did you look in Mr. Mullins mouth?

6 A. I don't -- I don't see that reflected in the report, so
7 I don't recall, no.

8 Q. That's fine.

9 Now, if you had found Mr. Mullins stinking of alcohol
10 or was smelling of marijuana, something that's flagrantly
11 right there, obviously alcohol use or drug use, do you think
12 that you would have put it in your narrative?

13 A. We -- what we would put in our narrative is that we
14 smelled, yes. We could often put that.

15 Q. Okay. Would it be fair to say that there is not any
16 odor of alcohol or any obvious sign of drugs, you didn't
17 have that because you didn't put it in here?

18 A. No, I did not include that in my report.

19 Q. Okay. Now, you said patient denies drugs and alcohol.
20 How -- do you have a standard way of asking him? Do you go
21 "buddy, have you been drinking or using drugs?" How do you
22 ask them?

23 A. I ask them if they have had any alcohol and/or drugs,
24 including alcohol, usually.

25 Q. Okay. In this case Mr. Mullins denied it?

1 A. He denied that, yes.

2 Q. Mr. Ford, have you been drinking?

3 A. No, I have not.

4 Q. Okay. Have you ever had a beer or a glass of
5 champagne?

6 A. Yes.

7 Q. Sometime in the past?

8 A. Yes.

9 Q. But today you are saying "I'm not drinking"?

10 A. No, I'm not.

11 Q. Okay. So if Mr. Mullins had had drugs or alcohol
12 sometime in the past before your seeing him out there
13 stretched out on the ground, he could have said "I'm not
14 drinking and I'm not using drugs," could he not?

15 A. Yes.

16 Q. Just as you said, "I'm not drinking"?

17 A. Yes.

18 Q. Okay. Thank you.

19 MR. SPRINGS: That's all.

20 THE COURT: Redirect?

21 MR. BARROWCLOUGH: No redirect, Your Honor.

22 I would ask this witness be excused.

23 Thank you.

24 Defendant calls Joe Medlin.

25

1. JOE MEDLIN, having been first duly sworn,
2 testified as follows:

3 (Medical Records marked as Defendant's Exhibit No.
4 2 for identification)

5 MR. BARROWCLOUGH: May it please the court, Your
6 Honor, Your Honor, I have had this marked for identification
7 Defendant's Exhibit 2, the medical records in this case. I
8 think by stipulation we are going to move them in as
9 admissible. They are from Piedmont Medical Center.

10 MR. SPRINGS: That's correct. We agreed by
11 stipulation.

12 THE COURT: In without objection.

13 MR. BARROWCLOUGH: All right, Your Honor, may I
14 approach the witness?

15 Your Honor, also by agreement we are going to
16 publish limited parts of the record using Joe Medlin.

17 DIRECT EXAMINATION BY MR. BARROWCLOUGH:

18 Q. Would you please state your name for the jury?

19 A. My name is Joe Medlin.

20 Q. And Mr. Medlin, where do you work?

21 A. I work for the York County Public Defender Office.

22 Q. All right, Mr. Medlin.

23 Mr. Medlin, I have handed you what is moved into
24 evidence Defendant's Exhibit 2.

25 Would you please turn to page 24 of 25 from that

1 record? And do you see where it says "date of service"?

2 A. Date of service, I do.

3 Q. Would you please read what it says?

4 A. "6-7 of 2010."

5 Q. And is there a time recorded there?

6 A. There is. It's "14:49."

7 Q. And Mr. Medlin, on the same page do you see the record
8 where it says "discharge done?"

9 A. I have disposition.

10 MR. BARROWCLOUGH: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes.

13 BY MR. BARROWCLOUGH:

14 Q. Do you see where it says "discharge done"?

15 A. I do. "Discharge done Monday, June 7th, 2010 at
16 19:00."

17 Q. All right. Mr. Medlin, will you flip to page 7 of 25?

18 MR. SPRINGS: What number is it?

19 MR. BARROWCLOUGH: 7 of 25.

20 BY MR. BARROWCLOUGH:

21 Q. Are you there?

22 A. I am.

23 Q. And is there a category that says "toxicology test,
24 drug screen, medical urine"?

25 A. There is.

1 Q. Would you please read the results for the jury for
2 cocaine?

3 A. "Cocaine is positive."

4 Q. And would you turn to page 8 of 25, please?

5 A. Okay.

6 Q. And is there a column there for "alcohol ethyl ferum"?

7 A. There is.

8 Q. And would you read what it says for that?

9 A. "5.0, or less than 5.0 MGD.L."

10 Q. And anywhere in that column does it say negative for
11 alcohol?

12 A. It does not.

13 Q. And would you turn to page 12 of 25, please?

14 A. I'm there.

15 Q. And on page 12 of 25, do you see another result for
16 cocaine?

17 A. I do.

18 Q. And would you read that for the jury?

19 A. "Cocaine, urine positive."

20 Q. All right. Would you turn to page 14 of 25, please?

21 Excuse me, excuse me, back up. Page 13 of 25.

22 A. Okay.

23 Q. And do you see where it says "impression one"?

24 A. I do.

25 Q. Would you read what impression one is for the jury?

1 A. "No acute intracranial injury."

2 Q. And would you read impression two for the jury?

3 A. "Soft tissue injury with laceration overlying the right
4 frontal bone. Small radiopaque foreign body at the depth of
5 the laceration. Right orbital and facial swelling
6 hematoma."

7 Q. And now if you would go to page 14 of 25.

8 A. I'm there.

9 Q. And is there an impression one on that page?

10 A. "Impression one, no acute fracture of the cervical
11 spine."

12 Q. Would you go to page 15 of 25?

13 And would you read impression one on page on page 15 of
14 25?

15 A. "Impression one, no evidence for traumatic abnormality
16 within the chest."

17 Q. And, finally, Mr. Medlin, if you would turn to page 18
18 of 25.

19 A. Okay.

20 Q. And is there an impression one on that page?

21 A. There is.

22 Q. And would you read that to the jury?

23 A. "Impression one, A, no evidence of traumatic
24 intra-abdominal or intra-pelvic injury identified."

25 Q. Thank you, Mr. Medlin. Please answer any questions

1 that Mr. Springs might have.

2 CROSS EXAMINATION BY MR. SPRINGS:

3 Q. Mr. Medlin, how are you doing?

4 A. Good.

5 Q. Let's see here. Now, this entire packet is Defense
6 Exhibit No. 2. The entire packet is in evidence?

7 A. That's correct.

8 Q. I'm going to ask you to turn to page 2 of 25.

9 All right. And down there where you see at the bottom
10 history of present illness note. Do you see that?

11 A. I do.

12 Q. If you would, please read what it says, that paragraph.

13 A. "HVI tech. 46 year old white male presents via EMS in.
14 full spinal protocol and backboard after he was involved in
15 a moped versus car incident. Patient was reportedly a
16 helmet by moped driver that was struck by another car at a
17 high speed that did not stop to assist the patient. Patient
18 sustained lacerations to his right forehead and multiple
19 abrasions of his upper extremities."

20 Q. Okay. That's good. If you would, you can stop there.

21 Now, on two places on this report you said he had some
22 cocaine. It said positive cocaine, did it not?

23 A. Yes, they do.

24 Q. And they are both from the same test, just they show up
25 twice on the report?

1 A. Yes, sir.

2 Q. To be fair to you, do they both show positive cocaine
3 June 7th, 2010?

4 A. Let me check that.

5 That's correct.

6 Q. Okay. The same drug test, would that be a fair
7 statement?

8 A. I assume.

9 Q. Okay. Let's talk about the alcohol, and that's on page
10 8 of 25. Are you there?

11 A. Yes, I am.

12 Q. Okay. And on that page it says that 80, the number 80
13 is legally intoxicated, doesn't it?

14 A. It says "a blood ethanol level of 80 MGBL or greater is
15 considered legally intoxicated."

16 Q. Okay. And we all know that .08 is the legal
17 intoxication level, right?

18 A. Yes.

19 Q. The .08 is legally drunk, intoxicated on alcohol.

20 The hospital uses numbers that make the 08 an 80. Does
21 that make sense?

22 A. Yes.

23 Q. Okay. His alcohol number was less than five. Do you
24 see that?

25 A. Yes.

1 Q. Okay. So if 80 is their number, the hospital system
2 number for legally intoxicated, which is 08 to the police,
3 five is actually going to be less than an 01, isn't it?

4 A. I don't know that they would consider that less than an
5 01.

6 Q. Okay. That ain't much alcohol, is it?

7 A. Doesn't appear to be.

8 Q. That's all. Thank you.

9 THE COURT: Any redirect?

10 MR. BARROWCLOUGH: No, sir, Your Honor.

11 THE COURT: All right, you can step down and be
12 excused.

13 THE WITNESS: Appreciate it, Your Honor.

14 MR. DELANEY: Defense calls Angela Johnson at this
15 time.

16 ANGELA JOHNSON, having been first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION BY MR. DELANEY:

19 Q. Please state your name for the jury.

20 A. It's Angela Johnson.

21 Q. And Ms. Johnson, how do you know Jason Franks?

22 A. He's my fiance.

23 Q. Did you all just have a baby together?

24 A. Yes.

25 Q. How long ago was that?

1 A. Two weeks ago Thursday.

2 Q. Ma'am, just make sure that you speak up.

3 A. Okay.

4 Q. You said two weeks ago Thursday?

5 A. Yes.

6 Q. Ms. Johnson, do you remember the day of June the 7th,
7 2010?

8 A. Yes.

9 Q. Where were you living June the 7th, 2010?

10 A. Tega Cay.

11 Q. And where in Tega Cay?

12 A.

13 Q. ?

14 A. Uh-huh.

15 Q. Who was living with you at that time?

16 A. Jason and my daughter Taylor.

17 Q. And on June the 7th, 2010, at approximately two p.m.,
18 were you at your house on Winward?

19 A. Yes.

20 Q. Was there anybody else at your house that day?

21 A. My daughter Taylor was also there, and Jason.

22 Q. You said Jason was there too?

23 A. (Shaking head yes).

24 THE COURT: You got to speak up a little bit and
25 answer with words.

1 THE WITNESS: Okay.

2 BY MR. DELANEY:

3 Q. Do you remember what you were doing that day?

4 A. Yes. I was -- I had called in sick to work, because I
5 was pregnant and I was very sick that day, and I was
6 actually vomiting in the bathroom.

7 Q. Do you remember if Jason had to go anywhere that day
8 around two p.m.?

9 A. Yes, he was going to cut his mother's grass and there
10 was also another neighbor in the neighborhood that he was
11 cutting grass for.

12 Q. Was he going to the house -- if he has to go anyplace
13 else besides the places to cut the grass, do you know?

14 A. He had to get some gas for his lawnmower first because
15 we didn't have any.

16 Q. Okay. You said that you were sick, right?

17 A. Yes.

18 Q. Is that why you didn't drive him?

19 A. Yes.

20 Q. Tell the jury what you remember before Jason was to
21 leave to go to the gas station.

22 A. I was in the bathroom and he was actually in there with
23 me occasionally holding my hair up for me, getting ready to
24 go cut the yards. He then just took the keys, because I
25 couldn't take him. I was going to, but I just said "go

1 ahead and take it because I can't drive you right now," and
2 so he did. He went outside.

3 Q. Okay. I'll stop you there.

4 So he took the keys. You couldn't drive him?

5 A. Right.

6 Q. And you said he went outside?

7 A. Right.

8 Q. And at that point did you see anybody outside?

9 A. No.

10 Q. Okay. Do you remember -- when he went outside, did he
11 come back in the house at any point?

12 A. Yes.

13 Q. How long was it from the time he went outside to the
14 time he came back in, to the best that you can remember?

15 A. It wasn't very long at all. Maybe 30 seconds. As soon
16 as he went out the door he was back in.

17 Q. So he went out the door and he came back in?

18 A. Correct, uh-huh.

19 Q. Do you know why he came back in?

20 A. Yes, he saw Eddie leaving on the scooter, so he came
21 back in the house.

22 Q. What did he do when he came back in the house?

23 A. We stood there and talked for about three minutes or so
24 and he said he was going to go ahead and let Eddie --

25 MR. SPRINGS: Objection to hearsay.

1 A. -- go on up the road.

2 THE COURT: I sustain the objection. Don't go
3 into what he said.

4 THE WITNESS: Okay.

5 THE COURT: You can say what he did.

6 BY MR. DELANEY:

7 Q. Approximately how long was he back in the house for?

8 A. About three minutes, maybe four.

9 Q. And during that time he was back in the house, did you
10 hear any threats made by Jason Franks when he went back in?

11 A. No, I didn't.

12 Q. Did you hear Jason say "I'm going to get him"?

13 A. No, sir.

14 Q. Why did Jason go back in the house?

15 A. Because he was trying to let Eddie get up the road so
16 there wasn't any confrontation, because it happened in the
17 past.

18 Q. And you are aware -- are you aware of any prior
19 incidents between --

20 A. Yes.

21 Q. -- Eddie Mullins and Jason?

22 A. Yes.

23 Q. And what did Jason do during those incidents?

24 A. They both took place at the neighbor's house and he
25 came home both times afterwards.

1 Q. Did he fight with Eddie?

2 A. No.

3 Q. Go after him?

4 A. No.

5 Q. You say he came back home?

6 A. Yes.

7 Q. Angela, on the evening of June the 7th, 2010, do you
8 remember anyone staying next door at Anthony Valenti's
9 house?

10 A. Uh-huh.

11 Q. Who was that?

12 A. It would be Eddie.

13 Q. Did that concern you?

14 A. Yes, it did. I had called the police to let them know
15 that I wasn't comfortable with him being over there.

16 Q. Did you see him at any time outside of Mr. Valenti's
17 house?

18 A. Yes, I did.

19 Q. What do you remember seeing when he was outside the
20 house?

21 A. On several occasions he was outside drinking.

22 Q. He was outside drinking?

23 A. Yes.

24 MR. DELANEY: Court's indulgence just one minute,
25 Your Honor.

1 (Off the record)

2 (Back on the record)

3 MR. DELANEY: No further questions.

4 BY MR. DELANEY:

5 Q. Answer any questions that Mr. Springs has for you.

6 A. All right.

7 CROSS EXAMINATION BY MR. SPRINGS:

8 Q. And Ms. Johnson, you said that you were in the bathroom
9 throwing up and Jason was holding your hair?

10 A. At one point, yes.

11 Q. Okay. So you couldn't take him to get gas?

12 A. No.

13 Q. So he took the keys and he went outside?

14 A. Uh-huh.

15 Q. And you know he did that because why?

16 A. Because when I was done getting sick, I went out to the
17 front part of the house.

18 Q. Okay. And he came back in 30 seconds?

19 A. Approximately, yes. I wasn't really timing it, but it
20 wasn't long.

21 Q. And you know that he came back in 30 seconds how?

22 A. Because I was up at the front of the house when he went
23 out with the keys and he came back in.

24 Q. Now, Mr. Valenti lives next door to you, or did live
25 next door to you?

1 A. That's correct.

2 Q. And he hired Jason to do odd jobs and pay him for it,
3 didn't he?

4 A. Occasionally.

5 Q. He was nice to him, was he not?

6 A. It would be determined. Not always, no.

7 Q. Well, did Mr. Valenti hire Jason to do odd jobs and pay
8 him the money?

9 A. Yes.

10 Q. And Ms. Johnson, do you love Jason Franks?

11 A. Yes, I do.

12 Q. Would you help him, if you could?

13 A. Sure.

14 MR. SPRINGS: Nothing further.

15 MR. DELANEY: Nothing else, judge.

16 THE COURT: Thank you. You can step down and be
17 excused. Appreciate your time.

18 Members of the jury panel, it's a little earlier
19 than we usually stop, but there is some witnesses who are
20 not available until tomorrow, so we are going to stop for
21 the day and start back at 9:30 in the morning.

22 Keep in mind my admonitions about not discussing
23 the case, not doing any research, not listening to any or
24 watching any news coverage, if there is any. So have a
25 pleasant evening and we'll see you back at 9:30 in the

1 will be having that once the evidence is in and we have a
2 break. You will then come back and hear the closing
3 arguments of the attorneys and then my charge on the law.

4 So at this time I call on the defense.

5 MR. DELANEY: Thank you, Your Honor.

6 The defense would call Jeffery Lee.

7 JEFFERY LEE, having been first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION BY MR. DELANEY:

10 Q. Please state your name for the court.

11 A. Jeffery W. Lee.

12 Q. And Mr. Lee, where do you live?

13 A. ..., Tega Cay, South Carolina.

14 Q. What type of work do you do?

15 A. Truck driver.

16 Q. Now, Mr. Lee, I would like to direct your attention to
17 the beginning of June, okay, this past summer?

18 A. Yes.

19 Q. Did you have an opportunity to cross paths, have an
20 interaction with Jason Franks?

21 A. I know it was sometime in the grass cutting season. I
22 couldn't be -- couldn't verify exactly what month it was,
23 but it was in the beginning of the grass season. And I came
24 in contact with then Jason who was walking with the
25 lawnmower.

1 Q. And Jason has cut your grass before?

2 A. Yes.

3 Q. And were you satisfied with the work he was doing?

4 A. Oh, absolutely.

5 Q. And when you -- you said that you encountered him
6 pushing the lawnmower down the street?

7 A. Yes.

8 Q. Was he going to go -- was he then going to cut your
9 grass?

10 MR. SPRINGS: I'm going to object to the relevance
11 of cutting grass.

12 THE COURT: Yeah, I sustain the objection.

13 A. I had stopped him.

14 THE COURT: Well, he's going to ask you another
15 question.

16 THE WITNESS: Okay.

17 BY MR. DELANEY:

18 Q. Did he have to get any gas?

19 A. Yes, he did.

20 Q. Did he ever show up to cut the grass at your place that
21 day?

22 A. No, he didn't come back.

23 Q. Do you know why?

24 A. No, I didn't.

25 MR. DELANEY: No further questions.

1 THE COURT: Cross?

2 MR. SPRINGS: No questions.

3 THE COURT: You can step down and be excused. We
4 appreciate your time. Thank you.

5 Call your next witness.

6 MR. DELANEY: Your Honor, at this time the defense
7 would call Phil Leazer.

8 THE COURT: If you will step up, there is a Bible
9 on there. Put your left hand on it and raise your right.

10 PHIL LEAZER, having been first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION BY MR. DELANEY:

13 Q. Please state your name for the court.

14 A. Phil Leazer.

15 Q. Mr. Leazer, who do you work for?

16 A. I work for the York County engineering department.

17 Q. And what do you do -- and you said that's for York
18 County?

19 A. Yes, sir.

20 Q. Okay. That's as an engineer?

21 A. Yes, sir.

22 Q. What do you do as an engineer for the York County
23 government?

24 A. Right now I'm managing what they call the Pennies For
25 Projects Program, which is the highway improvement --

1 countywide highway improvement program for the county.

2 Q. How long have you worked as an engineer for the York
3 County government?

4 A. I have been with York County for 22 years.

5 Q. Are you familiar with the roadways in York County?

6 A. Yes, sir.

7 Q. Are you familiar with the traffic flow of these
8 roadways in York County?

9 A. Yes, sir.

10 Q. Are you familiar, Mr. Leazer, with what's called a
11 traffic study?

12 A. Yes, sir.

13 Q. And what is a traffic study?

14 A. A traffic study really can be a broad range of things.
15 You can do anything from counting the number of vehicles
16 that travel over a road per day to predicting how many
17 vehicles would be there in 30 years.

18 Q. How do you conduct a traffic study?

19 A. To get the traffic counts for a roadway, we place a
20 mechanical device out on the subject road. That mechanical
21 device has a tube system that is air activated, similar to
22 what you have through in drive-thrus. When a car passes
23 over it, it creates an air pulse and the information is
24 counted on an electronic counter.

25 Q. In a traffic study, again what can a traffic study tell

1 you?

2 A. Traffic study can tell you how many vehicles have
3 traveled over a roadway. In some cases you can find out how
4 fast they are going, what direction, everything.

5 Q. At the defense's request did you do a traffic study on
6 Gold Hill Road?

7 A. Yes, sir, we did.

8 Q. Do you recall where on Gold Hill Road that traffic
9 study was done?

10 A. I believe the address was 1838, 13, something like
11 that.

12 Q. And --

13 MR. DELANEY: Court's indulgence for just one
14 moment.

15 A. Thank you, sir.

16 BY MR. DELANEY:

17 Q. What I handed to you, Mr. Leazer, are you familiar with
18 those papers?

19 A. Yes, sir.

20 Q. Okay. When did you conduct -- when was the traffic
21 study conducted?

22 A. We actually conducted the traffic study between the
23 dates of November 18th and November the 23rd.

24 Q. Okay. And what days -- was that done on a weekend?
25 What days did that cover?

1 A. I do not know the actual days, but it was during the
2 week.

3 Q. Okay. What were the results -- and a traffic study can
4 measure the number of cars that go through a certain area
5 per hour?

6 A. Yes, sir.

7 Q. Can be broken down that way?

8 A. Yes, sir, the -- I apologize. The traffic counts can
9 be -- are tagged the actual time that that car went over
10 that air tube. So you can -- from that point you can begin
11 to break it down by hour, by day, even by week, so you will
12 know how many cars have gone over that particular tube at
13 any given time.

14 Q. And as a result of the traffic study that you did at
15 1838 Gold Hill Road, were you able to get some results from
16 that traffic study?

