

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

Honorable R. Scott Sprouse, Circuit Court Judge

JASON R. FRANKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001592

APPENDIX

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ZACHARY W. JONES
Assistant Attorney General
P.O. Box 11629
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

VOLUME I OF II
PAGES 1-500

RECEIVED

Jul 14 2023

S.C. SUPREME COURT

INDEX

INDEX	i
TRANSCRIPT OF TRIAL HELD DECEMBER 13-15, 2010	1
APPLICATION FOR POST-CONVICTION RELIEF	453
RETURN.....	459
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	463
TRANSCRIPT OF EVIDENTIARY HEARING HELD APRIL 12, 2022.....	466
APPLICANT’S EXHIBIT NO. 1 (REPORT OF DR. MADDOX).....	655
ORDER OF DISMISSAL.....	660
INDICTMENT	668
SENTENCE SHEET.....	670

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
9 (VOLUME I)

10
11 B E F O R E:

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

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

16 E.B. SPRINGS, IV, ASSISTANT SOLICITOR
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

INDEX

(DECEMBER 13, 2010)

WITNESSES	PAGE
JURY VOIR DIRE -- PAGE 38	
JURY PANEL SWORN --- PAGE 54	
(JACKSON V. DENNO HEARING)	
OFFICER MICHAEL SCURLOCK, JR. (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	61
CROSS EXAMINATION BY MR. BARROWCLOUGH	63
OPENING STATEMENT BY MR. SPRINGS -- PAGE 66	
OPENING STATEMENT BY MR. DELANEY --- PAGE 71	
OFFICER DAVID GIBSON (S)	
DIRECT EXAMINATION BY MR. SPRINGS	75
CROSS EXAMINATION BY MR. DELANEY	91
REDIRECT EXAMINATION BY MR. SPRINGS	107

INDEX

(DECEMBER 14, 2010)

WITNESSES	PAGE
ANTHONY VALENTI (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	127
CROSS EXAMINATION BY MR. DELANEY	143
REDIRECT EXAMINATION BY MR. SPRINGS	157
TAYLOR JOHNSON (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	158
CROSS EXAMINATION BY MR. BARROWCLOUGH	162
PATRICIA JOHNSON (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	164
CROSS EXAMINATION BY MR. BARROWCLOUGH	172
REDIRECT EXAMINATION BY MR. SPRINGS	179
RE CROSS EXAMINATION BY MR. BARROWCLOUGH	179
OFFICER MICHAEL SCURLOCK, JR. (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	181
CROSS EXAMINATION BY MR. BARROWCLOUGH	202
REDIRECT EXAMINATION BY MR. SPRINGS	243
RE CROSS EXAMINATION BY MR. BARROWCLOUGH	247
EDWARD RAY MULLINS (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	251
CROSS EXAMINATION BY MR. BARROWCLOUGH	267
STATE RESTS -- PAGE 285	

INDEX

(DECEMBER 14, 2010)

WITNESSES	PAGE
OFFICER VINCE HOLLAND (DW)	
DIRECT EXAMINATION BY MR. BARROWCLOUGH	289
(NO CROSS EXAMINATION)	
KEVIN FORD (DW)	
DIRECT EXAMINATION BY MR. BARROCLOUGH	293
VOIR DIRE EXAMINATION BY MR. SPRINGS	298
CONT'D D. EXAMINATION BY MR. BARROWCLOUGH	299
CROSS EXAMINATION BY MR. SPRINGS	309
JOE MEDLIN (DW)	
DIRECT EXAMINATION BY MR. BARROWCLOUGH	311
CROSS EXAMINATION BY MR. SPRINGS	315
ANGELA JOHNSON (DW)	
DIRECT EXAMINATION BY MR. DELANEY	317
CROSS EXAMINATION BY MR. SPRINGS	323

1 INDEX

2 (DECEMBER 15, 2010)

3	WITNESSES	PAGE
4	JEFFERY LEE (DW)	
5	DIRECT EXAMINATION BY MR. DELANEY	338
6	(NO CROSS EXAMINATION)	
7	PHIL LEAZER (DW)	
8	DIRECT EXAMINATION BY MR. DELANEY	340
9	CROSS EXAMINATION BY MR. SPRINGS	346
10	REDIRECT EXAMINATION BY MR. DELANEY	349
11	WOODROW POPLIN (DW)	
12	DIRECT EXAMINATION BY MR. DELANEY	350
13	VOIR DIRE EXAMINATION BY MR. SPRINGS	352
14	CONT'D DIRECT EXAMINATION BY MR. DELANEY	353
15	CROSS EXAMINATION BY MR. SPRINGS	359
16		
17	DEFENSE RESTS -- PAGE 365	
18		
19	CLOSING ARGUMENT BY MR. BARROWCLOUGH -- PAGE 373	
20	FINAL ARGUMENT BY MR. SPRINGS -- PAGE 401	
21	JURY INSTRUCTIONS -- PAGE 415	
22	JURY VERDICT -- PAGE 439	
23	SENTENCING -- PAGE 444	
24	REPORTER'S CERTIFICATE -- PAGE 452	
25		

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	PHOTOGRAPH		128
4	S-2	PHOTOGRAPH		128
5	S-3	PHOTOGRAPH		143
6	S-4	PHOTOGRAPH		85
7	S-5	PHOTOGRAPH		140
8	S-6	PHOTOGRAPH		85
9	S-7	PHOTOGRAPH		140
10	S-8	PHOTOGRAPH		143
11	S-9	PHOTOGRAPH		137
12	S-10	PHOTOGRAPH		143
13	S-11	PHOTOGRAPH		137
14	S-12	PHOTOGRAPH		85
15	S-13	PHOTOGRAPH		85
16	S-14	PHOTOGRAPH		85
17	S-15	PHOTOGRAPH		84
18	S-16	PHOTOGRAPH		78
19	S-17	PHOTOGRAPH		83
20	S-18	PHOTOGRAPH		83
21	S-19	PHOTOGRAPH		83
22	S-20	PHOTOGRAPH		83
23	S-21	PHOTOGRAPH		83
24	S-22	PHOTOGRAPH		83
25	S-23	PHOTOGRAPH		83

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-24	PHOTOGRAPH		83
4	S-25	PHOTOGRAPH		83
5	S-26	PHOTOGRAPH		83
6	S-27	PHOTOGRAPH		83
7	S-28	PHOTOGRAPH		83
8	S-29	PHOTOGRAPH		83
9	S-30	PHOTOGRAPH		83
10	S-31	PHOTOGRAPH		83
11	S-32	PHOTOGRAPH		83
12	S-33	PHOTOGRAPH		83
13	S-34	PHOTOGRAPH		83
14	S-35	PHOTOGRAPH		83
15	S-36	PHOTOGRAPH		83
16	S-37	PHOTOGRAPH		83
17	S-38	PHOTOGRAPH		83
18	S-39	PHOTOGRAPH		83
19	S-40	PHOTOGRAPH		83
20	S-41	PHOTOGRAPH		83
21	S-42	PHOTOGRAPH		83
22	S-43	PHOTOGRAPH		83
23	S-44	PHOTOGRAPH		83
24	S-45	PHOTOGRAPH		83
25	S-46	PHOTOGRAPH		83

INDEX				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-47	PHOTOGRAPH		83
4	S-48	PHOTOGRAPH		83
5	S-49	PHOTOGRAPH		83
6	S-50	PHOTOGRAPH	15	
7	S-51	PHOTOGRAPH	15	
8	S-52	PHOTOGRAPH	16	
9	S-53	PHOTOGRAPH	16	
10	S-54	PHOTOGRAPH		200
11	S-55	PHOTOGRAPH		83
12	S-56	PHOTOGRAPH		200
13	S-57	PHOTOGRAPH		265
14	S-58	PHOTOGRAPH	16	
15	S-59	PHOTOGRAPH	16	
16	S-60	PHOTOGRAPH	16	
17	S-61	PHOTOGRAPH	16	
18	S-62	PHOTOGRAPH	16	
19	S-63	PHOTOGRAPH		265
20	S-64	PHOTOGRAPH	17	
21	S-65	PHOTOGRAPH		265
22	S-66	PHOTOGRAPH	17	
23	S-67	PHOTOGRAPH	17	
24	S-68	PHOTOGRAPH	17	
25	S-69	PHOTOGRAPH	17	

1		INDEX		
2	NO.	DESCRIPTION	ID.	EV.
3	S-70	PHOTOGRAPH	17	
4	S-71	PHOTOGRAPH	17	
5	S-72	PHOTOGRAPH	17	
6	S-73	PHOTOGRAPH	17	
7	S-74	PHOTOGRAPH	17	
8	S-75	PHOTOGRAPH	17	
9	S-76	PHOTOGRAPH	17	
10	S-77	PHOTOGRAPH		265
11	S-78	PHOTOGRAPH		265
12	S-79	PHOTOGRAPH		265
13	S-80	PHOTOGRAPH		265
14	S-81	PHOTOGRAPH		265
15	S-82	PHOTOGRAPH	18	
16	S-83	PHOTOGRAPH	18	
17	S-84	PHOTOGRAPH	18	
18	S-85	PHOTOGRAPH		265
19	S-86	PHOTOGRAPH		265
20	S-87	PHOTOGRAPH		265
21	S-88	PHOTOGRAPH		265
22	S-89	PHOTOGRAPH	19	
23	S-90	PHOTOGRAPH		265
24	S-91	PHOTOGRAPH		79
25	S-92	PHOTOGRAPH		265

1	INDEX			
2	NO.	DESCRIPTION	ID.	EV.
3	S-93	PHOTOGRAPH	19	
4	S-94	PHOTOGRAPH		265
5	S-95	PHOTOGRAPH	19	
6	S-96	PHOTOGRAPH	19	
7	S-97	PHOTOGRAPH		265
8	S-98	PHOTOGRAPH		265
9	S-99	PHOTOGRAPH	19	
10	S-100	PHOTOGRAPH	19	
11	S-101	PHOTOGRAPH		265
12	S-102	PHOTOGRAPH		265
13	S-103	PHOTOGRAPH	20	
14	S-104	PHOTOGRAPH		265
15	S-105	PHOTOGRAPH		265
16	S-106	PHOTOGRAPH	20	
17	S-107	PHOTOGRAPH	20	
18	S-108	PHOTOGRAPH		265
19	S-109	PHOTOGRAPH	20	
20	S-110	PHOTOGRAPH		265
21	S-111	PHOTOGRAPH		83
22	S-112	VOLUNTARY STATEMENT		194
23	S-113	AERIAL PHOTOGRAPH	125	
24	S-114	VOLUNTARY STATEMENT		158
25				

1	INDEX			
2	NO.	DESCRIPTION	ID.	EV.
3	D-1	HOSPITAL RECORD	293	
4	D-2	MEDICAL RECORD		311
5				
6				
7	CT-1	LIST OF EXHIBITS WITHDRAWN	372	
8	CT-2	JURY NOTE	439	
9	CT-3	JURY NOTE	451	
10	CT-4	NOTICE TO SEEK LIFE SENTENCE	451	
11	CT-5	INDICTMENT NO. 2000-GS-46-2557	451	

1 (PROCEEDINGS, DECEMBER 13, 2010)

2 (Photograph marked as State's Exhibit No. 1 for
3 identification)

4 (Photograph marked as State's Exhibit No. 2 for
5 identification)

6 (Photograph marked as State's Exhibit No. 3 for
7 identification)

8 (Photograph marked as State's Exhibit No. 4 for
9 identification)

10 (Photograph marked as State's Exhibit No. 5 for
11 identification)

12 (Photograph marked as State's Exhibit No. 6 for
13 identification)

14 (Photograph marked as State's Exhibit No. 7 for
15 identification)

16 (Photograph marked as State's Exhibit No. 8 for
17 identification)

18 (Photograph marked as State's Exhibit No. 9 for
19 identification)

20 (Photograph marked as State's Exhibit No. 10 for
21 identification)

22 (Photograph marked as State's Exhibit No. 11 for
23 identification)

24 (Photograph marked as State's Exhibit No. 12 for
25 identification)

1 (Photograph marked as State's Exhibit No. 13 for
2 identification)

3 (Photograph marked as State's Exhibit No. 14 for
4 identification)

5 (Photograph marked as State's Exhibit No. 15 for
6 identification)

7 (Photograph marked as State's Exhibit No. 16 for
8 identification)

9 (Photograph marked as State's Exhibit No. 17 for
10 identification)

11 (Photograph marked as State's Exhibit No. 18 for
12 identification)

13 (Photograph marked as State's Exhibit No. 19 for
14 identification)

15 (Photograph marked as State's Exhibit No. 20 for
16 identification)

17 (Photograph marked as State's Exhibit No. 21 for
18 identification)

19 (Photograph marked as State's Exhibit No. 22 for
20 identification)

21 (Photograph marked as State's Exhibit No. 23 for
22 identification)

23 (Photograph marked as State's Exhibit No. 24 for
24 identification)

25 (Photograph marked as State's Exhibit No. 25 for

1 identification)

2 (Photograph marked as State's Exhibit No. 26 for
3 identification)

4 (Photograph marked as State's Exhibit No. 27 for
5 identification)

6 (Photograph marked as State's Exhibit No. 28 for
7 identification)

8 (Photograph marked as State's Exhibit No. 30 for
9 identification)

10 (Photograph marked as State's Exhibit No. 31 for
11 identification)

12 (Photograph marked as State's Exhibit No. 32 for
13 identification)

14 (Photograph marked as State's Exhibit No. 33 for
15 identification)

16 (Photograph marked as State's Exhibit No. 34 for
17 identification)

18 (Photograph marked as State's Exhibit No. 35 for
19 identification)

20 (Photograph marked as State's Exhibit No. 36 for
21 identification)

22 (Photograph marked as State's Exhibit No. 37 for
23 identification)

24 (Photograph marked as State's Exhibit No. 38 for
25 identification)

1 (Photograph marked as State's Exhibit No. 39 for
2 identification)

3 (Photograph marked as State's Exhibit No. 40 for
4 identification)

5 (Photograph marked as State's Exhibit No. 41 for
6 identification)

7 (Photograph marked as State's Exhibit No. 42 for
8 identification)

9 (Photograph marked as State's Exhibit No. 43 for
10 identification)

11 (Photograph marked as State's Exhibit No. 44 for
12 identification)

13 (Photograph marked as State's Exhibit No. 45 for
14 identification)

15 (Photograph marked as State's Exhibit No. 46 for
16 identification)

17 (Photograph marked as State's Exhibit No. 47 for
18 identification)

19 (Photograph marked as State's Exhibit No. 48 for
20 identification)

21 (Photograph marked as State's Exhibit No. 49 for
22 identification)

23 (Photograph marked as State's Exhibit No. 50 for
24 identification)

25 (Photograph marked as State's Exhibit No. 51 for

1 identification)

2 (Photograph marked as State's Exhibit No. 52 for
3 identification)

4 (Photograph marked as State's Exhibit No. 53 for
5 identification)

6 (Photograph marked as State's Exhibit No. 54 for
7 identification)

8 (Photograph marked as State's Exhibit No. 55 for
9 identification)

10 (Photograph marked as State's Exhibit No. 56 for
11 identification)

12 (Photograph marked as State's Exhibit No. 57 for
13 identification)

14 (Photograph marked as State's Exhibit No. 58 for
15 identification)

16 (Photograph marked as State's Exhibit No. 59 for
17 identification)

18 (Photograph marked as State's Exhibit No. 60 for
19 identification)

20 (Photograph marked as State's Exhibit No. 61 for
21 identification)

22 (Photograph marked as State's Exhibit No. 62 for
23 identification)

24 (Photograph marked as State's Exhibit No. 63 for
25 identification)

1 (Photograph marked as State's Exhibit No. 64 for
2 identification)

3 (Photograph marked as State's Exhibit No. 65 for
4 identification)

5 (Photograph marked as State's Exhibit no. 66 for
6 identification)

7 (Photograph marked as State's Exhibit No. 67 for
8 identification)

9 (Photograph marked as State's Exhibit No. 68 for
10 identification)

11 (Photograph marked as State's Exhibit No. 69 for
12 identification)

13 (Photograph marked as State's Exhibit No. 70 for
14 identification)

15 (Photograph marked as State's Exhibit No. 71 for
16 identification)

17 (Photograph marked as State's Exhibit No. 72 for
18 identification)

19 (Photograph marked as State's Exhibit No. 73 for
20 identification)

21 (Photograph marked as State's Exhibit No. 74 for
22 identification)

23 (Photograph marked as State's Exhibit No. 75 for
24 identification)

25 (Photograph marked as State's Exhibit No. 76 for

1 identification)

2 (Photograph marked as State's Exhibit No. 77 for
3 identification)

4 (Photograph marked as State's Exhibit No. 78 for
5 identification)

6 (Photograph marked as State's Exhibit No. 79 for
7 identification)

8 (Photograph marked as State's Exhibit No. 80 for
9 identification)

10 (Photograph marked as State's Exhibit No. 81 for
11 identification)

12 (Photograph marked as State's Exhibit No. 82 for
13 identification)

14 (Photograph marked as State's Exhibit No. 83 for
15 identification)

16 (Photograph marked as State's Exhibit No. 84 for
17 identification)

18 (Photograph marked as State's Exhibit No. 85 for
19 identification)