17 A. Yes, sir, we did.

18 Q. Okay. What were those results? I guess specifically
19 around two p.m. were those results?

20 A. We -- we actually measured two different areas. We
21 measured what they call the eastbound lanes, because this is
22 a multi-lane highway, a major thoroughfare into Tega Cay.
23 We measured the two lanes in the westbound direction and
24 then we measured the two lanes in the eastbound direction at
25 the same time. Each one of those directional movements

1 yielded about 500 cars per hour at the two p.m. hour.

2 Q. Okay. And the South Carolina Department of
3 Transportation, do they do -- do they do a potential traffic
4 count?

5 A. Yes, sir. As a matter of fact, when we -- when we were
6 contacted about the traffic counts, the first bit of data
7 that we produced was the South Carolina Department of
8 Transportation's annual data count.

9 The SCDOT goes out and counts the major thoroughfares
10 once a year every year and then they publish this data.

11 That data was published the latest information was
12 published for 2008, and we were able to retrieve that
13 information.

14 Q. Okay. So you have information to rely on from 2008,
15 the official South Carolina Department of Transportation
16 traffic count, right?

17 A. Yes, sir.

18 Q. And then the traffic counts that you did in this case.
19 Right?

20 A. Yes, sir.

21 Q. In looking at those numbers, using those numbers, are
22 you able to make any type of correlation between the traffic
23 count that was done in November and, say, a period of time
24 in June?

25 A. What we can do is we can take the data that we acquired

1 in November and we can compare it to the counts that the DOT
2 did back in 2008.

3 In 2008, I believe the traffic counts that the DOT did
4 was 18,200 per day, and this particular traffic count was
5 about 18,000 -- a little less than 18,000 per day. With
6 that I would say that we could certainly assume that traffic
7 was somewhat at a constant -- since the economy has slowed,
8 it's somewhat of a constant in that area, around 18,000 per
9 day.

10 Q. 18,000 cars going through there eastbound and westbound
11 per day?

12 A. Yes, sir.

13 Q. And with your familiarity with the roadways here in
14 York County, this area where you did the traffic count, in
15 your opinion, how busy is that area compared to other areas,
16 other roadways here in York County?

17 A. As a result of this traffic study and the other
18 information we were given, we went back and looked at the
19 history of traffic counts for the DOT, since they publish
20 them every year, and we excluded I-77, which is really kind
21 of an anomaly. It has traffic that's going on it 24/7 up to
22 the tune of like 100,000 per day, so we took that out of the
23 equation. This particular section of Gold Hill Road is the
24 23rd most busy roadways with the heaviest traveled roadway
25 in the county out of all the roads that we have.

1 Q. Okay. In your opinion, is this a heavily traveled
2 road?

3 A. Yes, sir.

4 MR. DELANEY: No further questions. Thank you,
5 sir.

6 CROSS EXAMINATION BY MR. SPRINGS:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. I'm going to show you a calendar and if you would take
10 a look at and see what day of the week November 22nd was.

11 A. November 22nd is a Monday.

12 Q. Right, that was a Monday.

13 And June 7th of this year, what day of the week was
14 that?

15 A. June 7th is also a Monday.

16 Q. Okay. All right.

17 I have here some material that I think came from your
18 office and I'm going to ask you about this page, but first
19 of all -- yeah, take a look at those materials and let me
20 know if they were generated by your office.

21 A. Yes, sir, they were.

22 Q. Okay. This page, which has November 22nd, at two p.m.,
23 that 444, what does that number signify?

24 A. November 22nd, two p.m., 444, the number of vehicles
25 that were measured going in one of the two directions on

1 that day.

2 Q. Okay.

3 A. The number of vehicles in an hour.

4 Q. Okay. Now, would you agree, Mr. Leazer, that -- am I
5 saying that correctly, Leazer?

6 A. Yes, sir.

7 Q. That just about every highway or road has times when
8 there is very little traffic?

9 A. Yes, sir, there are obviously peak times for traffic
10 for the major thoroughfare roadways, yes.

11 Q. Let me show you what's been marked State's Exhibit 4,
12 and I'll ask you, first of all, if you recognize that
13 roadway? And if you don't, I'll give you some more
14 information.

15 Does it look like the 1800 block of Gold Hill Road that
16 you have been talking about?

17 A. Yes, sir.

18 Q. Okay.

19 A. Yeah.

20 Q. That's State's Exhibit 4.

21 Let me put it up here on the screen so the jury can
22 see.

23 MR. SPRINGS: Could you dim the lights?

24 BY MR. SPRINGS:

25 Q. Can you see, Mr. Leazer?

1 A. Yes, sir, I can.

2 Q. How busy does it look?

3 A. During that snapshot there are no vehicles shown.

4 Q. Occasionally that stretch of Gold Hill Road doesn't
5 have any traffic at all, does it?

6 A. That is correct.

7 Q. Okay. How long have you been dealing with traffic?

8 A. 22 years.

9 Q. Okay. Are you a pretty good judge of distance?

10 A. No. Admittedly, no.

11 Q. Are you a fair judge of distance?

12 A. Fair judge.

13 Q. Okay. This has actually been marked as an Exhibit 113
14 and it's a map of Tega Cay. Take a look at it.

15 A. Uh-huh.

16 Q. Now, the 1800 block of Gold Hill Road is in this area,
17 would you agree?

18 A. Yes.

19 Q. Okay. Down here at the bottom is Winward Drive. It's
20 hard to see, but that's what it says there, Winward Drive.

21 A. Yes.

22 Q. How far do you think it would be from Winward Drive
23 here to come up and go down Tega Cay Drive and up here to
24 the 1800 block of Gold Hill Road? Do you want to give it a
25 shot?

1 A. Do you want me to give it a shot?

2 Q. Would it look like two and a half miles to you?

3 A. I tell you what, you know, maps can be printed in
4 different scales, and all I can tell you that by my
5 familiarity of driving up and down these roads, two and a
6 half miles does sound reasonable, yes, sir.

7 Q. Okay.

8 MR. SPRINGS: Okay. That's all I have thank you.

9 A. Thank you, sir.

10 THE COURT: You can step down and be excused.
11 Wait a minute.

12 Does the defense have --

13 MR. DELANEY: Just one question.

14 THE COURT: I'm sorry.

15 REDIRECT EXAMINATION BY MR. DELANEY:

16 Q. Mr. Leazer --

17 A. Yes, sir.

18 Q. -- this area of Gold Hill Road, is it one of the more
19 heavily traveled roadways in York County?

20 A. Yes, sir, it is.

21 MR. DELANEY: Thank you.

22 MR. SPRINGS: Nothing further.

23 THE COURT: You can step down and be excused. We
24 appreciate your time. Thank you.

25 MR. DELANEY: Your Honor, the defense would call

1 Woodrow Poplin.

2 WOODROW POPLIN, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. DELANEY:

5 Q. Please introduce yourself to the jury.

6 A. My name is Woodrow Poplin.

7 Q. And Mr. Poplin, where do you work?

8 A. I have my own firm, W. Poplin Engineering.

9 MR. SPRINGS: I'm sorry, I couldn't understand.

10 THE WITNESS: I have my own firm, W. Poplin
11 Engineering.

12 BY MR. DELANEY:

13 Q. And Mr. Poplin, what is your line of work?

14 A. I specialize in the evaluation of transportation
15 accidents.

16 Q. What is your educational background?

17 A. I have a Bachelor of Science in mechanical engineering,
18 a Masters of Science in mechanical engineering, and a
19 Masters of Engineering in civil engineering.

20 Q. And, Mr. Poplin, do you have any accreditation?

21 A. Yes, sir. I'm a registered engineer in South Carolina.
22 I am also accredited with the Traffic Accident
23 Reconstruction Organization, ACTA Accreditation Commission.

24 Q. And Mr. Poplin, approximately how many vehicle
25 accidents have you evaluated in your career?

- 1 A. Approximately 2,700.
- 2 Q. Have you ever testified in court before as an expert?
- 3 A. Yes, sir, I have.
- 4 Q. How many times, approximately?
- 5 A. Over a hundred.
- 6 Q. Have you ever not been certified as an expert in the
- 7 court?
- 8 A. No, sir.
- 9 Q. And, Mr. Poplin, have you ever testified on behalf of
- 10 or for the State in a case?
- 11 A. Yes, I have.
- 12 Q. For the solicitor's office?
- 13 A. Yes, sir.
- 14 Q. And Mr. Poplin, what is accident reconstruction?
- 15 A. Well, accident reconstruction is the evaluation of an
- 16 accident using physical principles. It's looking at what
- 17 are the aspects of the accident in question, so I'm
- 18 interested in the geometry. I'm interested in the dynamics,
- 19 the speeds, when where, why, how.
- 20 Q. And accident analysis, is that similar to accident
- 21 reconstruction?
- 22 A. I think of it as the same thing.
- 23 Q. The same thing?
- 24 A. It's just the analytical part.
- 25 Q. Okay. And, Mr. Poplin, are you being paid to be here

1 today?

2 A. Yes, sir, I charge for my time.

3 Q. And who asked you to come today?

4 A. You did.

5 Q. Is the fact that we have asked you to come in today
6 going to make you any less objective in your testimony?

7 A. No, sir, I'm interested in the analysis of this
8 incident and what happened.

9 MR. DELANEY: Your Honor, at this time I would
10 move to certify Mr. Poplin as an expert in accident
11 reconstruction investigation.

12 THE COURT: Any voir dire?

13 MR. SPRINGS: Yes, please.

14 THE COURT: Okay.

15 VOIR DIRE EXAMINATION BY MR. SPRINGS:

16 Q. Do you have a business card, Mr. Poplin?

17 A. I do.

18 Q. Could I get one from you?

19 A. I may not have one with me. I have got a C.V..

20 Q. I would like the business card, too, if you have got
21 it.

22 A. Let me look. I got them in my vehicle, I know. Nobody
23 has ever asked me for a business card on the stand.

24 No, sir, I have got a note pad with all the information
25 that would be on the business card. It's like an eight and

1 a half by eleven version of it.

2 Q. All right. Thank you.

3 Your engineering degree sounds like that would fully
4 qualify you to build a bridge or lay a water line. How did
5 you learn how to do accident reconstruction?

6 A. Well, sir, accident reconstruction is using the
7 physical principles of engineering and science applied to
8 accidents. So what my engineering background did is provide
9 me with the fundamental basis for accident reconstruction,
10 and I have been to various schools. I have read large
11 amount of literature, seminars, classes, on-line education,
12 what have you for accident reconstruction, and it's what I
13 have been doing for the last 28 years.

14 MR. SPRINGS: We find him qualified.

15 THE COURT: All right. I find he is qualified to
16 testify regarding reconstruction of accidents.

17 You may proceed.

18 MR. DELANEY: Thank you, Your Honor.

19 BY MR. DELANEY:

20 Q. Now, Mr. Poplin, did you receive documents, information
21 from the defense?

22 A. Yes, I did.

23 Q. Okay. Did you receive pictures from the defense?

24 A. Yes, sir, a few.

25 Q. Okay. And did you review all of those documents and

1 pictures?

2 A. I did.

3 Q. And from what you reviewed --

4 And, Mr. Poplin, if you could just take a minute and
5 look through these photographs.

6 A. (Witness reviewing photographs).

7 Q. Thank you.

8 Are these the photographs that you reviewed in this
9 case?

10 A. Yes, sir.

11 Q. And that would be -- you reviewed -- did you review
12 photographs of the moped, right?

13 A. Yes, sir.

14 Q. And also pictures of the accident scene?

15 A. Yes, sir.

16 Q. And, Mr. Poplin, do you have an opinion, based on the
17 physical evidence in this case that you reviewed, as to
18 whether the collision was accidental or intentional?

19 A. No, sir, I don't.

20 Q. You don't have an opinion?

21 A. Not with regard to whether it was intentional or
22 accidental, no, sir.

23 Q. And, in your opinion, Mr. Poplin, would it be possible
24 based on physical evidence you reviewed in this case for any
25 expert to make a determination as to whether this collision

1 was accidental or intentional?

2 A. Not from the physical evidence it would not be, no,
3 sir.

4 Q. Based on the pictures that you reviewed of the moped
5 that was involved in this accident, would you say that the
6 moped had major structural damage?

7 A. No, sir.

8 Q. Did you review any pictures of a bent frame?

9 A. No.

10 Q. Any pictures of wheels bent?

11 A. No.

12 Q. Handlebars bent?

13 A. No.

14 Q. Or crumpled mangles?

15 A. No, most of the damage to the moped is from sliding on
16 the pavement.

17 Q. And, Mr. Poplin, is that significant with regard to how
18 the accident occurred, especially given the prosecutor's
19 allegations that Mr. Mullins was mowed down?

20 A. Yes, sir.

21 Q. And could you tell me about that, please?

22 A. Well, one of the things you are looking at is whether
23 the moped was run over. The moped was not run over. The
24 moped had some contact damage on the rear and it had some
25 damage on the left side from sliding across the pavement.

1 Q. Would there -- from the pictures that you reviewed in
2 this case of the damage to the moped, would there have been
3 a large speed differential between the two vehicles?

4 A. No, sir, the -- we call it the delta V. The change in
5 speed in the accident was not large. The closing speed
6 between the vehicles was not large.

7 Q. And, Mr. Poplin, you reviewed evidence in this case
8 that this moped traveled close to or approximately 300 feet,
9 is that right?

10 A. That's what the report said, yes, sir.

11 Q. For the vehicles -- for the moped to have traveled that
12 distance, how fast, in your opinion, would that moped had
13 been going, have been traveled link?

14 A. Well, to go 300 feet post-impact, you would expect
15 starting speed post-impact to be about 60 miles per hour.

16 Q. 60 miles per hour?

17 A. Yes.

18 Q. In your opinion, based upon the State's allegations in
19 this case -- strike that question.

20 Mr. Poplin, this is marked State's Exhibit 54. Are you
21 familiar with that picture?

22 A. Yes, sir.

23 Q. Okay. Reviewing that picture, did you -- does there
24 appear to be any damage to the hood of the white SUV?

25 A. I see what appears to be a potential small dent toward

1 the right side of the hood, but other than that I don't see
2 any damage.

3 Q. How is that -- why is that significant?

4 A. Well, a large closing speed between the vehicles would
5 cause a rider to impact the hood of the automobile, and so
6 we would have pretty substantial damage to the hood of the
7 automobile, if the speed difference was large.

8 But the absence of damage to the hood on the automobile
9 and the minimal damage on the moped says the difference in
10 speed between the vehicles was low.

11 Q. If someone is being mowed down at a high rate of speed,
12 in your opinion, would they have went up on the hood of the
13 vehicle?

14 A. If the speed difference is high, the rider would wind
15 up into the hood of the automobile, yes.

16 Q. And Mr. Poplin, in all these photographs that you
17 reviewed in this case, the photographs of the accident
18 scene, did you observe any gouge marks on the road?

19 A. No, sir. There were only three photographs that I saw
20 at the accident site. They basically didn't show anything
21 except the four-lane highway. And there was a blood spot,
22 but it was taken basically looking down onto the blood spot,
23 so you can't tell where in the roadway it is or any other
24 information about it.

25 Q. In your opinion, Mr. Poplin, what type of things could

1 have been done, should have been done, in this case at the
2 scene?

3 A. Well, I would normally expect quite a few photographs
4 taken at the accident scene of the moped that was at the
5 accident scene and later of the automobile. They -- I would
6 typically take in a case like this about a 150 photographs,
7 roughly split in thirds between site about 50 photographs,
8 the moped about 50 photographs, and the automobile a similar
9 number. The -- it's important to document both what is
10 there and what is not there.

11 For example, I haven't seen any photographs of the
12 right side of the moped. It's important to know
13 photographically that there is no damage to the right side
14 of the moped, but I don't know whether there is or not,
15 other than just the inference that since we don't have any
16 photographs of it, it must not be any damage there.

17 Q. Mr. Poplin, are you familiar with the MAIT Team?

18 A. I am.

19 Q. Could you tell the jury what does the MAIT Team do?

20 A. The MAIT Team is the specialized accident investigation
21 and reconstruction team by the South Carolina Highway
22 Patrol. These are guys who have been -- gone through
23 extensive training in fundamental physics, math. It's basic
24 stuff compared to engineering, but it's more in depth than
25 your typical highway patrolman would get.

1 They have also been to a lot of seminars and classes on
2 accident reconstruction.

3 And what they do is they are called in by the various
4 other agencies of the State - highway patrol, sheriffs
5 offices, whatever - to evaluate incidents. They do a lot
6 of -- a large portion of what they do is criminal related.
7 All the felony DUI's, reckless homicides, a lot of those are
8 investigated by the MAIT Team.

9 Q. And, in your opinion, would it make any difference
10 whether or not the allegations are that the accident was
11 intentional? In your opinion, does that make a difference
12 whether or not the MAIT Team would be called to the scene?

13 MR. SPRINGS: I'm going to object. I think this
14 is beyond his area of expertise.

15 THE COURT: Yeah, I sustain the objection.

16 MR. DELANEY: The court's indulgence for just one
17 minute, Your Honor.

18 (Off the record)

19 (Back on the record)

20 BY MR. DELANEY:

21 Q. Thank you, Mr. Poplin. Please answer any questions
22 that Mr. Springs has.

23 CROSS EXAMINATION BY MR. SPRINGS:

24 Q. Good morning, sir.

25 A. Good morning.

1 Q. Do you have an opinion of what the braking distance of
2 this sport utility vehicle, and I'm showing you State's
3 Exhibit 54, if it had good tires on it, what the braking
4 distance of it would be on dry asphalt going at 50 miles an
5 hour?

6 A. Yes, sir. I assume that's dry level asphalt.

7 Q. Well, it's the asphalt in these pictures.

8 A. It's -- well, this is slightly uphill.

9 Q. Okay. Let's get it right. I'm showing you State's
10 Exhibit 13. That asphalt with that slight grade.

11 A. All right.

12 Somewhere around 105 to 110 feet.

13 Q. So, in your opinion, your expert opinion, that sports
14 utility vehicles going 50 miles per hour on that roadway,
15 the driver hits the brakes, he could stop in 105 to 110
16 feet?

17 A. Once the brakes were applied, yes.

18 Q. How many yards would that be, sir?

19 A. 40 yards.

20 Q. Okay. About 40 yards.

21 Let me give you a hypothetical.

22 If that white sport utility vehicle knocked down that
23 moped and pushed that moped for 300 feet, a 100 yards, would
24 that indicate to you that that driver of that sport utility
25 vehicle, when he hit the moped, hit his brakes or did not?

1 A. Well, I have a little bit of a problem with that,
2 because if it knocked it down, I wouldn't expect it to push
3 it. I would expect it to run over it.

4 Q. Well, is it possible to push a moped with a sport
5 utility vehicle like that?

6 A. If it stays upright, yes.

7 Q. If it fell on its side, you are saying it would be
8 absolutely impossible to push it for a 100 yards?

9 A. Yes, sir, you would overrun it. The tires would roll
10 over it or it would go underneath the front. It might get
11 hung up on the undercarriage, but we don't have any damage
12 on this moped like it was hung up on the undercarriage.

13 Q. But there is damage on the moped?

14 A. Yes, sir, there is damage on the moped.

15 Q. There is damage consistent with running along the
16 asphalt on its side, is there not?

17 A. It is sliding on its side, yes, sir.

18 Q. Okay.

19 A. One side only.

20 Q. Okay.

21 A. As far as I can tell, which I don't think we are
22 talking about 300 feet, because of the limited damage.

23 Q. Okay. Are you saying this moped could not have gone
24 along the asphalt a 100 yards, 300 feet? Are you saying
25 that's not possible?

1 A. I don't think we have the damage consistent with that.
2 Sliding the length of a football field --

3 Q. Well --

4 A. -- across course asphalt --

5 Q. Right.

6 A. -- does a lot of damage. A lot of damage.

7 Q. Okay. Let's do another hypothetical. Let's take it
8 piece by piece.

9 If a driver said he was driving a white sport utility
10 vehicle, just like the one we have shown; and if the driver
11 says he hit that moped; and then you have gouge marks in the
12 highway a 100 yards long leading up to that moped; and that
13 moped has damage consistent with being pushed or skidded
14 along the highway; would you say it is possible, using those
15 elements - the driver says he hit the moped with that car,
16 there are gouge marks on the road a 100 yards, the moped is
17 damaged consistent with being drug along the asphalt, and
18 the gouge marks lead up to the moped's final resting point -
19 using those factors, would you say it is possible that a
20 moped that had been pushed down the highway a 100 yards?

21 A. No, sir, there is nothing wrong with that hypothetical,
22 and the answer to it certainly yes. I just don't think it
23 applies to this case.

24 Q. You think the moped should be more damaged?

25 A. 300 feet of travel --

1 Q. Yes.

2 A. -- on its side on the asphalt is going to cause more
3 damage than what we see on that moped.

4 Q. Okay. This is State's 36. I'm going to put it on the
5 overhead projector, but I wanted to show it to you close.

6 Okay, let me have it back. I'm going to put it on this
7 screen up here.

8 MR. SPRINGS: Could you dim the lights?

9 BY MR. SPRINGS:

10 Q. This is State's 36. Would you agree that's the moped's
11 motor, the engine, the metal engine? Some part of it?

12 A. It's some part of the drive train.

13 Q. Of the drive train.

14 And you have got gouge marks there consistent with
15 skidding along asphalt?

16 A. You have got scrapes. I think of gouge marks as being
17 in the asphalt.

18 Q. Okay. Scratched, consistent with being scratched along
19 the asphalt?

20 A. Yes.

21 Q. Okay. So going back to my hypothetical: The driver
22 says he hit the moped; the driver says he was in that white
23 SUV; the driver says he hit that moped; there are a 100
24 yards of gouge marks in the asphalt leading up to the moped;
25 using all those pieces in that hypothetical, you would agree

1 that that moped could have been pushed by the SUV a 100
2 yards? I think you agreed a little earlier to that?