20 (Photograph marked as State's Exhibit No. 86 for
21 identification)

22 (Photograph marked as State's Exhibit No. 87 for
23 identification)

24 (Photograph marked as State's Exhibit no. 88 for
25 identification)

1 (Photograph marked as State's Exhibit No. 89 for
2 identification)

3 (Photograph marked as State's Exhibit No. 90 for
4 identification)

5 (Photograph marked as State's Exhibit No. 91 for
6 identification)

7 (Photograph marked as State's Exhibit No. 92 for
8 identification)

9 (Photograph marked as State's Exhibit No. 93 for
10 identification)

11 (Photograph marked as State's Exhibit No. 94 for
12 identification)

13 (Photograph marked as State's Exhibit No. 95 for
14 identification)

15 (Photograph marked as State's Exhibit No. 96 for
16 identification)

17 (Photograph marked as State's Exhibit No. 97 for
18 identification)

19 (Photograph marked as State's Exhibit No. 98 for
20 identification)

21 (Photograph marked as State's Exhibit No. 99 for
22 identification)

23 (Photograph marked as State's Exhibit No. 100 for
24 identification)

25 (Photograph marked as State's Exhibit No. 101 for

1 identification)

2 (Photograph marked as State's Exhibit No. 102 for
3 identification)

4 (Photograph marked as State's Exhibit No. 103 for
5 identification)

6 (Photograph marked as State's Exhibit No. 104 for
7 identification)

8 (Photograph marked as State's Exhibit No. 105 for
9 identification)

10 (Photograph marked as State's Exhibit No. 106 for
11 identification)

12 (Photograph marked as State's Exhibit No. 107 for
13 identification)

14 (Photograph marked as State's Exhibit No. 108 for
15 identification)

16 (Photograph marked as State's Exhibit No. 109 for
17 identification)

18 (Photograph marked as State's Exhibit No. 110 for
19 identification)

20 (Photograph marked as State's Exhibit No. 111 for
21 identification)

22 THE COURT: All right.

23 MR. SPRINGS: Your Honor, the State is now calling
24 for trial of this case of the State of South Carolina versus
25 Jason Ray Franks on True Billed indictment number

1 2010-GS-46-3461.

2 Jason Ray Franks is charged with attempted murder
3 under the new statutory Code Section 15-3-29.

4 Mr. Franks is represented by Mr. Erik Delaney and
5 Mr. B.J. Barrowclough.

6 Gentlemen, how does Jason Ray Franks plead to
7 attempted murder?

8 MR. DELANEY: Not guilty.

9 MR. SPRINGS: Your Honor, the victim in this case,
10 Mr. Edward Mullins, is an inmate in the Department of
11 Corrections. He's also a vital witness in this case and
12 he's asked to exercise his right as the victim to be
13 present, and Your Honor will see him in the vicinity here
14 during the trial of this case as the victim.

15 I have a couple of things pretrial. I think the
16 defense does as well. If I may, I'll go ahead and start.

17 THE COURT: Okay.

18 MR. SPRINGS: The defendant in this case was asked
19 to voluntarily come up to the police station and make a
20 statement, and he did come to the police station and make a
21 statement. He was not under arrest and then he left and he
22 went home. We do not feel like we need a Jackson v. Denno
23 to get in his voluntary statement, but I would ask the court
24 to please inquire if the defense has other ideas.

25 THE COURT: Any motion to suppress the statement?

1 MR. BARROWCLOUGH: Your Honor, as part of our
2 motions in limine, we did -- we request a hearing, just to
3 ascertain the voluntariness of that statement.

4 THE COURT: All right. We will get to your
5 motions in a moment then.

6 MR. SPRINGS: I would ask -- we have served a
7 timely notice of our intention to seek a sentence of life
8 without possibility of parole in this case. I would ask
9 that the potential sentence in this case not be put before
10 the jury by the defense, either in cross-examination of my
11 witnesses or direct of their witnesses or in any opening and
12 closing. Under State v. Mizell it's prejudicial to the
13 State and it's irrelevant as to whether he did the crime or
14 not, so I would ask that this be precluded to any reference
15 or elicit to potential penalty in front of the jury.

16 MR. DELANEY: We understand that, Your Honor.

17 THE COURT: Okay.

18 MR. SPRINGS: I would also ask to settle -- we are
19 going to have a witness named Mr. Anthony Valenti and I
20 think we are agreed that Mr. Valenti has a prior conviction
21 for resisting arrest B, which would be an impeachable
22 offense, at which -- not too long ago, but Mr. Valenti,
23 after this alleged crime and after Mr. Valenti told the
24 police what he knew about it, he was charged with
25 intimidating Jason Franks, and that charge is still pending.

1 He is represented by David Cook. Mr. David Cook tells me he
2 has instructed Mr. Valenti not to discuss that, take the
3 Fifth, say his attorney has advised him not to discuss that
4 pending charge whatsoever. And I would ask that the
5 defense, when Mr. Valenti takes the stand, not mention that
6 interaction, that pending case, with Mr. Valenti on the
7 stand. I ask that they be precluded from that. I don't
8 know that if they intended to, but I would ask that they be
9 precluded from mentioning that incident.

10 MR. BARROWCLOUGH: Your Honor, surely we intend to
11 ask him about that. I think that that's proper under the
12 rules of evidence. It goes bias where he is a -- he has a
13 charge of intimidation of a witness, that being our client.
14 It has to do from that case and it does go to show, you
15 know, that he would have against Mr. Franks.

16 THE COURT: I certainly think that they can ask
17 him about it. I think it certainly goes to his credibility.
18 If you can show me some cases, I would be glad to look at
19 them, but I have -- of course, he has a right under the
20 Fifth Amendment to refuse to answer any questions, but
21 that's his right, not the State's and not the defense and
22 not mine.

23 MR. SPRINGS: Let me hand up State v. Hill, 675
24 S.E. 2d 761, which discusses a situation just like this.
25 Mr. Valenti wants to exercise his Fifth Amendment right not

1 to discuss the pending charge. That pending charge, that
2 interaction between him and the defendant, are collateral to
3 the facts of this case and they should not be brought up,
4 and I think State v. Hill supports me on that argument.

5 THE COURT: This headnote you have got appears to
6 me, with just quick reading, and I haven't read the body of
7 it, to apply once a defendant has invoked his right or an
8 individual has invoked their right.

9 MR. SPRINGS: All right. Then procedurally, Your
10 Honor, I guess I need to ask how far do they get to go? Ask
11 the question and --

12 THE COURT: Let me see what the body of this
13 opinion. The head notes aren't always reliable.

14 MR. SPRINGS: Yes.

15 (Off the record)

16 (Back on the record)

17 THE COURT: All right. Headnote 3, everything
18 through this, "where the privilege is being invoked at
19 purely collateral matters, there is little danger of
20 prejudice to the defendant, and, therefore, the witness'
21 testimony may be used against him."

22 "On the other hand, the witness by invoking the
23 privilege precludes inquiring into the details of his direct
24 testimony. There may be substantial danger or prejudice
25 because the defense is deprived of the right to test the

1 truth of his direct testimony and, therefore, that witness'
2 testimony should be stricken in whole or in part."

3 That's a little different. What they are saying
4 there is if you put him on the -- if I read this right, if
5 you put him up on direct and he answers all sort of
6 questions and then on cross they go into that and he says
7 "well, I'm not answering that, I'm invoking my Fifth
8 Amendment privilege," it says that witness' testimony should
9 be stricken.

10 Now, I'm just reading this real quick. I hadn't
11 had a chance to study it, but that's the way it reads to me.

12 MR. SPRINGS: All right. Then they may -- they
13 may ask a question, he takes the Fifth, and that is the
14 end -- that's the end of it?

15 THE COURT: Well, let's see, because -- because it
16 does say questions on cross examination are collateral if
17 they relate solely to the witness' credibility. But that
18 still has to do when the privilege has been invoked as to
19 purely collateral matters.

20 I still read this of him having to invoke the
21 privilege, and this would be a collateral matter, even
22 though it involves the same Mr. Franks.

23 MR. SPRINGS: Your Honor, I think later after the
24 fact incidents that involved the witness and Mr. Franks had
25 nothing to do -- would have nothing to do with his direct

1 testimony, because it happened after this whole incident.
2 It's purely collateral.

3 THE COURT: Well, as I read it, it reads like I
4 said it did a moment ago, but I do -- in reading it more
5 closely, it does appear that if the witness testifies as to
6 details involving the event, they cannot exercise their
7 privilege on cross regarding the offending question, which
8 here would be the charge against Mr. Franks.

9 But it does follow up with that language as to
10 that regard where questions on cross-examination are
11 collateral if they relate solely to the witness' credibility
12 and bear no relation to the subject matter of the direct
13 examination.

14 I guess until I hear the direct examination I
15 would not be able to determine whether his -- whether the
16 intimidation is collateral or not.

17 MR. SPRINGS: All right.

18 THE COURT: Let me -- let me just ask what -- in
19 trying to intimidate him as to this charge, or some other
20 charge, or how did that --

21 MR. SPRINGS: I'm going to hand up to the court a
22 copy. Have you got the incident report?

23 MR. BARROWCLOUGH: Yeah, that's fine.

24 And, judge, if I -- our position on this case, you
25 know, I read this Hill case and I really think it's

1 analogous -- my reading of it would be analogous to 608 (b)
2 rule, that, you know, you can ask on cross-examination
3 something that goes to a witness' credibility, you know, but
4 unless, like in this case, in the Hill case, where the
5 argument was whether or not the matters dealt with some
6 testimony on direct. Well, that's not the situation.

7 But just like the situation here, you can
8 cross-examine a witness on a specific incident of conduct
9 that might shed a negative light on the credibility, but you
10 are bound by their answer. If they lie and say no -- you
11 know, if I say "John Smith, did you lie to your pastor last
12 Sunday," and I have the pastor sitting right here in the
13 front row and I know it's true, but he denies it, I'm stuck
14 with his answer. I can't accept the collateral action but
15 call the pastor, but I think as it guess to his credibility
16 it's admissible.

17 I think in this case if we were to ask him isn't
18 it true, you know, that you have a pending charge for
19 intimidation of a witness where Mr. Franks is the victim of
20 that case, and he pleads the Fifth, I would agree we are
21 bound by his answer. We can't prove that collateral issue
22 that that's true, but I think under the rules of evidence
23 and under the Hill case we are still entitled to ask him
24 about that and cross-examine him about that, as that goes to
25 his credibility.

1 THE COURT: He's got to exercise his right. The
2 question is whether he can do that in-camera or whether that
3 has to be done in front of the jury.

4 MR. SPRINGS: The court has the incident report.
5 Evidently Mr. Valenti -- and, again, this goes to some few
6 days after the incident being tried. Mr. Valenti was
7 counting on Mr. Franks to be a witness in a case Mr. Valenti
8 has, unrelated to what we are trying here in this court, and
9 Mr. Franks didn't show up for him and Mr. Valenti was hot
10 about it.

11 Could we agree, Your Honor, at this point we don't
12 mention Mr. Valenti's unpleasantness in opening statement
13 with Mr. Franks and Mr. Valenti testifies on direct, we send
14 the jury out and we see where we are before he's crossed?

15 THE COURT: Well, I think there is a case, and
16 I'll ask my clerk to try to find it, that has to do with
17 whether or not it has to be done in front of -- whether the
18 invoking of the Fifth could done in-camera or has to be done
19 in front of a jury.

20 It seems to me the rationale from the court was
21 that if you are going to invoke it, he tries to invoke it,
22 he doesn't have to do it in front of the jury, but let's see
23 if we can find some law on that, and I will ask that you
24 stay away from it during the opening statement.

25 MR. SPRINGS: I have that case. I think the State

1 of the law at this point is you can't put him up there
2 knowing in advance he's going to take the Fifth just for the
3 show of it.

4 THE COURT: They are not putting him up. You are
5 putting him up.

6 MR. SPRINGS: But -- right.

7 MR. BARROWLCOUGH: Right. Judge, I would say that
8 that's really kind of apples and oranges, because we have
9 the right to cross-examine him on something. We are not
10 calling him. We are not calling him for that purpose.

11 THE COURT: Let me tell you the catch, though.
12 That's -- it depends on whether it flies or not until I
13 rule.

14 MR. BARROWCLOUGH: Yes, sir.

15 THE COURT: Sometimes I read them wrong.

16 Let's stay away from it in opening, all right?
17 Can we agree on that or do I have to make ruling?

18 MR. DELANEY: No.

19 THE COURT: You agree?

20 MR. SPRINGS: And that's all. That's all I had in
21 pretrial, other than this is attempted murder. Would you
22 let us know what you think the number of strikes are going
23 to be here? Since it's an attempted murder -- murder would
24 get ten for the defense.

25 THE COURT: I understand, and now we are under the

1 new ball game, and I don't -- this is analogous to the old
2 assault and battery with intent to kill.

3 MR. SPRINGS: It is.

4 I would ask the court this question. Burglary I
5 think is in the laundry list of strikes that gets ten. If
6 we were trying attempted burglary, would they get ten, or --
7 because it's just an attempt, but they only get five.

8 THE COURT: Let me see. Let me hear the defense's
9 position on that. I think I know it, but let me hear the
10 rationale for it.

11 MR. BARROWCLOUGH: Yes, judge, our position would
12 be that we would be entitled to ten. I mean, making the
13 analogy to assault and battery with intent to kill would be
14 ten.

15 As Mr. Springs pointed out, the analogy with
16 burglary or attempted burglary, murder and attempted murder,
17 would say the consistency would be the same number of
18 strikes, would be ten.

19 Taking into to account the penalty, which even if
20 it was not a life without parole case a charge carrying 30
21 years, I think that it would be ten would be appropriate
22 number. So, Your Honor, for all those rationale, I would
23 think our position would be that we would be entitled to
24 ten.

25 THE COURT: And the State's position is?

1 MR. SPRINGS: I'm going to defer to the court.

2 THE COURT: I think I'm a going to allow ten. I
3 don't think it's clear. I think when things are unclear,
4 the benefit goes to the defense. I would hate to have to
5 try this case again. I think that the legislature has
6 something that perhaps they overlooked in the new Omnibus
7 Crime Bill and maybe somebody like ought to call it to the
8 attention of Senator Malloy, which I will.

9 Anything else?

10 MR. SPRINGS: I'm finished. I'll be happy to
11 respond to the defense motions, if I may.

12 THE COURT: Good.

13 MR. SPRINGS: Number one --

14 THE COURT: Let's hear from them. Let's go over
15 them first, all right?

16 How about number one, have you applied with
17 discovery?

18 MR. SPRINGS: Fully, yes, sir.

19 MR. BARROWCLOUGH: Yes, sir, Your Honor, we are
20 satisfied. We are not -- there is not anything that we are
21 aware of that we lack, so --

22 THE COURT: All right. Prior record of defendant
23 for impeachment, also as to his potential sentencing here
24 would be life without parole.

25 Has the State provided the defense with Mr. Franks

1 record?

2 MR. SPRINGS: We have. I have misplaced half of
3 my own copy and asked my paralegal to run and make me a new
4 copy, but I can -- as I recollect, his only impeachable
5 offense would be his prior homicide by child abuse. That's
6 my recollection of his only impeachable offense.

7 As far as his full record for sentencing, I would
8 like to cross that bridge when we get to it.

9 THE COURT: All right. We don't have to worry
10 about sentencing at this point.

11 Any contention that that homicide by child abuse
12 could not be --

13 MR. BARROWCLOUGH: No, Your Honor.

14 THE COURT: Okay. You got a motion. You got a
15 witness list. We are going too deal with the Jackson v.
16 Denno.

17 Prior bad acts, like Lyle, 404.

18 MR. SPRINGS: We will discuss the prior
19 interaction between Mr. Franks and the man that would
20 eventually become his victim and they are not pretty, but we
21 think we are entitled to show that the full relationship
22 such as it was between the two. So having said -- having
23 said that, I'll say no there is no Lyle or Rule 404 (b)
24 evidence, but we will go into their relationship.

25 THE COURT: No Lyle, 404 (b), but bad blood?

1 MR. SPRINGS: Yes.

2 THE COURT: Anything, Mr. Barrowclough?

3 MR. BARROWCLOUGH: Well, Your Honor, being that
4 there is no really reports provided in discovery about those
5 incidents, Mr. Mullins didn't give a written statement. I
6 mean, of course, you know, we are somewhat aware of those
7 incidents, because, you know, Mr. Franks, you know, has
8 talked to us about that. But as far as what exactly the
9 State is talking about, you know, what their side of that
10 story is, we really don't know.

11 THE COURT: Well, obviously I don't know, and I
12 guess the only thing I can do is if the defense feels like
13 it's something being gone into that the State should not be
14 permitted to go into, then a motion -- then an objection
15 would have to be made at that time and we can look at it.

16 MR. BARROWCLOUGH: Yes, sir, Your Honor.

17 THE COURT: All right. Lay witnesses records?

18 MR. SPRINGS: We have provided some. I have got a
19 couple more that are coming in in the morning and before
20 they testify, I'll have their records run. I haven't run
21 them yet.