3 A. Yes, sir, I didn't have any problem with your
4 hypothetical.

5 Q. Okay. If that SUV going about 50 miles an hour can
6 stop in a 105 feet, a third of the distance of the gouge
7 marks, would that indicate to you that the driver never
8 stopped and kept his foot on the gas and continued to push
9 the moped?

10 A. No, sir, I just don't think it applies to this
11 instance.

12 Q. And why not?

13 A. Because if the moped is on its side on the pavement,
14 the sport utility vehicle is going to overrun it. It's not
15 just going to push it along the pavement. It's going to
16 ride over the top of it.

17 Q. Okay. Let's move on.

18 Speed differential. If the moped is going about 30
19 miles an hour and that SUV is going about 50 miles an hour -
20 30, 50 - 20 miles per hour, do you call that a high speed
21 differential, medium, low? What would you call it?

22 A. In the context of this incident, I would call it high.

23 Q. You would call it high?

24 A. Yes.

25 Q. And you think the SUV going about 50 hitting the moped

1 about 30, the driver would be thrown on the hood?

2 A. Yes, sir.

3 Q. After he was thrown on the hood, would he then roll
4 off? Any number of things could happen to him, once he got
5 thrown back, would you agree?

6 A. Yes, sir.

7 Q. And how much are you being paid?

8 A. I charge 195 an hour.

9 Q. 195 an hour?

10 A. Yes, sir..

11 Q. That's all. Thank you.

12 MR. DELANEY: No questions.

13 THE COURT: All right. Thank you, sir.

14 Appreciate your time. You can be excused.

15 MR. DELANEY: Your Honor, at this time the defense
16 rests.

17 THE COURT: All right. Anything in reply?

18 MR. SPRINGS: No, sir.

19 THE COURT: All right. Members of the jury panel,
20 we have reached the point where you have received all the
21 evidence. As I told you earlier, I have to take up some
22 matters outside your presence. When you come back the
23 attorneys will make for you their closing arguments.

24 Unlike their opening statements, where they
25 outline the case, now they will be taking the evidence and

1 I realize these arguments may be somewhat lengthy
2 based on your factual presentations, so we very well may
3 take a break before I do my charge. And it looks like we
4 are going to be running into the time where I would probably
5 order them lunch.

6 MR. BARROWCLOUGH: Yes, sir.

7 THE COURT: Bring the jury in.

8 (The following takes place in the presence of the
9 jury panel)

10 THE COURT: All right. As I told you, we will now
11 hear the closing arguments of the attorneys. The defense
12 will go first, followed by the State.

13 MR. BARROWCLOUGH: May it please the court?

14 THE COURT: Yes, sir.

15 MR. BARROWCLOUGH: Ladies and gentlemen of the
16 jury, it's a sad day when the wheels of justice, when the
17 heavy machinery of the Criminal Justice System can be put
18 into motion against one of our citizens, like this young man
19 right here, based on allegations by a cocaine using,
20 reckless driving, many times over convicted felon, like this
21 criminal right here. His freedom is at stake because of
22 what he did, because of what he said. That's the situation
23 we are confronted with. But, nevertheless, the system is
24 what it is, the case is what it is. So let's take a look at
25 the case.

1 First of all, let's begin with what was on the
2 scene. You heard from Trooper Gibson and how he went on the
3 scene and things that he saw and the things that he did, as
4 well as Deputy Scurlock, the things that he observed and the
5 things that he did. And ladies and gentlemen, the upshot of
6 all of that was that it was inconclusive what happened.

7 Now, much has been made about the fact that the
8 MAIT Team was not called. And why is that important? Well,
9 as you have heard testified to, the MAIT Team has
10 specialized training. The MAIT Team has specialized
11 training in accident reconstruction. The MAIT Team would
12 know what things to look for. The MAIT Team would know what
13 procedures to take. The MAIT Team would know what evidence
14 to collect. And the MAIT Team may or may not have been able
15 to render an opinion which would have been brought to you.
16 Now, the State tries to take the position, well, we didn't
17 call the MAIT Team because this wasn't an accident, it was
18 an intentional act. But that's really a circular argument.
19 At the time that the MAIT Team should have been called no
20 determination had been made, because the evidence on the
21 scene was inconclusive. And wouldn't you like to know, and
22 wouldn't we like to know, and in fairness to Mr. Franks,
23 shouldn't the MAIT Team's opinion have been considered in
24 this case? What do we pay tax money to have the MAIT Team
25 for if they are not going to be called out for something

1 like this?

2 And, again, another reason that's important, not
3 to state the obvious, but, you know, this is a criminal
4 court. This is the State of South Carolina versus Jason
5 Franks. They do have the burden of proof. They have the
6 burden of proving his guilt beyond a reasonable doubt. A
7 reasonable doubt is defined in the law as the type of doubt
8 that would cause a reasonable person, and all of you are
9 assumed to be reasonable people, to hesitate to act, to have
10 a hesitation based on the facts in the case, based on the
11 facts missing from the case, based on the things the police
12 did or didn't do in a case. You know, if they have the
13 burden of proof and they have a tool available to them like
14 the MAIT Team in their expertise, why would they not utilize
15 it?

16 Secondly, from the scene, there has been a lot of
17 discussion about 75 to a 100 yard worth of gouge marks.
18 Let's talk about those gouge marks for a minute. First of
19 all, as you heard the testimony, 75 to a 100 yards was
20 estimated, not measured. Now, is that important? Not
21 really, but, again, it goes to show the quality, or lack of
22 quality, that went into the investigation on the scene.

23 Gouge marks were not photographed. Is that
24 important? Sorry, they were not or photograped or
25 photographed. Typo.

1 Is that important? Well, I would suggest that is
2 important. I mean, there has been so much testimony about
3 it, wouldn't you like to see them? Wouldn't we like to see
4 them? If they meant so much to the State, you know,
5 wouldn't Mr. Poplin like to have seen them? Anybody could
6 see them. I mean, they are sort of like phantom gouge
7 marks. That's sloppy.

8 Now, more importantly, with regard to these gouge
9 marks, how do we really know that these gouges marks have
10 anything to do with this case? Deputy Scurlock truthfully
11 told me that no swabs were taken of the gouge marks. No
12 determination was made as to whether or not any rubber might
13 have matched any rubber from the moped. No determination
14 was made as to whether any paint compound matched any paint
15 compound from the moped. There was no swabs and no testing
16 done so that there could be a determination made as to
17 whether or not these gouge marks were made by this moped.
18 We really don't know.

19 Also, the testimony from both the trooper and
20 Deputy Scurlock was that the gouge marks led to the vicinity
21 of the moped. They didn't lead directly to the moped. The
22 moped was a few feet away.

23 In addition, the moped had been moved. We don't
24 know who moved it and we don't know where it was moved from
25 really. Everybody acknowledged that the moped was standing

1 up. So somebody, unknown, had stood up the moped. And in
2 standing it up, it may have been moved. It may have been
3 moved from closer to where the gouge marks were. It may
4 have been moved from further away from where the gouge marks
5 were. What if it had been two, three, four, five feet the
6 other direction and standing up there and moved close to the
7 gouge marks? We don't know that, and you can't assume that.
8 The State may want to you assume that. The police may have
9 assumed that, but your job as the jury is determine the
10 truth in this case, and you can't assume that.

11 You put these three facts together and it's quite
12 possibly the gouges marks had nothing to do with this
13 accident.

14 And, again, Deputy Scurlock, who, to his credit,
15 was very -- he testified with lot of candor, he testified
16 the gouge marks were their best guess. It was a best guess.
17 But what is the best guess when you get right down to it?
18 It's still a guess. It's still a guess. It's like shaking
19 the magic eight ball. These gouge marks don't have anything
20 to do with this case. Any best guess is yes. I mean, come
21 on, this is criminal court. You know, we need evidence. We
22 don't need a best guess.

23 But then where do we go from there? Well, there
24 is testimony about the point of origin. And Mr. Springs put
25 pictures on the screen and had them point on the pictures

1 where the point of origin was. How do we know what the
2 point of origin? From the gouge marks. From the guess.

3 So basically what you have is this entire
4 scenario, the State's entire scenario from the scene is
5 based on nothing more than a guess.

6 And then factor in the fact that Mr. Poplin
7 testified today that based on his review of the scene, that
8 it would be impossible for him, or any other expert, based
9 on that information that was on the scene that day, to make
10 the determination as to whether this was an accidental or
11 intentional. Basically it's a wash. Basically it's a wash.

12 Now, in addition to that, in addition to the
13 physical evidence not shedding any light on this case, not
14 moving the ball forward in any direction, we also have the
15 fact that no eyewitnesses. No eyewitnesses. And, again, I
16 don't mean to be repetitive, but they have the burden of
17 proof. They were out there that day. We weren't out there
18 that day. We didn't get appointed to the case for months
19 later. We didn't the opportunity to talk to bystanders.
20 The police were out there investigating. The police were
21 out there trying to find the truth. The police were out
22 there where the bystanders are.

23 Now, the bystanders were gone by the time Deputy
24 Scurlock got there, he testified, but Trooper Gibson
25 testified he was there when EMS an worker was there. And

1 Kevin Ford testified when he was there, there were
2 bystanders there. So there are bystanders and the
3 bystanders weren't interviewed. Their contact information
4 wasn't obtained. No statements were obtained. Even if
5 there are too busy working the accident, if they obtained
6 contact information the lawyers on the case later could have
7 gotten in contact with the bystanders to see what they had
8 seen, or not seen, or what happened, or what didn't happen.
9 That wasn't done.

10 Additionally, 911 caller, whoever called 911.
11 That wasn't investigator. Deputy Scurlock admitted those
12 records are available to him. He could have found out who
13 called 911. He could have interviewed those people. He
14 could have seen whether or not they saw the accident as it
15 happened or whether they came upon it later. He could have
16 taken the statements from those people, or he could have
17 relayed the information to Mr. Springs and myself, but that
18 wasn't done. And, again, they have the burden of proof.
19 And the failure to obtain any of this information, it would
20 be our position shows a reasonable doubt.

21 Now, ultimately the proof is in the pudding. And
22 the proof that everything that happened out there on the
23 scene was inconclusive was based on Deputy Scurlock's own
24 actions and testimony. He had been out to the scene around
25 2:15, he said. He had been out to the scene. He had saw

1 what he saw. He had discussed the case with Trooper Gibson,
2 right, and then later on he met Jason Franks at the Tega Cay
3 Police Department. He talked to Jason Franks, obtained a
4 statement from Jason Franks, and at that time he chose not
5 to charge Jason Franks. He chose not to arrest him. He
6 chose not to take him into custody. And why was that?
7 Well, he admitted because he hadn't yet made up his mind
8 about whether or not he was going to charge him. He had all
9 this information available to him already. It was already
10 available to him and yet he wasn't sure whether he should
11 charge Jason Franks. So, therefore, you know that none of
12 this would be persuasive enough to a law enforcement officer
13 for him to say "well, I had probable cause to arrest Mr.
14 Franks," so how could it be enough for you to find beyond a
15 reasonable doubt that Mr. Franks did this intentionally?

16 But, without this, without physical evidence, what
17 are you left with? What you are really left with, ladies
18 and gentlemen, is a swearing contest. A swearing contest.
19 Mullins, Valenti against Franks, Angela Johnson, Taylor
20 J. [REDACTED] and Jeffery Lee. It's a swearing contest. And in
21 order for you to find Mr. Franks guilty beyond a reasonable
22 doubt, you would have to believe them, not just a little bit
23 more than Franks and the Johnsons and Mr. Lee, but you would
24 have to believe them without hesitation and disbelieve them
25 without hesitation. And, ladies and gentlemen, that's just

1 not possible.

2 Now, let me take a look at Valenti who testified
3 against Jason Franks.

4 And the judge is going to tell you that
5 credibility, the credibility that you give to a witness, is
6 completely up to you, okay, but there are some, factors
7 ladies and gentlemen, that I would suggest that you could
8 take into account in evaluating Mr. Valenti's credibility.
9 You can evaluate the fact that he has a prior conviction for
10 resisting arrest, Subsection B, assaulting a police officer.
11 You can consider the fact that he has all of these pending
12 sex charges, including criminal sexual conduct with a minor
13 under 11 in the first degree, which carries a life sentence,
14 as some type of motivation why he might want to help the
15 State in this case. And, of course, the solicitor brought
16 out solicitor "we've not promised him anything." That's
17 true, but you don't think Valenti is up there saying "man,
18 if I help the State, maybe I'll get some consideration down
19 the road"? You don't think Valenti's attorney at some other
20 hearing in front of some other judge won't bring that up to
21 put Mr. Valenti in a good light? Four counts of lewd act
22 upon a minor. Two counts of criminal solicitation of a
23 minor. Exposure to private parts in a lewd manner,
24 intimidation -- oh, all these, and then also he has a charge
25 for intimidation of a witness, that witness being Jason

1 Franks. So not only does he have many reasons to cooperate
2 with the State generally to help himself, he also has a
3 motive to work against Jason Franks specifically,
4 specifically, because Jason Franks was a victim in one of
5 his cases.

6 Additionally, how much do you believe him? He
7 admitted he doesn't like Jason Franks. And how much can you
8 believe him when he admitted he's lied before? He's lied
9 before on behalf of Mr. Mullins. He's lied before to the
10 police. I mean, when you get right down to it, how much
11 weight can you give anything this man has to say? Really.

12 And then we have Mr. Mullins. Mr. Mullins, take a
13 look at his credibility. He has a prior conviction for
14 assault and battery of a high and aggravated nature, 2000.
15 He has a prior conviction for arson in the third degree in
16 2003. He has a conviction for being a habitual traffic
17 offender in 2003. He has a conviction for felony driving
18 under in the influence and infliction of great bodily
19 injury, two counts, in 2003. He has a conviction for being
20 a habitual traffic offender again in 2009. He testified
21 that he wrecked a truck and fled in 2009. Do any of those
22 things inspire confidence in his credibility?

23 Additionally, it came out through
24 cross-examination, he said as a result of this accident, Mr.
25 Mullins has filed a lawsuit against Jason Franks, that he's

1 trying to get some money out of this. Now, don't you think
2 that the desire to make money might be a reason for him to
3 lie against Jason Franks in the criminal case? Don't you
4 think that whatever transpires in this court might not come
5 back and have a say in a civil trial? Mr. Mullins has a
6 pecuniary interest or financial interest in testifying
7 against Jason Franks.

8 And think about this. Mr. Mullins got out of the
9 hospital the same day, right? June 7th he was discharged.
10 And I asked him, you know, "did you ever give a statement?"

11 "No.

12 "Did you ever go to see Deputy Scurlock?

13 "No.

14 "Did you ever go see Trooper Gibson?

15 "No.

16 "Did you ever go see Lieutenant Holland?

17 "No. No. No. Didn't have time. Ultimately went
18 to jail for a probation violation."

19 Somehow he found the time to contact the civil
20 lawyer. What's his true motivation?

21 And the same thing with the rehab records. I
22 didn't know we had rehab records. I asked him, I said "you
23 don't have rehab records?"

24 "Oh, yes, I do."

25 Well, we didn't have them. Mr. Springs didn't

1 have them. If Mr. Springs had them, I would have had them.
2 Mr. Springs, as the prosecutor, he would turn them over to
3 me. He had to under the rules, but he didn't have them, but
4 it came out that he provided them to the civil lawyer.

5 So what's Mr. Mullins true motivation here? Is it
6 justice or is it money?

7 Now, what else can we talk about with regards to
8 Mr. Mullins credibility? Well, he testified under oath in
9 that chair in front of y'all that he has two front teeth
10 knocked out. Well, that's just a bald-faced lie. You heard
11 Mr. Ford testify that nothing in his record that he read
12 indicated that Mr. Mullins had any damage to his mouth. And
13 then we admitted Mr. Mullins entire medical record from
14 Piedmont Medical Center from his treatment from June 7th.
15 We put this into evidence, because we are trying to bring
16 you the information. We are trying to bring you the truth.
17 And I would urge you, when you are back in the jury room,
18 comb through this record and see if you see any indication
19 that Mr. Mullins had two teeth knocked out. It's not in
20 there. And the reason it's not there is because it didn't
21 happen, because Mr. Mullins is a liar who told you a lie.

22 Now, Mullins had cocaine in his system June 7th,
23 2010. Now, Mr. Mullins couldn't get around that. Mr.
24 Mullins admitted that he used some cocaine or admitted that
25 he smoked some crack cocaine. "Well, it was two days

1 earlier at a party I did a line." Well, again, y'all have
2 the record in here. You will see that it was 1,610 nano
3 grams per deciliter and the cutoff is 150. Make up your
4 mind whether that was from two days later, or whether it was
5 from that same day.

6 Mr. Mullins had alcohol in his system. Now, it's
7 a tiny amount of alcohol, that's true. Mr. Springs brought
8 that out. He is right, it is a tiny amount of alcohol, but
9 why is it important, nonetheless? Because it's not
10 negative, because it indicates that he had been drinking
11 that day. Not two days earlier. That day. Whether he
12 drank one beer a few hours earlier, or whether he just took
13 perhaps a drink of beer to wet his throat after smoking some
14 crack before he got on the moped, either way it indicates he
15 was using some alcohol on June 7th. Not June 5th. Not
16 enough to get him intoxicated. Not the alcohol, but you
17 heard both law enforcement officers testify that cocaine
18 mixed with alcohol could be very intoxicating.

19 And, finally, when you are judging Edward Mullins
20 credibility, this testimony sort of speaks for itself.
21 Again, you bring your own life experiences to this
22 courtroom. You will bring your own life experiences to the
23 jury room. Well, what kind of guy tries to intimidate a
24 complete stranger for no reason; intimates that he's a
25 queer; says that he's going to make him his girl; and do you

1 really think he used the word girl? He says he's going to
2 make him his girl. Some sort of intimidation. Some sort of
3 innuendo that there be some kind of sexual assault, for no
4 reason. You got Mr. Franks working an extra job washing the
5 car to make money, who has got a baby on the way, minding
6 his business, working. Here is this guy come all the way
7 over from Clover to hang out with this guy, starting trouble
8 for no reason. I said "and you did this for no reason,
9 right?

10 "Yes." And then he "says well, I had my reasons."
11 He had his reasons.

12 What kind of guy is this?

13 Mullins and Valenti, that's what the State is
14 basing their case on, Mullins and Valenti.

15 Think about this. If it were Mullins and Valenti
16 Auto Sales, and you had saved up, say, \$20,000 on a car,
17 would you make the decision to trust Mullins and Valenti
18 with your \$20,000?

19 Or if it was Mullins and Valenti Retirement
20 Services, would you make the decision to trust them with
21 your nest egg?

22 And, ladies and gentlemen of the jury, in all good
23 conscience, if the answer to those questions is no, if you
24 won't trust those guys with your money, how could you trust
25 those guys with his freedom?

1 And let's talk about their story. Of course,
2 Mullins story we heard for the first time yesterday, because
3 he never gave a statement with any details in it. But their
4 story would be that Mr. Mullins had to go get gas for his
5 moped, and Mr. Valenti had to go to the doctor, and Mullins
6 also had to go to the bank. And he was afraid he was going
7 to run out of gas, so Valenti says that he's going to follow
8 Mullins to make sure he doesn't run out of gas. That's what
9 he said, he is going to follow him to make sure he doesn't
10 run out of gas.

11 Now, you have already heard testimony that -- I
12 forget which map Mr. Springs used, but that is about, I
13 think he said, two and a half miles. He asked Mr. Leazer
14 about two and a half miles. Two and a half miles to go get
15 gas. Well, then Valenti testified that at some point he
16 made the decision to leave Mullins. Now, what sense does
17 that make? I mean, it's convenient for him, because he
18 wants to be able to say that he was cut off and that he was
19 behind Mullins, so he said "well, I had to follow him to
20 make sure he didn't run out of gas." But then at some point
21 he just arbitrarily decides to leave Mullins. What sense
22 does that make, especially when you consider the fact that
23 one of the officers says that Mr. Franks was in between the
24 two cars and that gave him some reason for concern. So it
25 just logically doesn't follow. "I'm going to follow him and

1 make sure he doesn't run out of gas. Yes."

2 Was so concerned about his friend, "yes, but then
3 I just left." Is that consistent with how rational people
4 act? And if the answer to that question is no, then perhaps
5 that's because that didn't happen.

6 And then, of course, there is the dispute over,
7 you know, at what point Mr. Valenti actually did leave.
8 Okay. Mr. Valenti testified that he left by the B.P.. Mr.
9 Mullins testified that it was by Steve and Kelly's. And
10 there is testimony that those two are more than a mile
11 apart. And, in fact, there is testimony from Vince Holland
12 that the BP is actually further north past the accident
13 site. So Mr. Valenti was actually telling the truth. Mr.
14 Valenti was actually driving along right behind Mr. Mullins
15 and Mr. Franks all the way to the BP. They never got to the
16 B.P.. He would have observed the accident. So clearly
17 that's a lie. Clearly that's a lie. He's lying.

18 But the other thing is, these two guys who, I'm
19 not going to say they live together, but clearly Mullins
20 spent a lot of time at Valenti's house. Went back to
21 Valenti's house on the 7th. Clearly these guys could have
22 discussed what happened, and clearly they could have come up
23 with something, and clearly they could have gotten their
24 details wrong. Mullins followed him to the B.P -- Valenti
25 followed him to the B.P.. Just didn't get that detail

1 right.