22 THE COURT: Reveal the deal.

23 MR. SPRINGS: He wants to know if I made any deals
24 with Anthony Valenti, and I have made none whatsoever.

25 MR. BARROWCLOUGH: I believe, Your Honor, along

1 those lines, sort of akin to the intimidation of a witness
2 charge, Mr. Valenti has a litany of charges pending against
3 him being prosecuted by the solicitor's office, including
4 criminal sexual conduct with a minor in the first degree;
5 four -- as I count them, four lewd acts on a minor charges;
6 two criminal solicitation of a minor charges; and one goes
7 to private parts in a lewd manor charge. Your Honor, it
8 would our position that with all those charges being
9 prosecuted by the solicitor's office, he's obviously facing
10 more than a life sentence, that we would be allowed to
11 cross-examine him about those charges, the penalties, as
12 they affect his motivation to cooperate with the State in
13 this case.

14 MR. SPRINGS: I strongly object. Mr. Valenti gave
15 a statement before those charges were made. Those are
16 pending charges. They have -- that's totally inappropriate
17 to go into and explore that here at this trial. We haven't
18 made any deal with him. He's not trying to make us happy.
19 He's already given us a statement. He's just testifying.

20 THE COURT: But, but their position is that he --
21 that the jury could believe that by his testimony that he
22 may be getting some sort of benefit.

23 MR. BARROWCLOUGH: And, Your Honor --

24 THE COURT: Or that -- maybe this, if he's not
25 going to get the benefit. If he believes it would be in his

1 interests to testify to matters down the road.

2 MR. BARROWCLOUGH: And, Your Honor, if I might
3 add?

4 THE COURT: Let me finish.

5 I'll be glad to see any changes either side has on
6 that issue too.

7 MR. BARROWCLOUGH: Yes, sir, Your Honor.

8 And, Your Honor, just to be more clear, Mr.
9 Springs said he gave a statement to whatever the charges.
10 Well, he gave a statement, Your Honor, two days before he
11 went to court and he wound up getting 90 days. I wasn't
12 even on the case yet then. I don't know if that's a
13 coincidence or not, but I know he gave a statement to law
14 enforcement and two days later he went to court and got like
15 90 days. And any defense attorney worth their salt would
16 have brought that to the court's attention.

17 Now he has 11 charges. And again I'm not implying
18 that Mr. Springs made a deal with him or plans to make a
19 deal with him, but like you said, the test is not what
20 they're going to do. It's what's in his mind. I mean,
21 what's his motivation for cooperating? It goes to his
22 motive for testifying. And our position is without a doubt
23 the jury could think that the reason he's being so
24 cooperative with Mr. Springs is because he's hoping for some
25 benefit down the road when he's facing life plus about a

1 hundred years.

2 MR. SPRINGS: I would just say that that's unfair
3 to us. We could voir dire Mr. Valenti outside the presence
4 of the jury when he comes in here and ask him "are you
5 expecting something for this?" He hasn't been convicted.
6 It's just basically a smear of him on un-convicted pending
7 charges in front of the jury. It's just unfair.

8 THE COURT: Well, I think there is cases on it. I
9 mean, that's what controls my decisions, if I have got them.

10 At first blush it would the appear to me that
11 anybody that has pending charges that testifies for the
12 State pretty much traditionally -- of course, always if they
13 come from the same incident, but that that goes to their
14 motive for testifying. He's testifying how they testify.

15 Now, in this case you have got a safety net, it
16 sounds like to me, that you have got a statement that
17 precludes all that. You can certainly point out that the
18 statement was given before these charges were pending, but
19 absent seeing some case that prohibits it, it would appear
20 to me that that would be admissible.

21 MR. BARROWCLOUGH: Thank you.

22 MR. SPRINGS: I don't have a case offhand, Your
23 Honor. I would just ask that if they are going to do this,
24 just limit it to the question "do you have pending charges?"
25 They don't need to go through the entire litany. "Do you

1 have pending charges? Do you expect to get some benefit?"

2 I think pending charges would suffice.

3 THE COURT: Well, the key to that, though, is
4 pending charges. It may be robbing a bubble gum machine and
5 get thirty days in jail.

6 I think the jury is entitled to know that these
7 are matters of substance, not something that he didn't get a
8 very limited kind of sentence for. I think that -- I mean,
9 you want to take the sting out, obviously, but what you are
10 proposing is taking all the sting out. And the question is
11 how much do they get to go into to sting him good, and I
12 think they have got the right it show what he's facing. We
13 always do it -- we do it with co-defendants all the time
14 when they -- again, by the same incident, we do it with
15 co-defendants all the time when they turn State's evidence.
16 Sometimes there's a deal and sometimes it's not, but "are
17 you expecting to get anything out of this?" They always say
18 no, unless there is a deal cut, but I think it's relevant.

19 MR. BARROWCLOUGH: Thank you.

20 THE COURT: And admissible.

21 MR. BARROWCLOUGH: Thank you, Your Honor.

22 Our last motion is just to sequester the
23 witnesses.

24 THE COURT: We will sequester each side
25 reciprocally.

1 MR. BARROWCLOUGH: Thank you, Your Honor.

2 THE COURT: And how do we want to proceed? Do you
3 want to get the jury on up, or do you want to do the Jackson
4 v. Denno?

5 MR. SPRINGS: They have been waiting an hour. Why
6 don't we go ahead and pick them.

7 THE COURT: All right. Why don't we get the jury
8 up and we will impanel the jury. If you want to call them
9 and tell them to come on up. Let me know when they are
10 here.

11 MR. SPRINGS: Before you step out, I don't object
12 to their requested voir dire.

13 I would request do they object to my line of
14 requests?

15 MR. BARROWCLOUGH. No. No, we have no objection.

16 THE COURT: Thank you.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 (Whereupon, the jury voir dire panel entered the
20 courtroom)

21 THE COURT: Members of the jury panel, I'm John
22 Hayes. You met Judge Miller, who is visiting with us from
23 Greenville. I am one of the resident judges here, along
24 with Judge Alford, who is on vacation this week.

25 We are trying our first case in this courtroom for

1 the week and that is case of the State versus Jason Ray
2 Franks.

3 Mr. Franks, would you stand?

4 This is Mr. Franks.

5 Mr. Franks, you can be seated.

6 He is charged with attempted murder.

7 The charge is that on or about June 7th of this
8 year Mr. Franks intentionally drove a sports utility motor
9 vehicle at Edward Ray Mullins. I believe this is Mr.
10 Mullins seated over here, who was riding a moped, and that
11 Mr. Franks crashed into the moped, and that's the basic
12 allegations. Under our law that is charged as what is
13 called attempted murder.

14 To this charge Mr. Franks has entered a plea of
15 not guilty, and that places on the State the burden of
16 proving his guilt beyond a reasonable doubt.

17 Similarly to what you did this morning, I'm now
18 going to go over some questions. I don't know exactly how
19 Judge Miller did it downstairs, but I'm going to ask you if
20 you have to respond to any of these questions, just stand
21 and I will go through and ask your name and number and let
22 you put that on the record, and then I'll ask you some
23 follow-up questions about whether or not why you stand
24 affects your ability to be fair and impartial in the trial
25 of this case.

1 So first I ask if any of you are related by blood
2 or marriage to --

3 Let me back up for just a minute.

4 The State is represented by Mr. E.B. Springs.

5 And Mr. Franks is represented by Mr. Erik Delaney
6 and B.J. Barrowclough.

7 You may be seated.

8 Are any of you on the jury panel related by blood
9 or marriage, or are you a close personal friend or
10 acquaintance of any of the individuals that I just
11 introduced by, any of the five individuals who have just
12 stood and been introduced? If so, please stand.

13 No one stands.

14 Have any of you been represented by any of the
15 attorneys or the solicitor's office here in York County as a
16 witness for the solicitor, worked with the solicitor's
17 office, in any fashion whatsoever? If so, please stand.

18 No one stands.

19 Are any of you members of the Grand Jury which
20 passed on this indictment at an earlier time? If so, please
21 stand.

22 No one stands.

23 Any of you know anything about this case?

24 What's the general area where this happened?

25 MR. SPRINGS: This is alleged to have happened at

1 Tega Cay, on the main boulevard going through the middle of
2 Tega Cay. Tega Cay Drive, Gold Hill Road, about two in the
3 afternoon on June 7th.

4 THE COURT: June 7th on Tega Cay Road.

5 Do any of you know anything about this case, or
6 have any of you formed or expressed an opinion about any
7 matter or issue that would be involved in a case of this
8 type? If so, please stand.

9 No one stands.

10 Are any of you members of or contributors to
11 organizations, such as Mother's Against Drunk Drivers,
12 Students Against Drunk Drivers, Citizens Against Violence,
13 Troopers Association, South Carolina Troopers Association,
14 the Sheriff's Association, or anything like that? If so,
15 please stand.

16 No one stands.

17 Are any of you or a member of your immediate
18 family involved in law enforcement at any level or in the
19 prosecution of criminal cases at any level, anything from
20 Judge Advocate General, to magistrate, to municipal judge,
21 to U.S. Attorney, M.P., anything like that? If so, please
22 stand.

23 All right. Yes, ma'am, your name and number?

24 JUROR NUMBER 136: Cheryl Ligon, 136.

25 THE COURT: And you have what relation?

1 JUROR NUMBER 136: My stepson is with the county.

2 THE COURT: And his name?

3 JUROR NUMBER 136: Michael Eaton.

4 THE COURT: All right. Yes, ma'am.

5 Just remain standing. Please remain standing.

6 Yes, ma'am.

7 JUROR NUMBER 18: Number 18. My son works at the
8 prison camp.

9 THE COURT: Where?

10 JUROR NUMBER 18: The prison camp.

11 THE COURT: All right. And your name?

12 JUROR NUMBER 18: Rebecca Blackwood.

13 THE COURT: All right. Remain standing.

14 JUROR NUMBER 188: John Rutherford, 188. My
15 daughter, Joy Valverdi, is a detention officer with the
16 sheriff's department.

17 THE COURT: All right. Is this a county --

18 Yes, ma'am, your name and number?

19 JUROR NUMBER 203: Patricia Smith, 203. My
20 son-in-law, Harold James work here.

21 THE COURT: All right. Just remain standing.

22 Is this a county case?

23 MR. SPRINGS: It is, the sheriff's department.

24 THE COURT: All right. Would any of you be unable
25 to be fair and impartial in this case, because -- I'll get

1 to you in just a minute. The four of you that stood before
2 this last gentleman I'll go ahead and ask. If you would not
3 be able to be fair and impartial because of your
4 relationship with someone involved, please raise your right
5 hand.

6 None do.

7 You may be seated.

8 Now you just stood, your name and number.

9 JUROR NUMBER 25: My name is Terry Brown, number
10 25. I have a niece. Her name is Yolanda. She was a Brown.
11 The other guy that she married, I don't know his last name,
12 but I think he works for the sheriff's department.

13 THE COURT: Would that affect your ability to be
14 fair and impartial?

15 JUROR NUMBER 25: (Shaking head no).

16 THE COURT: You have to got to -- we have got to
17 make a record, so I got to have you say yes or no.

18 JUROR NUMBER 25: What, sir?

19 THE COURT: You shook your head, which indicated
20 to me you meant no, but I have got to have a word.

21 Would that affect your ability to be fair and
22 impartial, that is, that you have this niece in law
23 enforcement?

24 JUROR NUMBER 25: No, that wouldn't affect my
25 decision, no.

1 THE COURT: Thank you. Yes, sir. I appreciate
2 it.

3 Are any of you aware of any bias or prejudice that
4 you would have towards the State, the defendant, his counsel
5 or the subject matter of this case? If so, please stand.

6 No one stands.

7 Do any of you feel that because of any religious,
8 philosophical, or deeply personal reasons you would be
9 unable to be fair and impartial in a trial of this
10 particular case? If so, please stand.

11 No one stands.

12 The following are possible witnesses in this case.
13 If you related by blood or marriage or a close personal
14 friend or acquaintance of any of these individuals, please
15 stand.

16 You have already met Mr. Mullins.

17 Deputy Scurlock. Michael Scurlock.

18 Highway patrolman David Gibson.

19 Lieutenant Vincent Holland of the Tega Cay Police
20 Department.

21 Mr. Anthony Valenti.

22 Ms. Angela Johnson.

23 Ms. Taylor Johnson.

24 Ms. Pat Johnson.

25 Any of you --

1 I'm sorry, also Woodrow Poplin.

2 Phil Leazer.

3 Kevin Ford.

4 Joe Medlin.

5 Jeffery Lee.

6 Any of you related by blood or marriage or a close
7 personal friend or acquaintance of any of the names I have
8 called? If so, please stand.

9 All right. Yes, ma'am.

10 JUROR NUMBER 126: I'm a neighbor.

11 My name is Leslie Kirrane and number 126.

12 THE COURT: And you are a neighbor of who?

13 JUROR NUMBER 126: I don't know.

14 DEPUTY SCURLOCK: Michael Scurlock.

15 THE COURT: And would that affect your ability to
16 be fair and impartial in the trial of this case?

17 JUROR NUMBER 126: No.

18 THE COURT: Thank you.

19 Anything further from the State?

20 MR. SPRINGS: No, Your Honor.

21 THE COURT: Defense?

22 MR. DELANEY: No, Your Honor.

23 THE COURT: All right. Do any of you know of any
24 reason whatsoever why you could not or should not serve as a
25 fair and impartial juror in the trial of this case? If so,

1 please stand.

2 No one stands.

3 Now, the way we draw juries in this court is as
4 follows: If you hear your name called, please come forward.
5 The bailiff will be standing out here in the middle. Come
6 up to where he's standing and stand beside him.

7 Richard, you might want to move that podium. Get
8 it out of the way.

9 Stand beside the bailiff. Turn around and face
10 first the table where Mr. Springs is seated. He will say
11 either present the juror or excuse the juror. If he says
12 excuse the juror, just return to your seat. If he says
13 present the juror, turn and face the table where Mr. Franks
14 and his attorneys are seated. One of them will say either
15 swear the juror, which means you will take a seat in the
16 jury box, or he will say excuse the juror. Again, that
17 means you would return to your seat.

18 Go ahead and bring with you your jacket or
19 anything that you have - umbrella, jacket, books, newspaper,
20 anything like that - so you won't have to go back and get
21 it. So please come forward if you hear your name called.

22 THE CLERK: Number 230, Larry Venezia.

23 What say you for the State?

24 MR. SPRINGS: Please present the juror.

25 THE CLERK: Defense?

1 MR. BARROWCLOUGH: Please excuse the juror.
2 THE CLERK: You may be excused.
3 Juror number 155, Richard Melzer.
4 What say you for the State?
5 MR. SPRINGS: Please present the juror.
6 THE COURT: What say you for the defense?
7 MR. BARROWCLOUGH: Please excuse the juror.
8 THE CLERK: You may be excused.
9 Juror Number 203, Patricia Smith.
10 What say you for the State?
11 MR. SPRINGS: Please present the juror.
12 THE COURT: What say you for the defense?
13 MR. BARROWCLOUGH: Please excuse the juror.
14 THE CLERK: You may be excused.
15 Juror Number 92, Vicky Hagans.
16 What say you for the State?
17 MR. SPRINGS: Please present the juror.
18 THE CLERK: What say you for the defense?
19 MR. BARROWCLOUGH: Please present the juror.
20 THE CLERK: Have a seat in the jury box.
21 Juror Number 52, Lisa Cooper.
22 What say you for the State?
23 MR. SPRINGS: Please present the juror.
24 THE CLERK: What say you for the defense?
25 MR. BARROWCLOUGH: Please present the juror.

1 THE CLERK: Have a seat in the jury box.

2 Juror number 84, Anita Geddings.

3 What say you for the State?

4 MR. SPRINGS: Please present the juror.

5 THE CLERK: What say you for the defense?

6 MR. BARROWCLOUGH: Please present the juror.

7 THE CLERK: Have a seat in the jury box.

8 Juror number 126, Leslie Kirrane.

9 What say you for the State?

10 MR. SPRINGS: Please present the juror.

11 THE CLERK: What say you for the defense?

12 MR. BARROWCLOUGH: Judge, may we approach?

13 (Whereupon, the lawyers approached the bench for
14 an off-the-record discussion)

15 THE COURT: Ms. Kirrane, Judge Miller protected
16 you for one afternoon or one day?

17 JUROR NUMBER 126: For Wednesday. One morning,
18 Wednesday morning.

19 THE COURT: All right. Go ahead.

20 I think I'm going to go ahead and excuse you. I
21 think this case is going to take into Wednesday. I'm going
22 to excuse you.