2 And when I was cross-examining Deputy Scurlock and
3 I was talking to him, he acknowledged the importance of
4 details. The importance of details in a statement is that,
5 number one, it could be investigated to see if it's true or
6 false. And, number two, they could be matched to see if
7 they are competent or consistent amongst different
8 witnesses.

9 Now, granted, Mullins gave no statement, so he
10 didn't have any details, and Valenti gave a short statement,
11 but one detail that jumps right out is at what point did
12 Valenti leave, and it's totally inconsistent. And the
13 reason it's inconsistent is because it's a lie, because it
14 didn't happen.

15 And one other thing about Valenti's statement.
16 Valenti took the stand and he testified about, oh, the
17 threats that -- you know, Mr. Franks had made threats
18 against Mr. Mullins. He heard these threats. He threatened
19 him with a baseball bat and this and that. Huh. He had to
20 admit none of that is in the statement to the police. None
21 of that. You know, he have gave a statement to the police
22 two days before he was going to court to plead guilty to the
23 resisting arrest, but all those horrible sex crimes hadn't
24 been lodged against him yet. So then he gets all the sex
25 crimes against him and then he comes in here and testifies

1 to a whole bunch of threats that are not in his statement,
2 that were not before the police, that there is really no
3 evidence of it, other than his word.

4 And, ladies and gentlemen, you take it as you
5 will, but those statements by Mr. Valenti are completely
6 false.

7 So that just leaves us -- in analyzing the State's
8 case, that just leaves us with Ms. Johnson, Angela Johnson's
9 mother, who sort of dates back to her mother-in-law. And
10 she came in here and testified against Jason Franks. Now,
11 of course, she didn't claim to see the accident. She didn't
12 claim to know what happened in the accident, but she did
13 claim to have a conversation with Taylor, where Taylor said
14 that Jason Franks made a threat as he ran out the door; and
15 that prior to that Jason Franks had made some other threats.
16 That's what she said.

17 Now, bear in mind Ms. Johnson never called the
18 police. These alleged threats that she says, she never
19 called the police to report those threats. And even after
20 this alleged conversation with Taylor, she never met with
21 Deputy Scurlock. She never met with Lieutenant Holland.
22 She never gave a written statement to the police. And bear
23 in mind that she didn't return our calls. She refused to
24 meet with us. Now, at some point clearly she must have met
25 with Mr. Springs. She must have contacted Mr. Springs and

1 met with him, but she didn't meet with us.

2 And, ladies and gentlemen, again drawing on your
3 life experience, isn't it true that people who are
4 forthright and open are usually telling the truth, and
5 people who are secretive, sneaky, was not telling the truth?

6 And I'll say this. Y'all take it as you will.
7 The demeanor of the witnesses, that's totally up to you to
8 decide who you believe and who you don't believe, but from
9 where I sat, you heard Taylor [REDACTED] You heard her
10 testify about what happened that day that Jason Franks went
11 out, came back in and then waited a few minutes to avoid a
12 confrontation and then left. And when Mr. Springs
13 cross-examined her and said to her "isn't it true that you
14 told your grandmother that he said 'now I'm going get him
15 out the door," you saw her. That's why we have juries. Was
16 her surprise and shock at his question not genuine? Wasn't
17 her demeanor in all of her testimony believable? She
18 doesn't have a dog in this fight. Mr. Springs says "who
19 told you to lie?" No evidence anyone told her to lie. And
20 take it as you will, but, again, from where I sat, her
21 demeanor seemed honest.

22 Contrast that with Ms. Johnson's demeanor. Did it
23 not seem somewhat angry, somewhat vindictive? Take it as
24 you will. Just make an observation. Maybe she's upset with
25 Mr. Franks in getting her daughter pregnant and not marrying

1 her. I don't know, but it's up to you to determine the
2 credibility between those two.

3 That's the State's case; weak, shaky, untrue.

4 Now, let's contrast that with our case. You have
5 Jason Franks statement. You have heard it read twice. I'm
6 not going to read it again right now. You will have it in
7 evidence, but basically Jason Franks story is that yes, he
8 had a prior altercation with Mr. Mullins, where Mr. Mullins
9 started the trouble. Mr. Mullins called him a queer, and
10 Mullins even admitted that. But what did Jason Franks do?
11 Jason Franks walked away. Jason Franks avoided the
12 confrontation, and Jason Franks did the right thing. He
13 called the police. And that's why we had Lieutenant Holland
14 up here, because he acknowledged that Jason Franks called
15 him. Mr. Mullins never called him. Jason Franks called
16 him. He called him because he was being harassed and
17 confronted by this criminal who was right next to his house.

18 And he said that on the day in question he had to
19 get gas for his lawnmower, because he had a lawn mowing job
20 he had to do and he didn't have any gas. And he went out of
21 the house. He observed Mr. Mullins and he did what he had
22 done before. He wanted to avoid a confrontation, so he went
23 away. He went back into his house. He waited four to five
24 minutes and then elects to go get gas. And he drove for a
25 mile or two before he encountered Mr. Mullins on his

1 scooter, on his moped. And then he said Mr. Mullins began
2 driving slowly, began cutting him off, swerving, and giving
3 him the finger. And then ultimately Jason Franks thought
4 this is going to be a confrontation, so he pulled over, and
5 Mullins kept going. So he got back in his car, drove,
6 continued on Gold Hill Road to get gas, and Mr. Mullins
7 began doing the same thing again; swerving, driving slowly,
8 cutting him off. And in an effort to get around Mr.
9 Mullins, yes, Jason Franks vehicle did strike Mr. Mullins
10 vehicle. And, yes, Jason Franks did panic and drive away at
11 first, which is clearly the wrong thing to do. Had he
12 stayed, perhaps we wouldn't even be here, but he did leave.
13 But then he also did what he had done before, which was to
14 contact the police, tell them that he was involved in this
15 incident, agreed to go meet with them. He went to the Tega
16 Cay Police Department and allowed himself to be interviewed.
17 He gave a statement, which included a lot of details, okay.
18 It included a lot of details, and cooperated with the
19 authorities, and, as both Deputy Scurlock and Lieutenant
20 Holland testified to, had a good demeanor.

21 Now, that's our case, that this was an accident,
22 and that, therefore, Mr. Franks is not guilty. But let's
23 look at the rest of the evidence in this case and how it's
24 consistent with our case.

25 First of all, Mullins being high on cocaine.

1 There is evidence that Mullins was on cocaine. There is
2 cocaine in his system. But more than that, by his behavior
3 you could tell he was high on cocaine. How Mr. Franks
4 described Mr. Mullins behavior, his driving, his cutting
5 off, his swerving, his recklessness, his dangerousness, his
6 giving of the finger, that's all consistent with someone
7 high on cocaine. Deputy Scurlock admitted cocaine not only
8 can give you feelings of euphoria, but it can also make you
9 feeling stronger than you are, braver than you are, make you
10 feel invincible, could make you feel invincible. Could make
11 you feel like, I mean, even though you are on a moped, you
12 are going to mess with a guy in an SUV. A guy not under the
13 influence of cocaine probably wouldn't do that. But if you
14 feel invincible, because you are using cocaine, maybe you
15 would do that. It's consistent.

16 Of course, Jason's statement is consistent with
17 what Angela Johnson testified to, both in regards to the
18 prior incident that he walked away, that he called the
19 police; and also what happened that day, that she was sick,
20 she was throwing up, he was helping her, he had a job to do
21 cutting grass to make extra money because they had a baby on
22 the way. She couldn't take him to get the gas. Then he
23 went to get the gas. And that he went out the door, saw
24 Mullins, came back in the door and waited four to five
25 minutes to avoid a confrontation. That is what her

1 testimony was. Consistent.

2 Taylor J. [REDACTED] testimony, we just talked about.

3 The same thing, consistent; that Jason tried to avoid the
4 confrontation with Mullins. Consistency, because that's
5 where the truth is, consistency.

6 Jeffery Lee's testimony, albeit brief. I mean, if
7 you blink, you probably missed him. And I tell you what the
8 relevancy of that testimony is. The relevancy of that
9 testimony is that it's another detail corroborated, okay?
10 Mr. Lee had made arrangements for Mr. Franks to cut his
11 grass, and Mr. Franks did need to go get gas in order to go
12 cut that grass, and Mr. Franks never did get to cut that
13 grass because he got in this accident. But it's just
14 another detail confirmed, another consistency, because the
15 truth -- when the truth is -- when you have the truth on
16 your side, all the details line up.

17 And another thing about Jeffery Lee's testimony of
18 Mr. Franks having a job to do. It's kind of getting ahead
19 of common sense, but the State has charged Mr. Franks with
20 attempted murder, that he had a specific criminal intent to
21 murder this man. Does that make sense to you, given this
22 whole scenario, that he would, number one, want to murder a
23 guy for calling him a queer, and who does that? But even
24 more than that, in the middle of his busy work day, his girl
25 is pregnant, sick, trying to help her out; he's got this job

1 to do; he needs to go get gas. He says "I got to get gas
2 and cut the grass," or wait, there is more, "let me murder
3 him real quick and then I'll go cut the grass." I mean,
4 does that even make sense? That's why Jeffery Lee's
5 testimony, although brief, is important.

6 Jason Franks statement is also consistent with
7 Kevin Ford's findings on the scene, okay? Kevin Ford's
8 findings on the scene that Mr. Mullins injuries were mild to
9 moderate, just like Mullins medical records. And I, in an
10 effort to make it easier to understand, because medical
11 records are somewhat lengthy, I tried to hit the highlights
12 for y'all and consolidate them, but between Mr. Ford's
13 testimony that the injury was mild to moderate and what's in
14 these medical records, indicating no acute intracranial
15 injury. He did have a soft issue injury with laceration and
16 hematoma. That's the picture of the cut over his eye. No
17 acute fracture of the spine. No evidence of traumatic
18 abnormalities in the chest. No evidence of traumatic
19 intra-abdominal or intra-pelvic injury identified.
20 Basically it came down to a bunch of lacerations.

21 Now, the indictment says that Mr. Franks mowed him
22 down. In his opening statement Mr. Springs told you that
23 Mr. Franks mowed him down, ran him over with an SUV. But
24 Mr. Franks statement says that as he was tried to get around
25 him, that he hit him and he slid out.

1 Now, having no broken bones, no head injuries, no
2 brain damage, no organ damage, no pelvic injury, no
3 abdominal injury, I mean, how could you get run over by an
4 SUV and have none of those injuries? The injuries that Mr.
5 Mullins did suffer are totally consistent with how Mr.
6 Franks says the accident happened, and that's why we went to
7 such great lengths to bring you that information. That's
8 why we found the EMS worker and we called him to testify to
9 you. That's why we admitted the medicals into evidence.
10 They didn't do it. They want to charge Mr. Franks with
11 attempted murder and they don't even bring you the medical
12 records for the alleged victim? What kind of prosecution is
13 that?

14 And Jason Franks statement is also consistent with
15 both the pictures of the moped and pictures of the Mazda.
16 You know, again, not to jump ahead, but you heard Mr.
17 Poplin. He is an expert in accident reconstruction. You
18 heard his degrees. You heard his experience. And what he
19 testified to, beyond saying that you couldn't tell whether
20 or not this is accidental or intentional, but what you could
21 tell is that from the damage to the moped, being minor, and
22 the lack of damage to the SUV, this did not happen the way
23 they say it happened. This could not have happened the way
24 they say it happened, that the moped would have went under
25 the tires and would have had structural damage, had it gone

1 75 to a 100 yards. That didn't happen. Their theory of the
2 State is just not true. But what did happen is that Jason
3 Franks did accidentally hit that moped and it did skid out,
4 and the damage to the moped and the lack of damage to the
5 SUV is completely consistent with that. Once again, all the
6 details line up. They all match. They all show the same
7 thing. And you will have the picture of the moped and the
8 picture of the SUV.

9 And more importantly than even that is the fact
10 that Mr. Poplin says that this was an accident involving a
11 low speed differential. And if you read Jason Franks
12 statement hat he says is that, you know, he was trapped
13 behind Mullins and couldn't get around him, which means that
14 they were going approximately the same speed. And that when
15 he went to go around him, that Mullins cut in front of him
16 and braked and he hit him. That would be a low speed
17 differential accident, because just prior to contact they
18 had been going about the same speed.

19 Now, Mullins story and what Mr. Springs said in
20 his opening statement, that roared the engine and he got it
21 up to 50 miles an hour and he mowed down poor Mr. Mullins.
22 But Mr. Poplin, who is the expert, says that it didn't
23 happen that way, it couldn't have happened that way. You
24 would see way more damage to the moped, as well as the fact
25 that you would see damage to the hood of the white SUV,

1 which I can't find right now, but you will have the
2 pictures. There is virtually no damage, no damage really
3 that I can see, on the hood of the SUV. There is no damage
4 to the windshield of the SUV. There is no damage consistent
5 with an accident that would have occurred with a high speed
6 differential. Now, I'm not an engineer, but Mr. Poplin
7 testified to that. It's uncontradicted, and it goes to show
8 that Mullins version scientifically could not happen and did
9 not happen.

10 Once again, all the facts, all the details line up
11 to show that Jason Franks is telling the truth.

12 And, finally, you know, the testimony of
13 Lieutenant Holland and Deputy Scurlock concerning Franks
14 demeanor and cooperation, as well as the testimony of
15 Lieutenant Holland and Angela Johnson concerning Franks
16 handling of the prior incident, you know, he walked away.
17 He walked away. In light -- you know, there is an
18 expression, a leopard doesn't change his spots. Mr. Franks
19 is the guy who walked away. He walked away when this man
20 tried to intimidate him and he called the police. He did
21 the right thing. He walked away back into his house when he
22 saw Mr. Mullins leaving on his moped. He did the right
23 thing.

24 But this leopard, he saw Mr. Franks working and he
25 tries to intimidate him. This leopard, he saw Mr. Franks

1 behind him in the car and, once again, tried to mess with
2 him.

3 You know, Mr. Franks statement as to what
4 happened, even from a psychological standpoint, makes sense.
5 Draw on your own life experience. The people who typically
6 walk away all of the sudden become the antagonizers? Or, if
7 in your life experience you have ever met an antagonistic
8 person, do those people often become the kind of people who
9 don't cause trouble? You know what the true answer is.

10 Ladies and gentlemen, all of this is true and all
11 of it is consistent with each other. All of it hangs
12 together like threads in a tapestry. And if you take a step
13 back and look at the picture the tapestry revealed, the
14 picture is that this was an accident; that the truth is that
15 this was an accident. Mr. Mullins is no victim. Mr.
16 Mullins is a victimizer. Mr. Mullins victimized Mr. Franks
17 when he messed with him when he was washing the car. He
18 victimized Mr. Franks when he messed with him driving his
19 moped. He victimized Mr. Franks when he put these false
20 allegations against him. He victimized Mr. Franks when he
21 initiated a lawsuit against him. Ladies and gentlemen, it's
22 been our job to defend Mr. Franks against this
23 victimization. But, ladies and gentlemen, when I sit down
24 in a minute, it's out of my hands. It's out of Mr.
25 Delaney's hands.

1 Ladies and gentlemen, the truth in this case is
2 that Mr. Franks is innocent. And I would ask you to render
3 a verdict that reflects that innocence and find him not
4 guilty. And I truly thank you for your attention to my
5 lengthy argument.

6 THE COURT: Mr. Springs.

7 MR. SPRINGS: May it please the court?

8 THE COURT: Yes, sir.

9 MR. SPRINGS: Ladies and gentlemen of the jury,
10 Madam Forelady, thank you for your patience and paying
11 attention throughout this trial. It's an ugly case. No
12 doubt about that.

13 A defense team, with a client that has threatened
14 to kill somebody repeatedly in front of multiple witnesses,
15 and then runs down the same person and comes up with an
16 unplausible story, and the eyewitness was alive, an
17 eyewitness is there at the scene, this eyewitness, this
18 human being that lived and is able to tell the story, that
19 defense team has got a problem. What are they going to do?
20 They just don't lie down. They can't do that. They can't
21 get up here and say it's hopeless. He's threatened the guy
22 multiple times, threaten to kill him, slice his belly, goes
23 for his throat, beat him with a bat, so we just quit. They
24 don't do that and they get up here and they fight like
25 tigers and they spin the evidence. And like the child that

1 covers their eyes and says "you can't see me," they tell you
2 that what is is not and what is not is, and that's their
3 job.. That's our system. That's our system.

4 In factories that make things, there is a person
5 who is called a quality control person. This defense team
6 is the quality control person. They are making sure that we
7 prove the case. They didn't just lie down. I commend them.

8 Mr. Franks is guilty, and there are actually I
9 noted four different ways that we have shown you he's
10 guilty. Four different ways, any one of which you could
11 with good conscience do your job as a good juror and find
12 him guilty beyond a reasonable doubt.

13 Let's take the first way. There is an old saying
14 dead men tell no tales. But when he tried to kill Edward
15 Mullins by running over him, he didn't kill him. Mr.
16 Mullins survived and Mr. Mullins told the story. He said
17 "this guy intentionally ran me down. He intentionally ran
18 me down." His story is that this guy tried to kill him with
19 a car, which is a deadly weapon. If you believe Mr. Mullins
20 story, you could convict Jason Franks for that reason, but
21 let's go to the second reason, Mr. Valenti's story.

22 Mr. Valenti told the background. He told about
23 Jason Franks threatening Mr. Mullins. Mr. Valenti, who
24 hired and was nice to Mr. Franks, gave him work, paid him
25 money, employed him and was kind to him up to the point he

1 tried to kill his friend, and then he no longer liked him,
2 which is reasonable. Mr. Valenti described what happened.
3 He described the prior threat. He knew there were words
4 between them. He said he wasn't close to hear him, but he
5 knew there was some bad blood there. And Jason Franks came
6 back later after Mr. Mullins wasn't there with a baseball
7 bat talking big, "I'm going to beat the brakes off of him
8 and I'm going to ram this bat up his ass." Big talk when
9 Mr. Mullins isn't there.

10 Then Mr. Valenti talks about the day that this
11 happened. He had to go to the doctor. They left together.
12 Mr. Mullins was going to the bank, going to get gas. He
13 followed him. He sees this guy come running out of his
14 house, get in the white SUV and take off after the moped,
15 cutting off Mr. Valenti. And then once he gets out on the
16 highway, the big wide four-lane highway, and Mr. Jason
17 Franks driving along slowly behind the moped and Mr. Valenti
18 got a bad feeling. He followed them for a long ways. And
19 then after they get up towards Gold Hill Road and he's
20 getting close to the gas station, he pulled around him and
21 tried to motion to him look behind you, and he went on.

22 Mr. Valenti got into a world of legal problems
23 after this happened. No doubt about it, but all of that was
24 after this happened. He told his story and gave his
25 statement the same day this happened. If you believe Mr.

1 Valenti's story, you could find Jason Franks guilty of
2 running down Mr. Mullins, guilty of attempted murder.
3 That's the second way.

4 How about the third way you could find him guilty?
5 Well, that's Jason Franks own self-serving statement that he
6 gave to the police, after he had two and a half hours to
7 make up his statement, get his story straight, talk to his
8 girlfriend. It's absurd, absolutely absurd. And let's --
9 you will have it back there. You can have everything on
10 that table back there, all the pictures and all.

11 Let's take his statement, starting from the
12 beginning. It says "I was going to get gas for the
13 lawnmower." He just happened to be going to get gas for the
14 lawnmower at the exact same time as the guy he hated,
15 because he had teased him, left on the moped.

16 And he said he sees Eddie at his neighbor's house
17 pull out of the driveway. That he met Eddie while cleaning
18 his neighbor's house, Mr. Valenti's house. "Eddie called me
19 a bitch picking a fight. I ignored him and he left. I
20 ignored him and he left." Mr. Franks didn't try to fight
21 him. Mr. Mullins didn't try to fight Mr. Franks. I think
22 if you take the whole picture of this case, you could
23 conclude Mr. Franks, unless he had a baseball bat in his
24 hand, was afraid of Mr. Mullins.

25 "Later I was cleaning my neighbor's truck for some

1 money and Eddie showed up and started calling me names and
2 picking a fight." And there is no doubt Mr. Mullins
3 insulted him and was rude. Definitely not politically
4 correct and he was a jerk, but you don't get run down,
5 somebody doesn't get to try to kill you by running you over
6 because you have insulted the person and you have been
7 teased. That's no justification for running somebody down
8 and trying to kill them and get revenge upon them.

9 So he's seeing Eddie leaving because of the name
10 calling. "When I saw Eddie leaving my neighbor's house, I
11 waited three to five minutes to give him a head start to
12 avoid a confrontation." He waited three to five minutes
13 before leaving the house to avoid a confrontation.

14 Well, how far would Mr. Mullins have gotten in
15 three to five minutes going up the road on the moped 25 to
16 30 miles an hour? If you are going twice that speed, 60
17 miles an hour, you go one mile in a minute, but if you are
18 going half that speed, you go a half mile in a minute.

19 Let's take -- Franks said "I waited three to five
20 minutes." Let's take the middle. Let's take four minutes.
21 He's going 30 miles an hour on the moped, he's gone two
22 miles. He's almost up to where Gold Hill Road, the gas
23 station and everything is. That's implausible. He didn't
24 wait any two to three minutes.

25 "I left and drove about a mile when I saw him on

1 his scooter." That's after he has waited three to five
2 minutes. "I left and drove about a mile." Well, that
3 couldn't have happened. That's just not physically possible
4 the way he says it in his own statement.