23 JUROR NUMBER 126: Thank you.

24 THE CLERK: Juror number 169, Kathie Nogosky.

25 What say you for the State?

1 MR. SPRINGS: Please present the juror.

2 THE CLERK: What say you for the defense?

3 MR. BARROWCLOUGH: Please present the juror.

4 THE CLERK: Have a seat in the jury box.

5 Juror Number 49, Anne Coney.

6 What say you for the State?

7 MR. SPRINGS: Please present the juror.

8 THE CLERK: What say you for the defense?

9 MR. BARROWCLOUGH: Please present the juror.

10 THE CLERK: Have a seat in the jury box.

11 Juror Number 158, Bonnie Mitchell.

12 What say you for the State?

13 MR. SPRINGS: Please present the juror.

14 THE CLERK: What say you for defense?

15 MR. BARROWCLOUGH: Please present the juror.

16 THE CLERK: Please have a seat in the jury box.

17 Juror Number 18, Rebecca Blackwood.

18 What say you for the State?

19 MR. SPRINGS: Please present the juror.

20 THE CLERK: What say you for the defense?

21 MR. BARROWCLOUGH: Please excuse this juror.

22 THE CLERK: You have been excused.

23 Juror Number 163, Cassandra Murray.

24 What say you for the State?

25 MR. SPRINGS: Please excuse this juror.

1 THE CLERK: You have been excused.

2 Juror Number 154, Raul Melo.

3 What say you for the State?

4 MR. SPRINGS: Please excuse the juror.

5 THE CLERK: You have been excused.

6 Juror Number 119, Jo Kandel.

7 What say you for the State?

8 MR. SPRINGS: Please present the juror.

9 THE CLERK: What say you for the defense?

10 MR. BARROWCLOUGH: Please excuse the juror.

11 THE CLERK: You have been excused.

12 Juror Number 33, Katherine Camden.

13 What say you for the State?

14 MR. SPRINGS: Please present the juror.

15 THE CLERK: What say you for the defense?

16 MR. BARROWCLOUGH: Please present the juror.

17 THE CLERK: Have a seat in the jury box.

18 Juror Number 26, Patrice Bryson.

19 What say you for the State?

20 MR. SPRINGS: Please present the juror.

21 THE CLERK: What say you for the defense?

22 MR. BARROWCLOUGH: Please present the juror.

23 THE CLERK: Have a seat in the jury box.

24 Juror Number 118, Noah Jones.

25 What say you for the State?

1 MR. SPRINGS: Please present the juror.

2 THE CLERK: What say you for the defense?

3 MR. BARROWCLOUGH: Please present the juror.

4 THE CLERK: Please have a seat in the jury box.

5 Juror Number 147, Zachary McCorkle.

6 What say you for the State?

7 MR. SPRINGS: Please present the juror.

8 THE CLERK: What say you for the defense?

9 MR. BARROWCLOUGH: Please present the juror.

10 THE CLERK: Please have a seat in the jury box.

11 Juror Number 116, Brian Jewell.

12 What say you for the State?

13 MR. SPRINGS: Please excuse the juror.

14 THE CLERK: You have been excused.

15 Juror Number 120, Steve Kejr.

16 What say you for the State?

17 MR. SPRINGS: Please excuse the juror.

18 THE CLERK: You have been excused.

19 Juror Number 75, Roy Erikson.

20 What say you for the State?

21 MR. SPRINGS: Please present the juror.

22 THE CLERK: What say you for the defense?

23 MR. BARROWCLOUGH: Please excuse the juror.

24 THE CLERK: You have been excused.

25 Juror Number 43, Arnold Clark, Jr..

1 What say you for the State?

2 MR. SPRINGS: Please excuse the juror.

3 THE CLERK: You have been excused.

4 Juror Number 40, Lisa Caveny.

5 What say you for the State?

6 MR. SPRINGS: Please present the juror.

7 THE CLERK: What say you for the defense?

8 MR. BARROWCLOUGH: Please seat the juror.

9 THE CLERK: Have a seat in the jury box.

10 Juror Number 121, James Keller.

11 What say you for the State?

12 MR. SPRINGS: Please present the juror.

13 THE CLERK: What say you for the defense?

14 MR. BARROWCLOUGH: Please seat the juror.

15 THE CLERK: Have a seat in the jury box.

16 Juror Number 136, Cheryl Ligon.

17 What say you for the State?

18 MR. SPRINGS: Please present the juror.

19 THE CLERK: What say you for the defense?

20 MR. BARROWCLOUGH: Please excuse the juror.

21 THE CLERK: You have been excused.

22 Juror Number 197, Aaron Slaughter.

23 What say you for the State?

24 MR. SPRINGS: Please present the juror.

25 THE CLERK: What say you for the defense?

1 MR. BARROWCLOUGH: Please excuse the juror.

2 THE CLERK: You have been excused.

3 Juror Number 17, David Benson.

4 What say you for the State?

5 MR. SPRINGS: Please present the juror.

6 THE CLERK: What say you for the defense?

7 MR. BARROWCLOUGH: Please seat the juror.

8 THE CLERK: Have a seat in the jury box.

9 THE COURT: Anything from the State involving the
10 striking of the panel?

11 MR. SPRINGS: Nothing from the State.

12 THE COURT: Anything from the defense?

13 MR. DELANEY: No, sir, Your Honor.

14 THE COURT: Those of you who were not chosen, I'm
15 going to allow you to leave and ask you to call back after
16 seven tonight. It's very important that you follow the
17 instructions that you receive. It may be to call back at a
18 certain time or may be to report at a certain time. Please
19 make sure that you follow those instructions; or if you have
20 some reason you can't, call the clerk's office and let them
21 know. I would ask you to leave quietly so I can start
22 talking to this jury. Have a good evening.

23 (Whereupon, the jury venire panel left the
24 courtroom)

25 THE COURT: Members of the jury panel, I'm going

1 to ask you to stand and the clerk is going to administer the
2 oath. And when you sit down, Ms. Cooper, I'm going to ask
3 you to slide down and be the forelady in this first seat.
4 Why don't you go ahead and do that. If you will just --
5 slide may not be the right word. Work your way and
6 everybody else move down one in the front row, except for
7 the last lady. All right. You will sit in this seat.

8 And Mr. Benson will sit in that seat throughout
9 the trial and the rest of you have no assigned seating.

10 If you will raise your right hand, the clerk is
11 going to administer the oath.

12 THE CLERK: You shall well and truly try and in
13 true deliverance make between the State of South Carolina
14 and the defendant at the bar whom you shall have in charge
15 and a true verdict give according to the evidence and the
16 law, so help you God. Please respond by saying I will.

17 JURY PANEL: (Collectively said I will)

18 THE COURT: Thank you. You can be seated.

19 Members of the jury panel, I'm going to chat with
20 you just for a minute and then I'm going to turn the case
21 over to the attorneys, who have a right at that time to make
22 opening statements, if they wish. They are not obligated
23 to, but they have a right to come before you and outline the
24 case. They are not witnesses, so what they are telling you
25 is not testimony. They are not arguing their case; that is,

1 they are not trying to convince you of anything. That will
2 occur at a later point, at the end of the trial. All they
3 are doing is giving you the preview or an overview or an
4 outline of the trial.

5 To the charge of attempted murder Mr. Franks has
6 entered a plea of not guilty. He is presumed innocent of
7 the charge against him. Anyone charged with any offense in
8 our system is presumed innocent. They don't have to prove
9 their innocence. It is incumbent upon the State to prove
10 his guilt beyond a reasonable doubt before you could convict
11 him.

12 I have three primary jobs in this trial. One is
13 the logistics person. Sometimes I call it the wagon master.
14 I make sure we take breaks. I make sure one person speaks
15 at a time. I make sure that the furniture remains right. I
16 do all the mechanical kind of stuff.

17 The second is that I rule on questions of
18 admissibility of evidence. Once I believe the evidence
19 should be allowed to be reviewed by the jury and the other
20 side based on some legal reason believes that should not
21 occur, it's up to me to determine whether or not under our
22 laws of evidence that evidence is allowed into the record
23 for your consideration.

24 And if an attorney makes an objection and asks
25 that the jury be excused while we take up a matter of law,

1 don't hold that against the lawyers. That's what they are
2 supposed to do. That's the way our system works. You are
3 not to infer from anything --

4 Let me back up. My third job is that I am the
5 sole judge of the law in this case. You must take, accept
6 and apply the law as I charge it, even if I charge you the
7 law in error or even if you think the law should be
8 different. Your oath requires you to take, accept and apply
9 the law as I charge it.

10 Do not infer from anything that I say or do at any
11 time as indicating an opinion of mine on the facts. Our law
12 does not allow a trial judge to formulate or express to a
13 jury any opinion on the facts. It's solely your job to
14 examine the evidence, give to the evidence the effect, the
15 value, the weight and the truth that you believe the
16 evidence should have.

17 You may believe one witness as opposed to several,
18 several witnesses as opposed to one. You may believe all,
19 part, or none of a witness' testimony.

20 In analyzing the evidence use your common sense,
21 your sense of logic, your sense of reason. Use your
22 experiences in life.

23 As judges of the facts, you must necessarily judge
24 the believability, the credibility of the witnesses who
25 testify. In assessing believability, use the things that I

1 have just discussed. Use those things that you find in your
2 day-to-day life as being indicative of truthfulness. You
3 can use certain evaluators; how a witness acts on the stand,
4 their demeanor. Are they hesitant or straightforward. Is
5 the testimony consistent or inconsistent. Consider the
6 opportunity a witness had to know those things about which
7 they testify. You can consider any bias or prejudice a
8 witness may have; that is, whether a witness would wish to
9 help or hurt one side or the other. All of these things you
10 consider to determine the true facts, apply the law, and
11 verdict is to speak the truth.