5 "He saw me and began slowing down, so I was pinned
6 in the right lane due to cars in the left lane." Pinned in
7 the right lane? You are going to have the pictures back
8 there. How do you get pinned in this wide four-lane
9 boulevard with a turn lane in the middle? You don't get
10 pinned. You can go over to the other side if you want to.
11 Got pinned. "I'm pinned behind him. Because of cars in the
12 left lane I'm pinned."

13 "I rode behind him for about a block or so." This
14 is his statement. "He slowed down again looking back and
15 smiling like he's enjoying his game, so I came up beside him
16 and asked him what do you want to do, fight or play games?"
17 All the sudden he's not pinned any more. He's able to pull
18 up beside him. "What do you want to do, fight or play
19 games?" This is what he says in his own statement. So he
20 is looking for a fight.

21 "He made a comment that I took his wanting to
22 fight, so I pulled around him and I pulled over and I got
23 out of my vehicle preparing for a confrontation." Yeah, he
24 got out of the vehicle with a baseball bat. The hero.

25 "He drove on." This is his statement. This is

1 Jason Franks own statement. "Mr. Mullins drives on running
2 his mouth. He drives on." Who is avoiding a confrontation?
3 Mr. Mullins.

4 "I got back in my vehicle and he repeated the
5 process of not letting me pass by by staying in front of
6 me." So now he's pinned again. At some point when you go
7 through this statement you just go come on, it's absurd,
8 it's laughable. So he's saying after he's jumped out of the
9 car, his own statement, wanting a confrontation, wanting a
10 fight, Mr. Mullins rides by, does not stop, does not take
11 the bait, does not fight him. That's his own statement. He
12 is back behind him again and he says Mr. Mullins then
13 wouldn't let him pass by staying in front of him. Mr.
14 Mullins is going to tempt somebody in a full-sized car when
15 he's on a moped, as if to say "go ahead, just run me down.
16 I dare you." I don't think so, and you don't think so
17 either. It's absolutely absurd.

18 Here is the kicker. Here is the kicker. This is
19 his statement. "I tried to fake him out by swerving into
20 the left lane. When he swerved into the left lane at the
21 same time that I did and slowed as I sped up and I hit him
22 in the rear." A man on the moped swerved over all the
23 sudden and he's braking, he's slowing down, while Jason
24 Franks, according to his own statement, is speeding up and
25 "I hit him in the rear."

1 Then he says "I did not purposely hit him." And
2 then he says "after that I panicked and I went to the Gate
3 and I sat for a good five to seven minutes to calm down and
4 I drove back to the scene and I saw ambulances and I really
5 panicked. Drove to my mom's and I explained what happened
6 and then I called Vince Holland as he's calling me."

7 And then he says "when I hit him I looked in my
8 rearview mirror and he seemed fine, standing up walking
9 around and flippin me off."

10 Could you dim the lights, please?

11 "I looked in my rearview mirror and he seemed
12 fine. He is up and he's walking around and he's flippin me
13 off. He seemed fine," yet this guy has been run down, run
14 over, both his knees. You saw his knee. He showed them to
15 you. All the meat is taken off, and he's been run over, but
16 he's up and walking around and flippin him off. "He seemed
17 fine."

18 "I am truly sorry. I did not intend for this to
19 happen and I will cooperate in all ways possible."

20 You know, they say when a crocodile bites down on
21 its prey, it tears up, called crocodile tears.

22 "I did not purposely hit him. I am truly sorry.
23 I did not intend for this to happen." His own statement,
24 his own ridiculously implausible statement is the third way
25 you could find he intentionally ran this man over with a

1 deadly weapon, which is an automobile, intending to kill
2 him.

3 Let's take the fourth and last way, his threats to
4 kill Mr. Mullins. If Mr. Mullins had been killed, if his
5 head had gone under the wheel, if he would have been killed
6 when he was run down, you could still convict Jason Franks
7 on his own threats. He goes over to Valenti's house, "I'll
8 beat the brakes off of him. I'll shove this bat up his
9 ass." That's threat.

10 Then in front of his girlfriend's mother he says
11 Mullins teased him, insulted him, called him a bitch. He
12 said "my first thought was that I would slice his belly.
13 Then I thought no, my second thought was no, I'm going to go
14 for his throat." And then on the day this happened, after
15 Mr. Mullins pulls off on the moped, he runs out of his own
16 house in front of little Taylor and says "I'm going to get
17 him," and he did get him, and he did get him, and he ran him
18 down.

19 If Mr. Valenti had wanted to lie to help Mr.
20 Mullins, he could have really lied. He could have said "I
21 saw the whole thing. I saw him run him right over," but he
22 didn't. Consider his testimony. Consider his written
23 statement. Consider all the evidence here.

24 The gouge marks. We don't know these gouge marks
25 came from this incident? The officers are testifying fresh

1 gouge marks that lead right up to a foot from where the
2 moped is and the moped is gouged, damage is consistent with
3 it, even according to their own expert. Come on. It's
4 almost a football field worth of gouge marks where the moped
5 had been pushed along.

6 Their own expert said that SUV, if the person
7 driving it, and that would be Jason Franks, according to his
8 own statement, if he had hit the brakes when he first hit
9 Mr. Mullins, he could have stopped in a 100 feet. He pushes
10 that moped three times that. Does that sound like somebody
11 "oh, it was an accident? He said, he slowed and I hit him.
12 And I had I him." But if you look at the evidence out there
13 on the scene, I hit him and I kept my foot on the gas and
14 pushed that moped the length of a football field down the
15 highway. Does that sound like an accident? Of course it's
16 not an accident.

17 There was one eyewitness; this human being that
18 was there and saw it and told you what happened.

19 You are like a sports umpire, a baseball umpire.
20 You don't have any enemies to punish or friends to reward.
21 You just call it like you see it. You call it like you see
22 it. It would be intolerable if a baseball umpire thought,
23 you know, the Orioles are fair, they aren't having a good
24 year, I'm going to help them out a little bit. It would be
25 terrible, so don't do that. Judge the facts here.

1 The judge will give you the rules, rules of the
2 law. Just like the baseball umpire has his rule book, he
3 takes the law and apply it to the facts here. You are not
4 judging his soul, just whether he did this behavior, whether
5 he jumped in that car and using that car as a deadly weapon
6 to try to kill his enemy. If you will do that, you have
7 done your job. You represent all of York County. And in
8 York County the doors to justice are open for everybody,
9 even somebody with a horrible record that's been to prison.
10 The courtroom is like a church. We don't refuse anybody.
11 You have been run down, worse than a dog, most like for your
12 justice.

13 I'm honored and proud to come in here and fight
14 for justice. Mr. Mullins wants justice. He deserves
15 justice. Whatever he's done in the past for teasing
16 somebody, for insulting this guy's manhood, he doesn't
17 deserve what happened to him. You took an oath, all of you,
18 to be a good juror. You told the judge you could do it.
19 When you were still out there, the judge said "is there
20 anything that's going to keep you from being able to judge
21 this case? Anything deeply personal, religious,
22 philosophical?" And you all said no, you could do it. You
23 came up and you took your oath. Just judge the facts. The
24 facts are what you got here with the evidence and all. You
25 are called the fact finder, the judges of the facts. The

1 judge is the judge of the law. You judge the facts. You
2 apply the facts and you just decide did he do this behavior
3 or did he not.

4 When the judge gives you the rules, the law, he's
5 going to give you the current definition of reasonable
6 doubt. There has been a lot, and the one that's fashionable
7 now is a reasonable doubt is the kind of doubt that would
8 cause you to hesitate to act. Well, that doesn't mean we
9 don't want you to deliberate. They put chairs back in that
10 room for a reason. You are going to have lunch ordered
11 shortly. You will have plenty of time. We want you to
12 deliberate. We want you to hesitate that way. You are
13 going to hesitate in your life on every big decision you
14 make, even the ones that going into it you know what the
15 decision is. Think about that. You hesitate on every big
16 decision, even the ones that you know that you are going to
17 do. If somebody offered you a job making \$300,000 a year,
18 but you are going to have to move to Columbia, the boss
19 calls you in and says "we are offering you this job, going
20 to pay 300,000 a year, but you are going to have to move to
21 Columbia. Go home and sleep on it tonight and come back
22 tonight and tell me." Well, you are going to go home and
23 you are going to talk to your spouse; you are thinking about
24 moving the kids and changing schools. Are you going to take
25 that \$300,000 a year job? You knew when the boss called in

1 the office and said I got \$300,000 a year job, you knew
2 right then, "man, I'm taking it. Yeah, I'm going to have to
3 move to Columbia, move the kids." You knew that you were
4 going to take it, but you went home and you deliberated with
5 your family and then you made a decision. The same thing
6 here. Hesitate to act does not mean go back there and think
7 about it, go over it all. You are going to have twelve
8 memories. You will have twelve memories, and the things
9 that one or two of you have forgotten, the rest of you can
10 fill in. That's the nice thing about having twelve memories
11 working together. And you will have honest memories of what
12 really happened, not anything that was misstated up here.
13 Deliberate and go over it all. Think about those four ways
14 that you could find him guilty, any one. And then when you
15 put them all together, clearly way beyond a reasonable
16 doubt. We don't have to prove this beyond all doubt, just a
17 reasonable doubt. I would say we put those four different
18 ways, you could find Jason Franks guilty. Put them all
19 together and he's guilty way beyond any doubt. Any doubt.

20 The judge is going to tell you what attempted
21 murder means. He's going to define it, and then he's going
22 to tell you there are lesser assault and batteries that come
23 tucked under that. Attempting to murder somebody is the
24 highest level of an assault and battery.

25 Then you have the one where you weren't intending

1 to kill them, but you just horribly assaulted them. That's
2 the next level down.

3 He will give you all the levels, coming down to a
4 punch in the nose, and you are going to have to decide
5 whether beyond a reasonable doubt he intended to kill Mr.
6 Mullins, or the next lower level.

7 The maliciousness of this is what's going to tell
8 you whether he intended to kill him. How malicious was it?
9 What's malice? Just "I don't care. I don't care if you
10 live or die. It makes no difference to me." He will
11 define, the judge will, maliciousness. It's just "I don't
12 care. I don't care if you live or die."

13 Thank you for your time. Thank you for allowing
14 us to come before you and ask for justice for Mr. Mullins.

15 THE COURT: All right. Before I do my charge we
16 will take a short just refresher break. If you will go to
17 the jury room.

18 Madam Forelady, once you are ready to come back,
19 just knock on the door and tell the bailiff and say we are
20 ready.

21 JURY FOREPERSON: Okay.

22 We'll be at ease until we hear from the jury.

23 Don't start deliberating. We're not there yet.

24 (The following takes place outside the presence of
25 the jury panel)

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: Is the State ready?

4 MR. SPRINGS: Yes.

5 THE COURT: Defense ready?

6 MR. BARROWCLOUGH: Yes, sir, Your Honor.

7 THE COURT: Bring in the jury.

8 (The following takes place in the presence of the
9 jury panel)

10 THE COURT: Members of the jury panel, I
11 appreciate the attention that you have given to the
12 attorneys, the witnesses and me to this point. I want to
13 ask you to give me your attention for a few more minutes as
14 I charge you the law that you are to apply to the facts in
15 this case.

16 Mr. Franks, of course, has been charged with the
17 offense of attempted murder. That's a statutory offense
18 I'll define for you in a few minutes.

19 The indictment alleges that this happened on June
20 7th, 2010, and victim is alleged to be Edward Ray Mullins.

21 The indictment, which you will have with you in
22 the jury room, is not evidence. It is simply the charging
23 papers, the paperwork by way of which this case is processed
24 through our court system and contains a record of this
25 proceeding and ultimately contains the unanimous verdict of

1 the jury.

2 The fact that Mr. Franks has been charged, the
3 fact that he's on trial, the fact that he was arrested is
4 not evidence. That's just the way our system works. For
5 someone that's thought to have committed an offense, they
6 are arrested, charged and indicted and then brought to
7 trial. That is not evidence they committed the offense.
8 That is simply the way our system works.

9 To the charge Mr. Franks has entered a plea of not
10 guilty. His plea of not guilty places on the State the
11 burden of proving his guilt beyond a reasonable doubt.

12 Like anyone charged with any offense in our legal
13 system, Mr. Franks is presumed innocent. He need not prove
14 his innocence.

15 Now, this presumption of innocence is a legal
16 right. It is not a legal theory or a mere legal phrase.
17 It's a substantial right. The presumption of innocence
18 attaches to an individual at the time of their arrest,
19 remains with them as their case is processed through our
20 court system. The presumption of innocence, in Mr. Franks
21 favor, exists at this moment, and, in fact, exists as you
22 deliberate. The presumption of innocence in Mr. Franks
23 favor is removed if and when, and only if and when, you
24 determine unanimously that the State has convinced of you
25 his guilt beyond a reasonable doubt.

1 Now, the State is not required to prove his guilt
2 beyond all or beyond every doubt, but beyond a reasonable
3 doubt. Our courts have described a reasonable doubt as the
4 kind of doubt which would cause a reasonable person to
5 hesitate to act.

6 Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of an individual's guilt.

8 There are very few things in our world, of course,
9 that we can know with absolute certainty, and absolute
10 certainty is not required. The law does not require the
11 State to overcome every possible doubt.

12 If, based on your consideration of the evidence,
13 you are firmly convinced that Mr. Franks is guilty of the
14 charge, or has been alluded to, there are some lesser
15 included offenses that I will discuss with you, but, if
16 based on your consideration, you are firmly convinced of his
17 guilt as to a charge, you would find him guilty.

18 On the other hand, if you think there is a real
19 possibility that he is not guilty of any offense, you would
20 find him not guilty.

21 I'll remind you that I am -- should he is
22 entitled -- I should remind you or tell you that he's
23 entitled to the benefit of all reasonable doubts that you
24 have as to any issue in this case.

25 I am the sole judge of the law and you must take,

1 except, and apply the law as I charge it. This is true even
2 if you think I charge the law in error, or even if you think
3 the law should be different. Your oath requires you to
4 take, accept, and the apply the law as I charge it.

5 Do not infer from anything that I have said or
6 done or anything that I now say or do as being an indication
7 of an opinion of mine on the facts. Our law does not allow
8 a trial judge to formulate or express to a jury any opinion
9 on the facts. It is solely your job to examine the evidence
10 and to give to the evidence the effect, the value, the
11 weight, and the truth you believe the evidence should have.
12 In doing this you may believe one witness as opposed to
13 several, several witnesses as opposed to one.

14 You may believe all, part, or none of a witness'
15 testimony.

16 Use your common sense. Use your sense of logic.
17 Use your sense of reason. Use your experiences in life as
18 you analyze the evidence.

19 As judges of the facts you must judge the
20 credibility, that is, the believability of the witnesses
21 that have testified. In assessing believability, use those
22 things which I have just mentioned. Use the things that you
23 find in your day-to-day life as being indicative of
24 truthfulness.

25 And you can use certain bench marks, I call them:

1 A witness' demeanor, how they act on the stand. Are they
2 hesitant or straightforward.

3 You can consider any bias or prejudice a witness
4 may have; that is, whether they wish to help or hurt one
5 side or the other.

6 You can look at the consistencies or
7 inconsistencies of a witness' testimony.

8 Consider the opportunity a witness had to know
9 those things about which the witness testified.

10 You also may consider whether or not a witness has
11 a criminal record.

12 It's up to you to determine the credibility, that
13 is, the believability to give to a witness' testimony.

14 We have had an individual testify, Mr. Poplin, as
15 what we qualified as someone we qualified as an expert.
16 Generally an individual can only testify as to something
17 that they have sensed with one of their five senses.
18 Usually it's something they have seen or heard, but it could
19 be taste, touch, or smell. However, where an individual has
20 certain experience, training, education and skill in a
21 certain area, that individual can give an opinion. Take the
22 facts and from that facts reach an opinion. An opinion of
23 expert is given to assist you. They are not binding on you.
24 You are to take or accept in whole or in part the testimony
25 from an expert, just like you do other witnesses. And just

1 like other witnesses, you look at his credibility. You look
2 at the same things I have discussed.

3 In addition, as to an expert, look at their
4 credentials. Look at their ability to give and reach the
5 opinion they rendered. And also you can look at the
6 underlying reasons they gave for reaching the opinion that
7 they reached.

8 All of these things you consider and you can
9 determine the true facts and you would be able to return a
10 verdict that speaks the truth..

11 The testimony of a witness may be discredited or
12 impeached by showing that that witness previously made
13 statements which were inconsistent with their present
14 testimony.

15 These earlier contradictory statements are also
16 admissible to establish the truth of those statements.

17 It is your province to determine credibility, if
18 any, to be given the earlier statements and to be given to
19 the testimony of the witness whose testimony has been
20 impeached.

21 If a witness has shown knowingly to have testified
22 falsely concerning any material matter, you may consider
23 this in determining whether to trust such witness' testimony
24 in other particulars.

25 You may reject all the testimony of a witness or

1 give all or part of the testimony credibility you think it
2 deserves.

3 I instruct you and emphasize to you the fact that
4 Mr. Franks has exercised his Constitutional Right to remain
5 silent cannot be used against him in any fashion whatsoever.

6 Anyone charged in our judicial system has an
7 absolute right to remain silent. He doesn't have to prove
8 his innocence, as I have told you before. He is presumed
9 innocent, and the State must prove his guilt beyond a
10 reasonable doubt.

11 The fact that he exercised his Constitutional
12 Right to remain silent cannot be discussed by you, cannot be
13 factored into your own deliberation in determining what
14 verdict to return. It cannot be discussed, as I said, and
15 cannot be used against him in any way whatsoever. Again, he
16 is presumed innocent. The State must prove his guilt beyond
17 a reasonable doubt, and the exercise by him of his
18 Constitutional Right to remain silent cannot be used against
19 him in any way whatsoever.

20 Generally in cases such as this there are two
21 types of evidence presented: Direct and circumstantial
22 evidence.

23 Direct evidence is the testimony of a person who
24 claims to have actual knowledge of a fact. It is evidence
25 which immediately establishes the main fact sought to be

1 proven.

2 Circumstantial evidence is proof of a chain of
3 facts and circumstances which indicate the existence of a
4 fact. Circumstantial evidence is evidence which immediately
5 establishes collateral facts from which the main fact may be
6 inferred. Circumstantial evidence is based on inference and
7 not on personal knowledge or observation.

8 Our law makes absolutely no distinction between
9 the weight or value to be given either direct or
10 circumstantial evidence, nor does our law require a greater
11 degree of certainty for circumstantial evidence as opposed
12 to direct evidence.

13 What you should do in this case is weigh all of
14 the evidence. After doing so, if you are not convinced of
15 the guilt of Mr. Franks beyond a reasonable doubt, you would
16 find him not guilty.

17 I am going to define some words for you giving you
18 the legal definition as I go through the charge. I will be
19 using the word intent or intention on several occasions.
20 Here we are talking about criminal intent.

21 Criminal intent is a necessary element of each of
22 the crimes which I will -- or the offenses for which I will
23 be later discussing. It must be proven by the State beyond
24 a reasonable doubt. Criminal intent is always a matter that
25 must be determined by you from circumstances surrounding the

1 situation at issue.

2 There is, of course, no way to prove intent to a
3 mathematical certainty. There is no way we can dissect an
4 individual's brain and determine their intent at any time,
5 so the law says that criminal intent may be inferred from
6 circumstances which have been shown to have existed. This
7 is how you make a determination of whether or not the
8 element requiring intent was present.

9 Criminal intent is the state of mind which
10 operated jointly with an act in the commission of a crime.
11 Criminal intent is a mental state, a conscious wrongdoing,
12 so it is up to you to determine what the defendant intended
13 to do based on the circumstances which are shown to have
14 existed.

15 I tell you the State must prove criminal intent
16 beyond a reasonable doubt, just as it must prove every other
17 element in this case.

18 It is not necessary to establish intent by direct
19 and positive evidence, but intent may be established by
20 inference, in the same way as other factors, by taking into
21 consideration the acts of an individual and all the facts
22 and circumstances in the case.

23 While the State move prove motive, it is not
24 necessary that the State so do. However, the State must
25 prove intent.

1 Specific intent is defined as the intent to
2 accomplish the precise criminal act that one is later
3 charged with attempting to commit.

4 Attempted murder is a statutory offense; that is,
5 it's an offense that our legislature has enacted and is part
6 of the Code of Laws of our state.

7 Here Mr. Franks is charged with that offense, the
8 statutory offense of attempted murder. That Code Section
9 states "a person who would intent to kill or attempts to
10 kill another person with malice aforethought, either express
11 or implied, commits the offense of attempted murder."
12 That's what the statute says. That's the heart of the
13 offense.

14 As it applies to attempted murder, malice the word
15 I just used, is defined as hatred, ill will, or hostility
16 towards another person. Malice is the intentional doing of
17 a wrongful act without just cause or excuse and with an
18 intent to inflict an injury or under other circumstances
19 which the law will infer an evil intent.

20 Malice aforethought, another phrase I used, does
21 not require that malice exists for any particular time
22 before the act is committed, but malice must exists in the
23 mind of a defendant just before and at the time the alleged
24 act is committed; therefore, there must be a combination of
25 previous evil intent and an act.

1 Malice aforethought may be express or inferred.
2 These terms express and inferred do not mean different kinds
3 of malice, but merely different manners by which malice may
4 be shown to exists; that is, either by direct evidence or by
5 inference from the facts and circumstances which have been
6 proven.

7 Express malice is shown when a person speaks words
8 which express hatred or ill will for another or when a
9 person prepares beforehand to do the act which was later
10 accomplished, such as acts of preparation going to show that
11 a deed was within a defendant's mind would constitute
12 express malice.

13 Now, that is the charge with which he's charged,
14 attempted murder. And, again, I have defined that for you
15 as the statute states. Again that attempted murder is
16 defined as "a person who with intent to kill attempts to
17 kill another person with malice aforethought, either express
18 or implied." That's malice -- I mean that's attempted
19 murder.

20 Now, I'll be using the words assault and battery
21 several times as I define for you these lesser included
22 offenses. Our law has said that there are certain
23 elements -- certain offenses which do not rise, so to speak,
24 to the level of attempted murder, but are encompassed in the
25 charge of attempted murder and which you may consider.

1 In a nutshell, if you determine that the State has
2 not proven that Mr. Franks is guilty beyond a reasonable
3 doubt of attempted murder, you may, but not required, it's
4 up to you, again, to determine all the facts, to determine
5 whether or not he committed one of these lesser offenses,
6 I'm going to go through them in order of severity, attempted
7 murder being the most severe, down to assault and battery of
8 a high and aggravated nature being the next, and down
9 through the third degree assault and battery.

10 First I'll define for you an assault. An assault
11 occurs when a person unlawfully attempts or offers to commit
12 a violent injury upon another person and has the present
13 ability to complete the attempted injury. An assault is the
14 intentional creation of a reasonable fear of immediate
15 bodily harm.

16 It's not necessary there be an assault that the
17 attempted injury or harm actually take place.

18 By way of example, if I'm close enough to strike
19 you and I draw back my fist in a rude and resentful manner
20 and I'm close enough to strike you and by actions imply that
21 I intend to strike you, that is an assault.

22 A battery is the unlawful touching of another
23 person by a person who has committed the assault.

24 An unlawful touching can be caused by a part of
25 the accused body or by any object that an accused has put

1 into motion.

2 A battery is the completion of the assault by
3 using or applying force to another person, however slight,
4 in a rude, angry, or resentful manner without legal
5 justification for so doing.

6 To follow through with my example, if I assault
7 you by rearing back close enough to hit you and then follow
8 through and actually strike you and make contact, this is
9 the assault. The actual touching of your body would be the
10 battery.

11 I will use the term great bodily injury. Our
12 legislature has defined this for the purpose of the offenses
13 for which I'm going to go over in a moment, it meaning
14 bodily injury which causes a substantial risk of death or
15 which causes serious permanent disfigurement or protracted
16 loss or impairment of the function of a bodily member or
17 organ.

18 Our courts have held that in South Carolina an
19 automobile is regarded as a dangerous instrumentality.

20 Our legislature has provided for several, as I
21 mentioned a moment ago, lesser included offenses to the
22 charge of attempted murder.

23 First I'm going to go over next on the level of
24 severity, I'll call it, would be assault and battery of a
25 high and aggravated nature.

1 A person commits the offense of assault and
2 battery of a high and aggravated nature if the person
3 unlawfully injures another person and great bodily injury to
4 that person results, or the act is accomplished by means
5 likely to produce death or great bodily injury.

6 If the State has failed to prove Mr. Franks guilty
7 of attempted murder or assault and battery of a high and
8 aggravated nature, as I have just defined it, you could
9 consider the lesser degrees of assault, which are assault
10 and battery in the first, second, and third degree, first
11 being the highest.

12 Our legislature by statute states that a person
13 commits the offense of assault and battery in the first
14 degree if the person unlawfully offers or attempts to injure
15 another person with the present ability to do so and the act
16 is accomplished by means likely to produce death or great
17 bodily injury.

18 Our legislature has designated assault and battery
19 in the second degree as this: A person commits the offense
20 of assault and battery in the second degree if the person
21 unlawfully injures another person or offers or attempts to
22 injure another person with the present ability to do so and
23 moderate injury to another person results or moderate bodily
24 injury to another person could have resulted.

25 Our legislature has defined moderate bodily injury

1 as meaning physical injury requiring treatment to an organ
2 system of the body other than the skin, muscles, and
3 connective tissues of the body, except when there is
4 penetration of the skin, muscles, and connective tissue that
5 require surgical repair of a complex nature, or when
6 treatment of the injuries require the use of regional or
7 general anesthesia.

8 Assault and battery in the third degree occurs
9 when a person unlawfully injures another or attempts to
10 injure another person with the present ability to do so, and
11 that is the least of the possible verdicts.

12 Now, your verdicts in these cases, or your
13 verdict, must be unanimous. All twelve jurors must agree.
14 Once all twelve have agreed, Madam Forelady, you will enroll
15 on the verdict form, which I'll go over in just a moment,
16 the jury's unanimous verdict.

17 Your verdict cannot be based on passion,
18 prejudice, public opinion, sympathy, or matters outside the
19 record. It must be based on the law and evidence you
20 received in this trial. Again, it must be unanimous.

21 While you are deliberating, if you have any
22 questions, Madam Forelady, write them down and knock on the
23 door and give them to the bailiff and the bailiff will bring
24 them to me. After consulting with the attorneys, I will
25 respond. It may be that I can write an answer to the note

1 on the question. It may be that I will have to bring you
2 back here into open court and answer your question.

3 We can have testimony replayed, if you wish.

4 You will have the exhibits with you to look at,
5 talk about in the jury room.

6 If you want us to go over any testimony, we can
7 bring you back out here, with nobody saying anything, just
8 having the testimony played back for you.

9 In South Carolina we do not send in with the jury
10 a written charge on the law, so if you want me to go over
11 any part or all of my charge on the law, let me know. I
12 will bring you back out here in open court and I will be
13 charging on any part or all of the law.

14 Now, when you first go into the jury room, do not
15 start deliberating. I must go over my charge with the
16 attorneys. If I have made an error, I will have to correct
17 it. I have told you you have to follow the law as I charge
18 you. So it would be incumbent on me to make sure that I did
19 not make an error.

20 If I need to, I will bring you back in and correct
21 anything that I left out or put in that shouldn't have been
22 there or stated incorrectly, if there is any. If not, I
23 will send in to you the verdict form and the exhibits and
24 the bailiff will tell you to start deliberating.

25 Lunch will be pizza. It's coming. You can work

1 while you eat lunch, or you can take that time off and not
2 work while you eat lunch.

3 Since the verdict has to be unanimous -- you can
4 also take breaks when you need to, but I want you either all
5 working or all on break; that is, eight people can't be
6 working while four take a break. You have got to work
7 collectively to reach this unanimous verdict.

8 So don't start deliberating until I instruct you
9 to do so.

10 I have a verdict form, Madam Forelady. It's
11 already got your name typed on it, a place for you to sign.
12 It's already got today's date. There are several possible
13 verdicts, six to be exact. They are set forth on this
14 verdict form in the order I went over them. The order they
15 are in is of no significance. I, of course, have to put
16 them in some order and I always put them in this order. I
17 always put the first the top of the list the charge and the
18 last is the not guilty. That's just the way I always do it.

19 So on the verdict form you will see the six
20 possible verdicts. You will choose whatever the jury
21 determines unanimously to be the verdict, you will put a
22 check or an X mark in front of that line.

23 If the State has proven to the jury's unanimous
24 satisfaction Mr. Franks guilty beyond a reasonable doubt of
25 either attempted murder, or assault and battery of a high

1 and aggravated nature, or assault and battery in the first,
2 second, or third degree, you would simply put a check in
3 front of the line that says that.

4 If you find the State has failed to prove Mr.
5 Franks guilty of any offense, you would use the last line,
6 the sixth line, that says "we find the defendant not
7 guilty," again just placing a check mark.

8 When you have reached a verdict, just knock on the
9 door and tell the bailiff and we will send for you as
10 promptly as we can. I'm supposed to start another trial, so
11 I may be doing some work, but I will send for you as
12 promptly as I can when you have reached a verdict.

13 Mr. Benson, you are not to go back in the jury
14 room, but I'm going to keep you around. I'm going to let
15 you go to the other jury that's not being used. You will
16 get pizza too, and I'm going to let you stay in case for
17 some reason we may need your service at a later time.

18 So at this time I'm going to let the jury go to
19 the jury room, everybody but Mr. Benson. And Mr. Krueger,
20 if you will get somebody to take Mr. Benson to the other
21 jury room.

22 (Whereupon, at 12:59 p.m., the jury went to the
23 jury room awaiting instructions to begin deliberations)

24 THE COURT: Close the door.

25 Any exceptions from the State?

1 MR. SPRINGS: No, sir.

2 THE COURT: Any exceptions from the defense?

3 MR. BARROWCLOUGH: No, sir, Your Honor.

4 THE COURT: All right. I think you have already
5 checked the exhibits, but double check, if you wish.

6 Here is the verdict form and the indictment. We
7 will send it in. And Mr. Dunlap or somebody -- nobody is
8 paying me any attention but --

9 (Off the record)

10 (Back on the record)

11 (Whereupon, at 1:03 p.m., the jury panel was
12 instructed to begin deliberations)

13 (Whereupon, at 1:04 p.m., proceedings were
14 recessed, pending the verdict of the jury panel)

15 (Whereupon, at 2:27 p.m., proceedings were
16 reconvened)

17 (Jury Note marked as Court's Exhibit No. 2 for
18 identification)

19 THE COURT: We have received a note that the jury
20 wants me to recharge on the offenses, and so that's what I
21 will do. Give me one second to get them. I think I got
22 them in order here.

23 And anything before the jury comes in? They just
24 want me to recharge them on the -- they call them the
25 verdicts.

1 MR. SPRINGS: No, sir.

2 MR. BARROWCLOUGH: No, sir, Your Honor.

3 THE COURT: All right, bring in the jury.

4 (Whereupon, at 2:30 p.m., the jury panel returned
5 to the jury room)

6 THE COURT: All right. First I'm going to ask is
7 it cold back there?

8 THE JURY: Yes.

9 THE COURT: I notice everybody coming in with
10 gloves.

11 THE JURY: Yes.

12 THE COURT: All right. Well, that's fine. I
13 just -- if we needed to change anything with the temperature
14 back there, let us know and we will try to do it. I don't
15 know if we can. These public buildings it takes -- I think
16 they operate it out of Atlanta or somewhere.

17 But, anyway, you have asked for me to recharge
18 you, it said the five verdicts. There are actually six.
19 One, of course, is not guilty if the State has filed -- you
20 would use that one if the State has failed to prove Mr.
21 Franks guilty of any of the offenses with which he's charged
22 or any of the four underlying lesser included's.

23 He's charged, as I told you, with attempted
24 murder, which is a statutory offense. That statute provides
25 that a person who with intent to kill attempts to kills

1 another person with malice aforethought, either express or
2 implied, commits the offense of attempted murder.

3 As it applies to the attempted murder, malice is
4 defined as hatred, ill will, or hostility towards another
5 person. It is the intentional doing of a wrongful act
6 without just cause or excuse and with intent to inflict an
7 injury or under circumstances which the law would infer an
8 evil intent.

9 Malice aforethought is not required that malice
10 exists for any particular time prior to the act being
11 committed, but malice must be in the mind at the time just
12 before at the time the act is committed. Therefore, there
13 must be a combination of a previous evil and the act to
14 constitute aforethought.

15 Malice aforethought may be express or inferred.
16 These terms do not mean different kinds of malice, but
17 merely the manner in which malice may be shown to exist;
18 that is, either by direct evidence or by inference from the
19 facts and circumstances which have been proven.

20 Express malice is shown when a person speaks words
21 to express hatred or ill will for another or when a person
22 prepares beforehand to do an act which they later
23 accomplish. This would be such as an act of preparation
24 which would go to show that the deed done was in the
25 defendant's mind and that would constitute express malice.

1 I define for you assault and battery, assault
2 being an attempt to offer to commit a violent injury where
3 one has the present ability to complete the attempted
4 injury.

5 An assault, as I told you, is the intentional
6 creation of a reasonable fear of immediate bodily harm.

7 I'll remind you it's not necessary that the
8 attempted injury or harm actually take place, and I used my
9 example of raising my fist.

10 A battery is the unlawful touching of another
11 person by a person who has committed an assault.

12 An unlawful touching can be caused by part of the
13 accused body, or by any object the accused has put into
14 motion.

15 A battery is the completion of an assault by using
16 or applying force to another person, however slight, in a
17 rude, angry, or resentful manner, without legal
18 justification for doing so.

19 I, of course, showed you that if I carried through
20 and bring my fist forward and actually make contacts, that I
21 have committed a battery.

22 As to these charges, I have defined great bodily
23 injury as meaning -- it means bodily injury which causes a
24 substantial risk of death, or which causes serious permanent
25 disfigurement or protracted loss or impairment of the

1 function of a bodily member or organ.

2 I told you that in South Carolina an automobile is
3 regarded as a dangerous instrumentality.

4 Our legislature has provided the lesser included
5 offenses to the charge of attempted murder as follows:

6 First would be assault and battery of a high and
7 aggravated nature.

8 The legislature has defined that as follows: That
9 law says that a person commits the offense of assault and
10 battery of a high and aggravated nature when the person
11 unlawfully injures another person and either great bodily
12 injury to another person results or that act is accomplished
13 by means likely to produce death or great bodily injury.

14 The next lesser included would be assault and
15 battery in the first degree. A person commits this if they
16 unlawfully offer or attempt to injure another person with
17 the present ability to do so and the act is accomplished by
18 means likely to produce death or great bodily injury.

19 Assault and battery in the second degree, which is
20 the next level, the person commits the offense of assault
21 and battery in the second degree if the person unlawfully
22 injures another person or offers or attempts to injure
23 another person with the present ability to do so and
24 moderate bodily injury results, or moderate bodily injury
25 could have resulted.

1 And I defined moderate bodily injury to mean
2 physical injury requiring treatment to an organ system of
3 the body other than the skin, muscles and connective tissues
4 of the body, except when there is penetration of the skin,
5 muscles and connective tissues that requires surgical repair
6 of a complex nature, or when treatment of the injuries
7 requires the use of regional or general anesthesia.

8 The last of the lesser included offenses would be
9 assault and battery in the third degree. A person commits
10 this offense if the person unlawfully injures another or
11 offers or attempts to injure another person with the present
12 ability to do so.

13 So those were my charge on the possible five
14 offenses. And, of course, the sixth possible verdict form
15 is not guilty.

16 I'll let you go back to deliberate.

17 (Whereupon, at 2:37 p.m., the jury panel returned
18 to the jury room to continue deliberations)

19 THE COURT: Anything from the State?

20 MR. SPRINGS: No, sir.

21 THE COURT: Anything from the defense?

22 MR. BARROWCLOUGH: No, sir, Your Honor.

23 THE COURT: All right. I hope it won't matter,
24 but our chief bailiff did not understand my instructions and
25 released the alternate. So we will not have the alternate

1 at this point.

2 (Whereupon, at 2:40 p.m., proceedings were
3 recessed, pending the verdict of the jury panel)

4 (Whereupon, at 3:17 p.m., proceedings were
5 reconvened)

6 THE COURT: All right. We got a note that the
7 jury has reached a verdict in Mr. Franks case.

8 Is the State ready?

9 MR. SPRINGS: Yes, sir.

10 THE COURT: Defense ready?

11 MR. BARROWCLOUGH: Yes, sir, Your Honor.

12 THE COURT: Mr. Franks is here, so let's bring in
13 the jury.

14 (Jury Note marked as Court's Exhibit No. 3 for
15 identification).

16 (Whereupon, at 3:20 p.m., the jury returned to
17 open court to report its verdict)

18 THE COURT: Madam Forelady, I understand the jury
19 has reached a verdict?

20 JURY FOREPERSON: Yes.

21 THE COURT: If you will hand it to the bailiff.

22 All right.

23 THE CLERK: Indictment 2010-GS-46-3461, State
24 versus Jason Ray Franks, verdict, we find the defendant
25 guilty of attempted murder.

1 JUROR NUMBER 92: Yes.

2 THE CLERK: Is it still your verdict?

3 JUROR NUMBER 92: Yes.

4 THE COURT: Anything further from the State?

5 MR. SPRINGS: No, sir.

6 THE COURT: Defense?

7 MR. BARROWCLOUGH: No, sir, Your Honor.

8 THE COURT: Members of the jury panel, I'm going
9 to excuse you for the day and the rest of the week. We have
10 already gotten into a bit of our next trial. We hadn't
11 actually drawn the jury, but they are downstairs and that
12 would be the last one we try this week, so I'm going to
13 allow you to leave, but I'm not going to require you to stay
14 for any sentencing procedure.

15 I will tell you that in South Carolina we have a
16 two and three strikes law and you are out. Mr. Franks has a
17 prior homicide, which was his first strike, and this would
18 be his second strike. So there is only one sentence I can
19 impose, which would be a life sentence for Mr. Franks.

20 I wanted to let you know that now. It will
21 probably be in the paper. Of course, papers have covered
22 this a little bit. Thank you.

23 And we need you to -- Ms. -- I want to call you
24 Lisa, but I don't want to call you by your first name. Ms.
25 Cooper, if you will come forward, we are going to get the

1 indictment and get you to put the verdict form on the
2 indictment.

3 (Whereupon, at jury 3:25 p.m., the jury panel was
4 discharged)

5 THE COURT: All right. Let's bring Mr. Franks
6 around for --

7 Well, first any -- certainly the jury has now been
8 dismissed. Anything from the State, as far as the verdict,
9 not sentencing?

10 MR. SPRINGS: No, sir.

11 THE COURT: All right. Anything from the defense
12 involving -- before sentencing?

13 MR. BARROWCLOUGH: Your Honor, for purposes of the
14 record we would move for a new trial based that the evidence
15 does not support the verdict.

16 Additionally, Your Honor, we would -- of course,
17 the court heard all our previous objections and exceptions
18 motions that was already made on the record for appellate
19 purposes.

20 THE COURT: All right. Bring Mr. Franks around
21 for sentencing and I will be glad to hear anything else.

22 And this case has, from what I understand, a
23 unique wrinkle that I think needs to be put on the record,
24 because obviously this case would not end here.

25 It is my understanding that the State had offered

1 Mr. Franks a sentence of one year on this charge and on
2 leaving the scene and that that was not accepted. Is that
3 true Mr. Springs?

4 MR. SPRINGS: Not exactly.

5 THE COURT: Okay.

6 MR. SPRINGS: He was originally charged -- this
7 happened on June the 7th, a few days after the new attempted
8 murder law was enacted and assault and battery with intent
9 to kill was repealed, disappeared. The officer that made
10 this case charged him with assault and battery with intent
11 to kill on the 7th, and there is no such crime on June the
12 7th.

13 I met with Mr. Franks. I looked at the case. I
14 saw difficulties with the case. The victim has a horrible
15 record, as the court has learned. I spoke to the victim and
16 I said "you have a horrible record. I'll put this guy in
17 prison, but I'm only going to offer him a year. It's better
18 than nothing, and you could lose everything at trial," and
19 he wasn't happy about it. I feel terrible about it now. I
20 gave him a short strip, but at any rate, I met with Mr.
21 Franks. He was in jail. His probation officer locked him
22 up. He was pro-se. I met with him. We had a pleasant
23 conversation. I said "first of all, do you want a lawyer?"
24 He said "no. No, I'll handle this." I said given the facts
25 here, I will let you plead to leaving the scene of an

1 accident with bodily injury, which carries a year, and
2 reckless driving for one year active sentence." And he was
3 extremely happy with that. He said "I want that. You are a
4 fine fellow. I'll do that." I said "do you want a lawyer?
5 You can have the same things and do the same thing. I can
6 get you a public defender." He said "no, I'll handle it
7 myself."

8 It came time for him to take that deal and he came
9 into my office pro-se with his girlfriend and his mother and
10 he said "I'm not going to. I want a trial."

11 And I said "do you understand that I had explained
12 to you when I first met with you that this would be charged
13 as attempted murder. That's what the correct charge would
14 have been. With your prior record, you would be tried for
15 life without parole. And if you lose, you are going to get
16 life without parole." He said "I understand that. I want a
17 trial."

18 I brought him into the courtroom. We had a
19 visiting judge next door. I don't remember the judge and
20 gave the quick summary of where we were. I said "he needs a
21 public defender," and Mr. Franks indicated "yeah, I want a
22 public defender because I want a trial." He got a public
23 defender. He was charged with attempted murder and Mr.
24 Delaney got this case.

25 Mr. Delaney came to me. And right about that time

1 Mr. Franks picked up a lewd act upon a minor to do with a 13
2 year old girl. Mr. Delaney came to see me and basically
3 asked for some kind of an offer. I said "okay. I would
4 allow him to plead to the new statutory assault and battery
5 of a high and aggravated nature for twelve no-parole years,
6 throw in the lewd act, and he can plead no-contest, if he
7 wants." And the feedback I got was Mr. Franks wanted
8 nothing whatsoever to do with that. He wanted a trial and
9 that's what we gave him, a trial.

10 THE COURT: All right.

11 MR. SPRINGS: I would like to go ahead and make
12 some things part of the record.

13 THE COURT: Okay. Well, the reason I wanted that
14 on the record is -- Mr. Delaney, do you dispute any of that,
15 or do you want to elaborate or --

16 MR. DELANEY: Well, the only thing that I would
17 add to that is when -- as far as when he came back from
18 twelve, we -- Mr. Franks was willing to plead to something.
19 We wanted something in the range of five to six years. We
20 met with E.B. on that. We met with Solicitor Brackett on
21 that trying to get something in the range of five years or
22 six years in the case and we didn't get that. So that's the
23 only thing I would say.

24 THE COURT: Go ahead.

25 MR. SPRINGS: Yes. He was served back in

1 September, and I might have the exact date here. A month
2 ago. Here it is. On September the 22nd, 2010, in open
3 court on the record before Judge Alford. I served our
4 notice with intention to seek a sentence of life without
5 parole upon Mr. Franks and Mr. Delaney, put into his hand,
6 each of them, a copy of the paper I'm holding here, and I'm
7 going to ask in a moment to make that a part of the record.
8 It referenced his prior conviction of 2000 of homicide by
9 child abuse. I'm holding a certified true copy of that
10 sentence sheet. I would like to make the life notice and
11 the sentence sheet a part of the record as court exhibits,
12 if you don't mind.

13 THE COURT: That's fine.

14 MR. SPRINGS: And, finally, I would like to give
15 his other record. He does have other record.

16 A 1998, assault on a female in Charlotte.

17 Communicating threat to a lady in Charlotte.

18 Injury to real property in '99, in Charlotte. And
19 that's it.

20 THE COURT: Mr. Delaney, Mr. Barrowclough, I'll be
21 glad to hear from you and then listen to Mr. Franks.

22 MR. BARROWCLOUGH: Well, judge --

23 THE COURT: I hate to interrupt, but I need the
24 sentencing sheet. I'm sorry, go ahead.

25 MR. BARROWCLOUGH: Your Honor, I know you have no

1 discretion, but, you know, just to elaborate further on the
2 what Mr. Delaney said on Mr. Franks situation, I was not
3 involved in the initial aspects of this case, but at some
4 point in time when Mr. Delaney came to me and told me what
5 was going on, and he pointed out how highly unusual it was.
6 So I went to Mr. Brackett and talked to him about it.

7 Just a couple additional facts Mr. Brackett had
8 shared with me that are germane that Mr. Franks at some
9 point, and I don't know when, but Mr. Franks cooperated in a
10 prosecution murder case in another county. I believe it was
11 Clarendon County."

12 MR. SPRINGS: One of the southern counties. I
13 don't recall.

14 MR. BARROWCLOUGH: Anyway, it was a gang-type
15 situation, and, you know, basically put his well-being in
16 jeopardy. And from what I understand, he was instrumental
17 to the case and that the solicitor there in that county had
18 called this solicitor's office seeking some consideration
19 for Mr. Franks. My understanding from Mr. Brackett was that
20 that had went to the original offer.

21 And also that Lieutenant Holland, who testified at
22 trial, also -- Mr. Franks had also done some work for him
23 and he had also put in a call on behalf of Mr. Franks also
24 looking for some consideration. And that -- and that
25 those -- all those events also transpired as part and parcel

1 with Mr. Franks original deal, which, of course, was before
2 Mr. Delaney or myself was on the case.

3 And, Your Honor, like I said, I know you have no
4 discretion, so the fact that you know that he did all that
5 to help various prosecuting agencies and help the State
6 really amounts to nothing now, but I did want to bring that
7 to your attention.

8 THE COURT: Mr. Franks, anything that you want to
9 say?

10 THE DEFENDANT: I can tell you I'm trying pretty
11 much afforded going back to the penitentiary, because I knew
12 behind the evidence that I showed in that previous case, I
13 know I was a dead man once I got back there, but I didn't
14 feel confident that E.B. was going to have me protected. So
15 I took it as far as I could to try to keep -- and the only
16 reason I denied that plea was October 6th of 2009, I had a
17 son that was born and caught spinal fluid in the hospital
18 and he died ten days later. So I was trying to do right by
19 this one and not have this child out of wedlock. He wanted
20 me to come to court August 26th, which I did.

21 September 10th I was going to be married. So I
22 was trying to buy time until September 10th and I would have
23 took whatever plea possible, but he wouldn't work with me on
24 that. Now I have that baby, so I guess it was all in vein.
25 That's all I have.

1 THE COURT: The sentence of the court is that this
2 is your second most service offense and, therefore, the
3 sentence is life without the epossibility of parole.

4 (Notice to Seek Life Sentence was marked as
5 Court's Exhibit No. 4 for identification).

6 (Indictment No. 2000-GS-46-2557 was marked as
7 Court's Exhibit No. 5 for identification).

8 (NOTE: State's Exhibit No. 50, State's Exhibit
9 No. 51, State's Exhibit No. 52, State's Exhibit No. 53,
10 State's Exhibit No. 58, State's Exhibit No. 59, State's
11 Exhibit No. 60, State's Exhibit No. 61, State's Exhibit No.
12 62, State's Exhibit No. 64, State's Exhibit No. 66, State's
13 Exhibit No. 67, State's Exhibit No. 68, State's Exhibit No.
14 69, State's Exhibit No. 70, State's Exhibit No. 71, State's
15 Exhibit No. 72, State's Exhibit no. 73, State's Exhibit No.
16 74, State's Exhibit No. 75, State's Exhibit No. 76, State's
17 Exhibit No. 82, State's Exhibit No. 83, State's Exhibit No.
18 84, State's Exhibit No. 89, State's Exhibit No. 93, State's
19 Exhibit No. 95, State's Exhibit No. 96, State's Exhibit No.
20 99, State's Exhibit No. 100, State's Exhibit No. 103,
21 State's Exhibit No. 106, State's Exhibit No. 107, State's
22 Exhibit No. 109 were withdrawn by Solicitor Springs.)

23 (END OF REQUESTED TRANSCRIPT OF RECORD)
24
25

337

WITNESSES

JO / Scurlock

DOCKET NO. 2010-GS-46-03461

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 14, Term 2010

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

1204

ACTION OF GRAND JURY

TRUE BILL

Person of Grand Jury

10-14-10

VERDICT

guilty

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-29
CDR Code: 3410

Person of Petit Jury

12/15/10

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2010 DEC 20 PM 12:18

At a Court of General Sessions, convened on October 14, 2010, the Grand Jurors of York County present upon the indictment of

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
ATTEMPTED MURDER

The Defendant, Jason Ray Franks, did in York County, South Carolina on or about June 7, 2010, attempt to kill and murder Edward Ray Mullins, with malice aforethought, either express or implied, when the Defendant intentionally drove a sport utility motor vehicle at the victim, Edward Ray Mullins, as the victim was travelling down a public street on a motorized vehicle known as a "moped," and the Defendant crashed the vehicle he was driving into the victim's body on the moped, and "ran down" the victim. This was in violation of Section 16-3-29 of the Code of Laws of South Carolina, (1976, 2010 as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

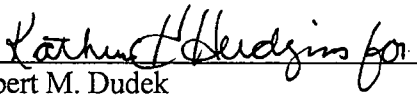
E. B. Springer

ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 10th, 2012


Robert M. Dudek
Chief Appellate Defender

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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON RAY FRANKS

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the Court erred by refusing to allow impeachment evidence on cross-examination that complaining witness Mullins was involved in an incident in West Virginia a few weeks after this incident which led to Mullins outrunning police officers where Mullins on direct examination claimed appellant intentionally hit him with his car while Mullins was on his moped and severely injured him since this was relevant impeachment evidence given Mullins' claims on direct examination?

2.

Whether the Court erred by allowing Patricia Johnson to testify that her granddaughter, fourteen-year-old Taylor [REDACTED] told her appellant said he was "going to get" Mullins before the incident occurred since Taylor was not told of the alleged time and place she alleged made this statement to Johnson as mandated by Rule 613(b), SCRE?

STATEMENT OF THE CASE

Appellant was indicted by the York County Grand Jury for the offense of attempted murder in an automobile crash involving Mullins. R. 337. His case was called to trial on December 13, 2010 before the Honorable John C. Hayes, III, and a jury. B. J. Barrowclough and Erik Delaney represented appellant. E. B. Springs, IV was the Assistant Solicitor. R. 1.

On December 15, 2010, the jury found appellant guilty of attempted murder. R. 327, ll. 23-25. Based on appellant's prior conviction for homicide by child abuse appellant was sentenced to life without the possibility of parole based upon the two strikes law.¹ R. 330, l. 13 – 336, l. 3.

This appeal follows.

¹ The solicitor acknowledged at one point he offered appellant a one year prison sentence to resolve the dispute given the horrible criminal record that Mullins had. R. 330, l. 6 – 333, l. 13.

ARGUMENT

1.

The Court erred by refusing to allow impeachment evidence on cross-examination that complaining witness Mullins was involved in an incident in West Virginia a few weeks after this incident which led to Mullins outrunning police officers where Mullins on direct examination claimed appellant intentionally hit him with his car while Mullins was on his moped and severely injured him since this was relevant impeachment evidence given Mullins' claims on direct examination.

Relevant Facts

Appellant was Anthony Valenti's neighbor, and he did "odd jobs" for him. R. 37, l. 23 – 38, l. 4. Edward Mullins, who the solicitor even acknowledged "is no angel. He has a horrible criminal record" saw appellant Jason Franks washing the truck of his friend, Anthony Valenti, a couple of weeks or so before the incident in this case, and he remembered appellant "had a tattoo under his eye and I made a comment about didn't that mean he was queer and he said no. And then so I made a comment about he had some earrings. Made a comment about that, and I asked him didn't that mean he was queer and he said no." Add. R. 1, ll. 12-19; R. 159, l. 9 – 160, l. 24.

Mullins also "told him if he [appellant] ever [had] been locked up with me he would have got all the chocolate candy bars he wanted." Mullins said this meant appellant would be his "bitch" if he was ever in jail with him. R. 160, l. 25 – 161, l. 4. Mullins claimed: "He really didn't say anything. He said that he would stab me, and I told him he wouldn't do nothing, and he went home." R. 161, ll. 3-10.

The evidence of what occurred on June 7, 2010 was, not surprisingly, very much in dispute. Anthony Valenti testified that Mullins had gone to prison for driving his truck with a revoked driver's license. Apparently Mullins had an accident, and fled. R. 37, l. 28 – 38, l. 23. Thereafter, Mullins drove a moped.

Valenti said he was going to follow Mullins as Mullins drove on his moped to be sure Mullins did not run out of gas on his way to the bank. Valenti, openly admitted he did not like appellant, claimed appellant jumped off "his front porch and run (sic) to his wife's SUV and he got in it and started it when Mullins drove by his [appellant's] house on the moped." R. 43, l. 20 – 45, l. 24. Valenti said appellant followed Mullins at a very slow rate of speed and he claimed "I had a bad feeling about it." R. 49, ll. 14-25.

Valenti testified that he drove next to Mullins and motioned to him that appellant was behind him. Valenti said he thought Mullins was waving at him and Mullins waved back. Valenti did not see the accident, and he admitted he could not tell whether appellant hitting the decedent was an accident or intentional. R. 50, l. 9 – 51, l. 3; R. 59, l. 24 – 60, l. 1.

On cross-examination Valenti acknowledged that Mullins was a good friend, and Valenti admitted he had lied to the police for Mullins on prior occasions. Valenti refused to answer whether he was still under investigation for intimidating a state's witness, appellant. R. 60, ll. 2-10. Valenti also denied he was getting special treatment from the authorities for his testimony.

Rule 613 (b), SCRE issue

Fourteen-year-old Taylor [REDACTED] lived next door to Valenti with her mother. Appellant was dating her mother. R. 67, l. 17 – 69, l. 2. [REDACTED] remembered on the

afternoon of June 7, 2010, at about two o'clock, she was home with her mother and appellant. [REDACTED] testified on direct examination by the solicitor that she did not remember appellant saying "I'm going to get him" when Mullins rode by their house on his moped. R. 69, ll. 14-22; R. 70. The following then occurred on direct examination of Taylor by the solicitor:

Q. Do you remember telling your grandmother Pat Johnson that Jason saw a man on the moped, left, ran out of the house and said that "I'm going to get him" and jumped in your mom's car? Do you remember saying that?

A. I remember when he came back in, he said that he had seen him leaving and he was going to wait a few minutes so he didn't run into him to leave.

Q. Taylor, Jason Franks didn't say that, did he?

A. Yes, sir, I think he did.

Q. Who told you to say that, Taylor?

A. Nobody.

R. 70, ll. 10-20.

Taylor's mother, Patricia Johnson, also testified for the State. R. 73, l. 2 – 74, l. 23. Johnson said that appellant was angry with Mullins over his statements about Mullins making him "my bitch" in prison, and she said appellant had threatened to hurt Mullins by stabbing him. Johnson testified she told appellant to "drop it," and that it was not worth getting in trouble over. R. 76, ll. 2-25.

The solicitor then stated he wanted to impeach Taylor through Patricia Johnson under Rule 613(b), SCRE. Defense counsel stated the solicitor had not laid the foundation as to "time and place" with Taylor and the judge agreed. R. 77, l. 1 – 78, l. 12.

After the jury was sent out the solicitor claimed Taylor said this “after the incident, on the telephone.” Defense counsel again objected this was not specific as the rule of evidence mandated, and it could have been “a day, a week, a month, or six months after the incident.” The judge disagreed and ruled that “it being said over the telephone” was sufficient for purposes of Rule 613(b), SCRE. R. 79, l. 18 – 80, l. 7.

Over objection Johnson then claimed Taylor told her that: “Mr. Franks saw Mr. Mullins leave from his neighbor’s house and get on his moped. And she said when Jason saw that happen, he said ‘I’m going to get him.’” R. 81, ll. 5-11.

On cross-examination Johnson acknowledged she never gave the police a statement and she had not talked to the defense about the case. She was hostile to appellant and the defense team. R. 81, l. 22 – 82, l. 21.

During Mullins’ testimony he admitted he had cocaine in his system at the time of the incident or accident but he claimed it was “from two days earlier.” R. 178, ll. 19-25. Mullins admitted he filed a lawsuit against appellant and Mullins testified: “I mean I didn’t deserve to be run down like a dog in the road, or twenty-one stitches in my head, my teeth knocked out, my shoulder permanently dislocated don’t you think I deserve something.” R. 182, ll. 1-18. Mullins denied that he walked around after the accident, he and denied he gave appellant “the finger”: “I was just hit at 50 miles an hour or 60. I’m not Superman.” R. 182, l. 14 – 183, l. 5. Mullins said he was badly hurt when appellant hit his moped and he had to undergo rehab treatment. R. 185, ll. 14-18.

When defense counsel began questioning about an incident that happened 290 miles away in Clay, West Virginia, the solicitor objected. R. 184, ll. 6-21. Appellant proffered the testimony about what happened two weeks after this incident in West Virginia.

The following occurred on the proffer of Mullins:

Q. You weren't too bad to get into a physical altercation with two women at the same time, right?

A. There wasn't an altercation.

Q. And you weren't hurt too bad to physically drag a woman up a flight of steps by her hair?

A. That didn't happen.

Q. And you weren't hurt too badly to fight off the other woman, Ms. Deborah Nelson, while that was going on?

A. That's not true.

Q. And you weren't hurt too bad – now, when the police came for you, you were able to run away from the police, right?

A. (No response)

THE COURT: Did you run away from the police?

THE WITNESS: Yes, sir.

BY MR. BARROWCLOUGH:

Q. From an officer Davis?

A. Right.

Q. And you weren't hurt too bad when they tackled you and you fight him off, right?

A. I was never tackled.

Q. And you weren't hurt too bad to outrun him and escape, right?

A. I did outrun him, yes.

Q. And then you weren't hurt too bad to travel another 290 miles back to South Carolina in your car?

A. I wasn't – I didn't travel. I wasn't driving, no.

Q. But, I mean, you traveled?

A. Right.

R. 186, l. 8 – 187, l. 13.

Defense counsel then argued that Mullins had testified about how badly he was hurt - that his teeth were knocked out and he went through rehabilitation -- and the defense was entitled to show the jury that Mullins was quite capable of physical activity two weeks after this incident. The solicitor argued it was irrelevant, and the judge ruled he agreed this evidence was irrelevant. R. 188, ll. 6-22. The judge reasoned: "It might have something to do with his damages claim in a civil trial, but the issue here is whether your client ran over this man. And, if so, did he suffer injuries from it. Not the degree of injuries – I know he went quite into detail as to what injuries he had, but I find it's – you are on the record for grounds for appeal, but I find it's not relevant." R. 188, l. 22 – 189, l. 4.

Later during the trial the defense was also precluded from having the paramedic who arrived at the scene testify he was told that Mullins was "ambulatory at the scene prior to EMS arrival . . ." but Mullins was told bystanders to lie down. R. 209, l. 7 – 220, l. 12.

Deputy Michael Scurlock, Jr. testified that appellant reported to the police station after the accident and he gave the police a statement. Appellant told the police when Mullins was leaving on his moped: "I waited three to five minutes to give him a head start so as to avoid a confrontation." Appellant said Mullins was playing games with him and looking back and smiling at appellant as he rode on his moped. Appellant told the police that he did not hit Mullins on purpose. R. 104, l. 10 – 106, l. 6.

Scurlock also testified that he was told by appellant that after he accidentally hit Mullins, he looked in his rear view mirror and Mullins was “standing up walking around flipping me off.” Appellant apologized for the accident and said he would cooperate fully with the police. R. 106, ll. 2-12.

Discussion

Defense counsel correctly argued that Mullins had made out his own claim of how badly he was injured and that appellant “tried to run him over like a dog in the road” as Mullins made his case against appellant for the prosecution. The only issue in this case was whether this was an accident or whether appellant intentionally hit the decedent and tried to kill him as the indictment alleged. The extent of Mullins’ injuries was clearly relevant in this case as he urged that appellant attempted to kill him and almost did. He was badly hurt he asserted.

The judge found that the proffered West Virginia evidence about Mullins successfully outrunning the police and the physical disturbance with the women was admissible in a civil case but not in appellant’s defense in the LWOP case. However, Rule 608(c), is broad in allowing evidence that shows bias, prejudice, or motive to misrepresent.

In State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976) our Supreme Court said that “anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony.” State v. Brewington 267 S.C. at 101, 226 S.E.2d at 249. See, also, State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002); Davis v. Alaska, 415 U.S. 308 (1974).

The credibility of Mullins in this case was key just as it was for alleged accomplice James Brown in State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001), where Brown claimed

Jones was the killer. In Jones, our Court held the defendant had the right to impeach Brown with available evidence showing that what was being presented to the jury as Brown's motivation for testifying may not be accurate. In Jones, Brown's favorable history of dealing with the solicitor's office tended to show -- if the jury sought to believe it -- that Brown may have been motivated by his desire to limit his sentencing exposure *rather than* his concern for telling the truth and for salvation.

Here, the state presented a case where Mullins said he was deliberately hit by appellant in his SUV while Mullins was defenseless on his moped. Appellant *attempted to murder* Mullins was the state's case. The state also introduced evidence that appellant had threatened to harm Mullins prior to this incident. Appellant had as much right to show Mullins' bias and motive to misrepresent the truth in this criminal case as he did in the civil action where the judge ruled he would have allowed this impeachment evidence. Appellant should be granted a new trial.

The Court erred by allowing Patricia Johnson to testify that her granddaughter, fourteen-year-old Taylor [REDACTED] told her appellant said he was "going to get" Mullins before the incident occurred since Taylor was not told of the alleged time and place she alleged made this statement to Johnson as mandated by Rule 613(b), SCRE.

Relevant Facts

As seen, Taylor [REDACTED] denied that she remembered hearing appellant saying that he was "going to get him" -- Mullins -- or something similar to that. In fact, her best memory was appellant said he would wait a few minutes for Mullins to clear the area before he left.

Defense counsel correctly objected that the solicitor had not laid a proper foundation as to time and place in his attempt to impeach Taylor through the testimony of her grandmother, Patricia Johnson. The judge initially, and correctly agreed, but then erroneously changed his mind.

Rule 613(b), SCRE, mandates that extrinsic evidence of a prior inconsistent statement by a witness is not admissible **unless** the witness -- fourteen-year-old Taylor -- is advised of the substance of the statement, **the time and place it was allegedly made**, and the person to whom it was made, and is given the opportunity to explain or deny the statement.

That did not happen in this case. Defense counsel properly objected that Taylor was not given the opportunity to give an explanation by being specifically told of the time and place she allegedly told her grandmother, Patricia Johnson, that appellant had said he was going after Mullins.

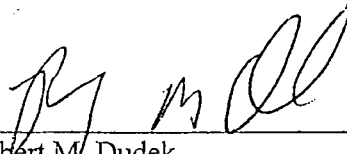
Here, unlike State v. Bixby, 388 S.C. 528, 698 S.E.2d 572 (2010), the young Taylor was not given a *specific* time and place that she allegedly told Patricia Johnson that appellant made this statement about going after Mullins. This is a rule of fairness to jog the memory of the witness and put her on notice that she may be impeached if she denies the *specific inquiry*. This was critical testimony and the State was not held to its obligations of fairness under Rule 613(b), SCRE as it applied to the time and place of the alleged statement.

Our state rule requires that proper foundation must be laid before admitting a prior inconsistent statement. See, State v. McLeod, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004). Again, Rule 613, SCRE is a rule of fairness to the witness. The impeachment of fourteen-year-old Taylor in this case -- since she was not given the time and place she allegedly made this critical statement to her grandmother -- was improper and highly prejudicial. Motive to maim or kill versus accident was the sole issue in this case.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed and his case remanded to the York County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

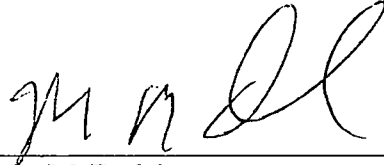
ATTORNEY FOR APPELLANT

This 30th day of August, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 30th, 2012

A handwritten signature in black ink, appearing to read 'M M D', is written over a horizontal line.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

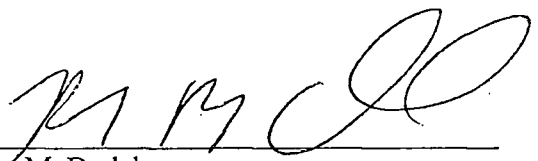
V.

JASON RAY FRANKS

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 30th day of August, 2012.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of August, 2012.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013 .

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, 111, Circuit Court Judge

THE STATE,

Respondent,

vs.

JASON RAY FRANKS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Any issue regarding Rule 608 (c), SCRE is precluded because Appellant's trial counsel failed to raise the argument at trial. Moreover, the trial judge properly excluded the proffered West Virginia testimony because the testimony was irrelevant. Furthermore, even if the proffered testimony was relevant, it was inadmissible under Rule 403, SCRE. Regardless of any error in excluding the proffered testimony, Appellant suffered no prejudice.

II.

The trial judge properly allowed Patricia Johnson's testimony because the State laid a proper foundation under Rule 613 (b), SCRE. Regardless, any error in admitting Patricia Johnson's testimony was harmless due to the overwhelming evidence of guilt against Appellant.

STATEMENT OF THE CASE

A York County Grand Jury indicted Appellant for attempted murder. (R. pp. 337-338.) On December 13, 2010, Appellant proceeded to trial before a jury. Assistant Public Defenders B.J. Barrowclough and Erik Delaney represented Appellant, and Assistant Solicitor E.B. Springs represented the State.

On December 15, 2010, the jury found Appellant guilty of attempted murder. (R. p. 327.) Because Appellant had a prior conviction for homicide by child abuse, the Honorable John C. Hayes, III sentenced Appellant to life without the possibility of parole based upon the two strikes law. (R. pp. 330-336.)

On December 16, 2010, Appellant filed a Notice of Intent to Appeal.

STATEMENT OF FACTS

On June 7, 2010, Appellant intentionally ran over Edward Mullins while Mullins was driving his moped. (R. pp. 167-168.) Mullins was a friend of Appellant's neighbor, Anthony Valenti. (R. pp. 37-38; R. p. 159.) A week or two before the incident, Valenti hired Appellant to wash his truck. (R. p. 160.) When Mullins arrived at Valenti's house, he asked Appellant if Appellant's tattoos and earrings meant Appellant was a "queer." (R. p. 160; R. p. 176.) Mullins told Appellant that if Appellant was ever locked up with him, Appellant "would have got all the chocolate candy bars he wanted." (R. pp. 160-161.) According to Mullins, that statement meant Appellant would have been his "bitch" in prison. (R. p. 161.) In response to Mullins' teasing, Appellant told Mullins that he would stab Mullins. Thereafter, they went their separate ways.

A day later, Appellant went to Valenti's house with a small club and told Valenti that he was going to "beat the breaks off of him [Mullins] and he was going to stick it in him [Mullins]." At trial, Valenti testified Appellant threatened Mullins multiple times. (R. pp. 40-41.)

On the day of the incident, Mullins went to Valenti's house. (R. pp. 41-42.) Both Mullins and Valenti left the house in order to run errands. (R. p. 42.) Valenti followed Mullins as Mullins drove his moped to the gas station because Mullins was afraid he was going to run out of gas. (R. p. 43.) As Valenti left his driveway, Appellant jumped off his front porch and jumped into his girlfriend's white SUV. According to Valenti, Appellant cut him off and began chasing after Mullins. (R. pp. 43-50.)

At trial, Valenti testified that he was concerned about the fact that Appellant was following Mullins so closely in the right lane, even though the left lane was clear. (R. pp. 47-49.) Valenti tried to get Mullins' attention in order to warn him about Appellant. (R.

p. 50.) However, Mullins just thought Valenti was waving at him. (R. p. 166.) Valenti had to go to his doctor's appointment, so he never saw the incident. (R. pp. 50-51.)

At trial, Taylor [REDACTED] the daughter of Appellant's girlfriend, testified. (R. p. 68.) During the time of the incident, Taylor lived next to Valenti with her mother and Appellant. Taylor testified that she was home on the day of the incident. (R. p. 69.) However, she denied Appellant ran out of the house and said, "I'm going to get him." Taylor denied Appellant hastily entered the house around 2:00 p.m. and said, "I'm going to get him." Thereafter, the Solicitor elicited following testimony:

Q. Do you remember talking to your grandmother Pat Johnson about that day and Jason and you being in the house? Do you remember talking to her on the telephone after it happened?

A. Yes.

Q. Do you remember telling your grandmother Pat Johnson that Jason saw a man on the moped, left, ran out of the house and said that "I'm going to get him" and jumped in your mom's car? Do you remember saying that?

A. I remember when he came back in, he said that he had seen him leaving and he was going to wait a few minutes so he didn't run into him to leave.

Q. Taylor, Jason Franks didn't say that, did he?

A. Yes sir, I think he did.

Q. Who told you to say that, Taylor?

A. Nobody.

(R. p. 70.)

Next, the State called Patricia Johnson, Taylor's grandmother, to the stand. (R. p. 73.) Patricia testified that Appellant told her about Mullins' teasing. (R. p. 76.) While Appellant was telling Patricia the story, he began pacing back and forth, and he said his

first thought was to slice Mullins' belly. And then he said his second thought was that he was going to go for Mullins' throat. In addition, Appellant said, "that's okay, I'll get him."

Furthermore, Patricia testified that she called Taylor several weeks after the incident and asked Taylor if she was at home when the incident took place. (R. p. 77.) When Patricia began testifying regarding Taylor's statements, Appellant's trial counsel objected under Rule 613 (b), SCRE. Appellant's trial counsel claimed the "time and place" requirements of Rule 613 (b) had not been established during Taylor's testimony. (R. p. 78.)

At first, the trial judge did not recall the State laying the foundation of the time and place of the statement; however, the court reporter read that portion of Taylor's testimony. After rehearing Taylor's testimony, the trial judge ruled that the foundational requirements of Rule 613 (b) had been met; therefore, the State could use Patricia's testimony in order to impeach Taylor. (R. pp. 79-80.) Patricia testified that Taylor told her that when Appellant saw Mullins get on his moped, Appellant said, "I'm going to get him." (R. p. 81.) Thereafter, Appellant ran out of the house.

Later on, the State called Mullins to the stand. (R. p. 159.) Mullins' testimony was largely consistent with Valenti's testimony. Mullins' admitted to teasing Appellant a week or two before the incident. (R. pp. 160-161.) Mullins testified he was driving his moped approximately 25 miles per hour at the time of the incident. (R. p. 165.) Mullins noticed a white vehicle behind him, but the vehicle did not concern him at first. All of the other vehicles passed Mullins in the left lane, but Mullins could not figure why the white vehicle would not pass him. (R. p. 166.) Mullins realized Appellant was the driver of the vehicle when Appellant drove up next to him and started hollering and screaming. (R. pp.

166-167.) Next, Appellant got in front of Mullins' moped and pulled to the side of the road. Appellant jumped out of the car and pulled out a baseball bat. Mullins kept driving.

Thereafter, Mullins looked in his review mirror and saw Appellant driving behind him at a high rate of speed. Mullins was hit from behind by Appellant and was left on the side of the road bleeding. (R. pp. 167-168.) Appellant revved his engine and fled the scene. An ambulance came to the scene of the incident and took Mullins to the hospital. (R. p. 169.) At trial, Mullins testified regarding the extent of his injuries. (R. pp. 169-174.)

During cross-examination, Appellant's trial counsel impeached Mullins with two prior convictions for felony driving under the influence with the infliction of serious bodily injury and one prior conviction for leaving the scene of an accident. (R. pp. 179-180.) In addition, Appellant's trial counsel brought out the fact that Mullins filed a civil lawsuit against Appellant in order to recover money for his injuries. (R. pp. 181-182.) Furthermore, Mullins admitted to using cocaine approximately two days before the incident. (R. p. 170.)

When Appellant's trial counsel began questioning Mullins about a physical altercation Mullins had in West Virginia, the State objected. (R. p. 184.) Appellant's trial counsel proffered testimony regarding what happened in West Virginia three weeks after the incident in this case. (R. pp. 185-188.) According to Mullins, he was accused of getting into a physical altercation with two women in West Virginia. (R. p. 186.) When the police came to the scene, Mullins ran away.

After hearing arguments from both sides, the trial judge ruled the proffered testimony was irrelevant and inadmissible. (R. p. 188.)

Thereafter, Appellant's trial counsel once again impeached Mullins with a prior conviction for being a habitual traffic offender in 2009, a prior conviction for assault and battery of a high and aggravated nature in 2000, and a prior conviction for third degree arson in 2003. (R. p. 191; R. p. 192.)

Later on during the trial, Appellant was able to elicit testimony regarding the extent of Mullins' injuries from Kevin Ford, a paramedic for Fort Mill rescue. (R. p. 216.) Ford testified Mullins' injuries were minor to moderate injuries.

ARGUMENT

I.

Any issue regarding Rule 608 (c), SCRE is precluded because Appellant's trial counsel failed to raise the argument at trial. Moreover, the trial judge properly excluded the proffered West Virginia testimony because the testimony was irrelevant. Furthermore, even if the proffered testimony was relevant, it was inadmissible under Rule 403, SCRE. Regardless of any error in excluding the proffered testimony, Appellant suffered no prejudice.

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001); *accord* State v. Brown, 344 S.C. 302, 308, 543 S.E.2d 568, 571 (Ct. App. 2001). Moreover, it is well settled that in ruling on the admissibility of evidence, the trial judge has considerable latitude and his ruling will not be disturbed absent a showing of probable prejudice. State v. Kelly, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995).

A. Appellant failed to preserve the Rule 608 (c) issue. In any event, Rule 608 (c) is inapplicable to this case.

i. The Rule 608 (c) issue is not preserved.

On Appeal, Appellant claims the West Virginia testimony was admissible because it was evidence of Mullins' bias and motive to misrepresent the truth. However, Appellant's trial counsel never argued the testimony was admissible under Rule 608 (c). (R. p. 188.)

An argument not raised and ruled on by the trial court is not preserved for appeal. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997). Furthermore, "a specific objection

to the admission of evidence must be made to preserve the issue for appeal.” McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996). In other words, “[t]he objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge.” Id. “The same ground argued on appeal must have been argued to the trial judge.” Id.

In the case at hand, Appellant’s trial counsel argued that the testimony was admissible because the State presented evidence of Mullins’ injuries. (R. p. 188.) However, Appellant’s trial counsel never argued that the testimony was evidence of Mullins’ bias and motive to misrepresent the truth. In other words, Appellant’s objection was not sufficiently specific to bring into focus the precise nature of the alleged error so that it could have been reasonably understood by the trial judge.

Thus, any issue regarding Rule 608 (c) is not preserved.

ii. In any event, Rule 608 (c) is inapplicable to this case.

On appeal, Appellant argued the trial judge should have admitted the West Virginia testimony because it was evidence of Mullins’ bias and motive to misrepresent the truth. However, the testimony did not show any bias or motive to misrepresent on the part of Mullins.

According to Rule 608 (c), “[b]ias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.” Rule 608 (c), SCRE. “Our courts have held that ‘anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded to his or her testimony.’ ” State v. Burgess, 393 S.C. 396, 404, 712 S.E.2d 1, 5 (Ct. App. 2011) (citations omitted).

In Burgess, this Court held that the narcotics officer's employment records were inadmissible under Rule 608 (c) because the records did not have a legitimate tendency to show bias on the part of the officer. Id. at 405, 712 S.E.2d at 5. On appeal, the defendant sought to introduce the arresting officer's employment records as evidence of bias and motive to misrepresent. Id. at 404, 712 S.E.2d at 5. After the officer arrested the defendant, the officer got in arguments with other officers and violated protocol. Id. In addition, the officer threatened another officer, and the police department formally disciplined the officer for his bad behavior. Id. This Court reasoned that because each incident occurred after the defendant's arrest and none of the incidents related directly to the defendant, the employment records were inadmissible. Id. at 405, 712 S.E.2d at 5. At most, the incidents showed the officer was hot-tempered and uncooperative, but the incidents did not show the officer's bias against the defendant. Id.

Furthermore, in State v. Mekler, this Court held that the witness' statement to a police officer was inadmissible. 368 S.C. 1, 12, 626 S.E.2d 890, 895 (Ct. App. 2005). At trial, the witness testified that she was not afraid of the victim. Id. at 10, 626 S.E.2d at 895. In attempt to attack the witness' credibility, the defendant sought to introduce a statement the witness made to a police officer that occurred two months before the defendant killed the victim. Id. The witness told the police officer that the victim threatened to kill the witness, and the witness said she was afraid of the victim. Id. at 11, 626 S.E.2d at 895. This Court concluded that the defendant did not offer the evidence to show " 'bias, prejudice, or any motive to misrepresent' " on the part of the witness. Id. at 12, 626 S.E.2d at 895. Rather, defendant's trial counsel stated he was offering the evidence to generally attack the witness' credibility. Id. Thus, the defendant could not rely on Rule 608 (c). Id.

Just like the defendants' trial counsel in Burgess and Mekler, Appellant's trial counsel in this case did not offer the evidence in this case to show bias, prejudice, or any motive to misrepresent on the part of Mullins. Rather, Appellant's trial counsel sought to introduce the evidence to generally attack Mullins' credibility. Simply put, the West Virginia testimony does not fall within Rule 608 (c).

B. The trial judge properly excluded the West Virginia testimony because it was irrelevant.

At trial, Appellant's trial counsel argued that the West Virginia testimony was admissible because Mullins testified about his injuries, and pictures of his injuries were admitted into evidence. (R. p. 188.) The State argued that the evidence was irrelevant, and the trial judge agreed. The trial judge stated that the testimony might have been relevant in a civil case with regards to damages; however, the degree of Mullins' injuries was not an element of the crime of attempted murder. (R. pp. 188-189.) Thus, the testimony was irrelevant.

Under the South Carolina Rules of Evidence, "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Moreover, "[a]ll relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible." Rule 402, SCRE.

Our legislature defined the crime of attempted murder as the following: "A person, who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." S.C. Code Ann. § 16-3-29 (2010) (noting this statute replaces any reference to assault and battery with intent to kill.).

When looking at the plain meaning of our attempted murder statute, it is clear that the victim's injuries are irrelevant. (See State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) ("The cardinal rule of statutory construction is to ascertain and effectuate legislative intent." "As such, a court must abide by the plain meaning of the words of a statute. When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation. "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."") (internal citations omitted).

At trial, the only real issue before the jury was whether Appellant intentionally ran over Mullins or whether it was an accident.¹ Thus, whether or not Mullins' injuries were as severe as he claimed was irrelevant to whether or not Appellant intended to kill Mullins.

In summary, the trial judge properly held that the proffered West Virginia testimony was irrelevant.

¹ Interestingly, neither party requested a jury charge on accident. (Supp. R. p. 1.)

C. The West Virginia testimony was inadmissible under Rule 403, SCRE.

Even if the West Virginia testimony was relevant, the testimony would have still been inadmissible under Rule 403, SCRE.

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE.

Here, the probative value of admitting the West Virginia testimony was minimal. The only real issue before the jury was whether Appellant intended to run over Mullins or whether it was an accident. Thus, whether or not Mullins could run from the police three weeks after the incident was irrelevant to the issue of Appellant’s intent. As discussed above, the extent of the victim’s injuries is not an element the State must prove in order to convict someone for attempted murder. Moreover, the only reason Appellant’s trial counsel wanted the jury to hear the testimony was to attack Mullins’ credibility. However, Appellant was allowed to impeach Mullins with numerous prior convictions. Thus, Mullins’ credibility had already been called into question.

On the other hand, the danger of unfair prejudice in admitting the West Virginia testimony was substantial. “Unfair prejudice means an undue tendency to suggest a decision on an improper basis.” State v. Owens, 346 S.C. 93, 610 S.E.2d 494 (2001) *overruled on other grounds by* State v. Gentry, 368 S.C. 93, 610 S.E.2d 494 (2005). If the trial judge admitted the testimony, the testimony would have just misled the jury into believing that the extent of Mullins’ injuries was an element of attempted murder.

In summary, because the probative value of admitting the testimony was substantially outweighed by the danger of unfair prejudice, the trial judge's decision to exclude the testimony should be upheld.

D. Regardless of any error in excluding the West Virginia testimony, Appellant suffered no prejudice from the exclusion.

"In determining harmless error regarding any issue of witness credibility, [courts] will consider the importance of the witness's testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case." State v. Fossick, 333 S.C. 66, 70, 508 S.E.2d 32, 34 (1998) (citations omitted). "An error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005).

Appellant attempted to elicit the West Virginia evidence from Mullins because Appellant wanted to paint Mullins' as a liar and a bad person. However, during cross-examination of Mullins, Appellant's trial counsel successfully impeached Mullins with numerous prior convictions. In addition, Mullins admitted to using cocaine two days before the incident. Moreover, Appellant was able to elicit favorable testimony regarding the extent of Mullins' injuries from Kevin Ford, a paramedic for Fort Mill rescue. (R. p. 125.)

In summary, Appellant suffered no prejudice from the exclusion of the West Virginia testimony.

II.

The trial judge properly allowed Patricia Johnson's testimony because the State laid a proper foundation under Rule 613 (b), SCRE. Regardless, any error in admitting Patricia Johnson's testimony was harmless due to the overwhelming evidence of guilt against Appellant.

A. The State laid the proper foundation under Rule 613 (b) during Taylor

 direct examination.

Appellant contends the trial judge erred in allowing Patricia to testify regarding her conversation with Taylor, where Taylor told Patricia that on the day of the incident, Appellant ran out of the house and said, "I'm going to get him." However, the State advised Taylor of the substance of the statement, the time and place the statement was allegedly made, and the person to whom the statement was made. Moreover, the State gave Taylor an opportunity to explain or deny the statement. After Taylor denied the statement, the State properly impeached Taylor with Patricia's testimony under Rule 613 (b), SCRE, which provides the following:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible.

Rule 613 (b), SCRE.

In State v. Bixby, our Supreme Court held that the State laid a proper foundation under Rule 613 (b), SCRE. 388 S.C. 528, 551, 698 S.E.2d 572, 584 (2010). The State asked Rita Bixby if she remembered receiving a phone call from Alane Taylor. Id. After

Rita admitted she received the call, the State asked Rita if she recalled making several different statements. Id. Rita denied making each statement. Id. at 552, 698 S.E.2d at 584. Thereafter, the State called Alane to impeach Rita's testimony. Id. The Court reasoned that the testimony was admissible because "[t]he record clearly reflected that Rita admitted having the conversation at issue but specifically denied making the statements later testified to by [Alane] Taylor. Thus, the State laid a proper foundation under Rule 613 (b), SCRE" Id. at 552, 698 S.E.2d at 585.

Thus, this case is similar to Bixby. Taylor admitted she remembered having a conversation with Patricia after the incident. However, just like Rita Bixby, Taylor simply denied making the statement. Thus, Taylor knew exactly what the State was talking about when the State asked her about the conversation with Patricia. Therefore, there was no unfairness to Taylor.

Moreover, Rule 613 (b) does not require the proponent of the evidence to pinpoint the exact time that the statement was allegedly made. See State v. Moses, 390 S.C. 502, 523, 702 S.E.2d 395, 406 (Ct. App. 2010) (holding that the time requirement of Rule 613 (b) was established by stating "fall of 2006."); see also State v. Hampton, 79 S.C. 179, 60 S.E. 669 (1908) (holding that the time requirement was established by stating "some time after the other trial in this case, at the last term of court . . .").

Furthermore, the incident occurred on June 7, 2010, and Taylor testified on December 14, 2010. Thus, the conversation occurred within six months of Taylor's testimony. Therefore, the State sufficiently narrowed down the time period in which Taylor made the statement. For example, this was not a situation where the State asked Taylor if she remembered having some vague conversation with her grandmother in the past ten years.

In summary, the State laid a proper foundation under Rule 613 (b). Taylor was fully aware of what statement the State claimed she made to Patricia. However, Taylor simply denied making the statement. Thus, there was no unfairness to Taylor.

B. Regardless, any error in admitting Patricia Johnson's testimony was harmless.

Accordingly, even assuming the admission of Patricia's testimony in this regard was error, any such error is harmless. See State v. Holder, 382 S.C. 278, 289, 676 S.E.2d 690, 696-97 (2009) (holding the erroneous admission of evidence is harmless beyond a reasonable doubt where it is minimal in the context of the entire record and cumulative to other testimony admitted without objection); State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) (the admission of improper evidence is deemed harmless if it is merely cumulative to other evidence). See also State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318-19 (2002) (noting whether an error is harmless depends on the particular facts of each case, including: the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case). " 'Harmless beyond a reasonable doubt' means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt." Id. 349 S.C. at 334, 563 S.E.2d at 319.

At trial, Valenti, Mullins, and Patricia all testified that Appellant threatened to hurt Mullins. Moreover, there was evidence that Appellant got out of his girlfriend's vehicle with a baseball bat and threatened to beat up Mullins right before the incident. Furthermore, both Valenti and Mullins testified that Appellant could have easily passed

Mullins by moving to the left lane, thereby negating the argument that it was an "accident."

In summary, there was overwhelming evidence of guilt in this case. Moreover, Patricia's impeachment testimony regarding Taylor's prior inconsistent statement was merely cumulative of all of the other testimony in this case.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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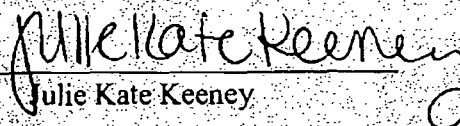
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August 23, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

JASON RAY FRANKS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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Appeal from York County
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Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 23rd day of August, 2012.

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