12 Do not try to make up your own mind or discuss the
13 case until we reach the point in the trial where I instruct
14 you to do so. Prior to that time you are not equipped with
15 all the tools that you need to make a fair and reasonable
16 decision.

17 Do not let anyone discuss the case with you
18 outside the courtroom. Report back to me if anyone tries to
19 discuss this case with you, hopefully giving me that
20 person's identity. So do not initiate a conversation or let
21 anyone initiate a conversation with you concerning this
22 case. Your verdict must be based on the law and evidence
23 that's developed in the trial. If someone tries to speak to
24 you about the case, they would be in contempt of court and I
25 would have to know about it and take action.

1 You are not to use any independent research means.
2 You are not to go on line to check anything that could
3 remotely deal with this trial. That happened in some cases
4 and the Supreme Courts of various states, including ours,
5 have set cases aside and had to be retried because people
6 have done their own independent research. Don't go to the
7 scene, unless you live in Tega Cay and have to go down Tega
8 Cay Road to get there, because that's the only one way in
9 and out of Tega Cay, but don't go to the scene where this is
10 supposed to have happened. Don't research anything on line
11 or any other way that could remotely deal with this trial;
12 or anything about me, or the lawyers, or Mr. Franks, Mr.
13 Mullins, or anybody, or anything. You must be your verdict
14 solely on the law and the evidence that's developed in the
15 trial here in this courtroom.

16 Do not let yourself be exposed to any news
17 coverage, if there is any. Don't read about it, watch
18 anything, or listen to anything that could remotely deal
19 with this case. If your eye or ear catches something that
20 might have something to do with this trial, do not let
21 yourself be exposed to it.

22 If you can't see or you can't hear, let me know.
23 Cup your ear or give me a voice-raising gesture or a nudging
24 gesture. It's not fair for you to be placed on the jury and
25 then not be allowed to see and hear what you need to see and

1 hear to make a fair and reasonable decision. So let me know
2 if I need to correct something.

3 We take breaks about every hour and a half.
4 However, everybody's comfort level is different. If you
5 need a break at any time, just raise your right hand and no
6 questions asked and we will take a break. I extend that to
7 counsel and to Mr. Frank. Again, we want to move the case
8 along, but not to the extent that someone -- that we are not
9 tolerant to an individual's needs.

10 You do not need to take notes. Please listen
11 carefully.

12 Madam Forelady, you will preside and be the
13 liaison between the jury and myself. Preside over the
14 deliberations and ultimately sign the unanimous verdict on
15 the jury's behalf.

16 Mr. Springs.

17 MR. SPRINGS: Your Honor, can we ask the jury to
18 step out and take up that legal ruling before we --

19 THE COURT: All right, I'm going to let you step
20 outside. We already have a matter to take up.

21 (The following takes place outside the presence of
22 the jury panel)

23 THE COURT: What's legal?

24 MR. SPRINGS: That would be the statement. I want
25 to mention the statement in opening and I want to make sure

1 it's appropriate.

2 THE COURT: All right. Let's have a Jackson v.
3 Denno proffer on the statement.

4 And the statement is based on him coming to the
5 police station and then talking and then leaving, right?

6 MR. SPRINGS: That is correct. I don't think we
7 need a Jackson v. Denno, but if they want to.

8 THE COURT: They have asked for one. They have
9 moved to suppress, so I guess -- I'm kind of confused.
10 Usually we don't need a Jackson v. Denno motion to suppress.
11 This kind of like a discovery mechanism.

12 Is there a motion to suppress any statement? If
13 so, which statement?

14 MR. BARROWCLOUGH: Your Honor, I feel like this.
15 You know, I just wanted to question the officer outside the
16 presence of the jury to see if it was voluntarily given,
17 because this is a life without parole case and I want to do
18 it by the book.

19 I mean, as far as the motion to suppress, I mean,
20 I would perceive the circumstances are similar to what Mr.
21 Springs said and I don't see the statement getting
22 suppressed, but, again, just out of an abundance of caution
23 I want to do it right way. I wanted to question the
24 officer, since there is no videotape or audiotaped
25 statement.

1 THE COURT: Call the officer and let's go ahead
2 and do that.

3 MR. SPRINGS: Deputy, step up to the Bible there
4 in front of the clerk and she will swear you in.

5 OFFICER MICHAEL SCURLOCK, being first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. SPRINGS:

8 Q. Deputy, I'm going to ask you to hold that microphone
9 right there so you can start getting used to it.

10 Tell us your name?

11 A. My name is Michael Scurlock.

12 Q. Are you a York County deputy sheriff?

13 A. Yes, sir.

14 Q. And were you involved in an investigation of an
15 incident that took place on Gold Hill Road right outside of
16 Tega Cay on June the 7th of this year?

17 A. Yes, sir.

18 Q. Did you develop as a suspect Jason Franks?

19 A. Yes.

20 Q. Did you talk to Jason Franks on the telephone?

21 A. Yes, I did.

22 Q. Did you ask him to meet you at the Tega Cay police
23 station to give you a voluntary statement?

24 A. Yes, sir.

25 Q. Did he come up and meet you at the Tega Cay police

1 station?

2 A. Yes, sir.

3 Q. Did you arrest him?

4 A. No, sir.

5 Q. Did you sit down and have a conversation with him?

6 A. Not quite, no.

7 Q. Did you get a statement from him?

8 A. Yes, I did.

9 Q. Okay. That's conversation.

10 A. Okay.

11 Q. He came in. Did he give you a written statement?

12 A. Yes, he did.

13 Q. Okay.

14 (Voluntary Statement marked as State's Exhibit No.
15 112 for identification)

16 BY MR. SPRINGS:

17 Q. Even though he wasn't arrest, did you give him his
18 Mirandas anyway?

19 A. I did.

20 Q. And did he understand his warnings?

21 A. Yes, sir.

22 Q. Did he agree to talk to you?

23 A. Yes, sir.

24 Q. Did he give you a written statement?

25 A. He did.

1 Q. And then did he get up and leave and go home?

2 A. Shortly after, yes.

3 Q. I'm showing you what's been marked State's Exhibit 112.

4 Is that the written statement that Jason Franks gave you?

5 A. That's correct.

6 Q. All right. The defense attorneys may want to ask you
7 some questions.

8 MR. BARROWCLOUGH: May it please the court, Your
9 Honor?

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION BY MR. BARROWCLOUGH:

12 Q. Deputy Scurlock, you said you spoke to Mr. Franks on
13 the phone?

14 A. Yes, sir.

15 Q. How did that come to pass?

16 A. That I don't know. I believe the Tega Cay police
17 officer handed me a cell phone that Jason had called. It
18 happened one way or the other. I can't say for sure.

19 Q. That would be -- when you say Tega Cay police officer,
20 Officer Holland?

21 A. I believe that's correct.

22 Q. And when you interviewed Mr. Franks, it was you and Mr.
23 Holland together, is that correct?

24 A. That's correct.

25 Q. And was that in a room at the Tega Cay police

1 department?

2 A. Yes, sir.

3 Q. And what, if anything, did you tell Mr. Franks to get
4 him to talk, if you will? What questions did you ask to
5 prompt him to give this statement?

6 A. I didn't actually. He was voluntarily giving his
7 statement over the phone. And rather than him giving it to
8 me over the phone, I asked him to come down and put it on
9 paper.

10 Q. Okay. And so that's what he did?

11 A. Yes, sir.

12 Q. And you didn't promise him anything?

13 A. No, sir.

14 Q. And how long did that entire process take?

15 A. That I can't be for sure. If I were to guess, I'm --
16 maybe about 20 to 30 minutes, somewhere around there.

17 Q. And when it was done, I know that you told the
18 solicitor he left. Did you tell him anything at that time
19 that he would be arrested, or you were going to do more
20 investigation, or how did you leave it with him as he walked
21 out?

22 A. I possibly told him there was going to be an ongoing
23 investigation and we will basically let him know.

24 Q. Okay. And did he say anything else after that to you?

25 A. Not to my recollection.

1 Q. Okay. Was anyone else present besides you and
2 Lieutenant Holland?

3 A. No, sir, not in that room.

4 Q. Okay. And this interview of Mr. Franks, you did not
5 audiotape that, correct?

6 A. No, sir.

7 Q. Or videotape that?

8 A. No, sir.

9 Q. It was a written statement.

10 Did he write the statement or did you write the
11 statement?

12 A. He wrote the statement.

13 Q. And at that point in time that you were at the Tega Cay
14 Police Department interviewing Jason Franks, had you made up
15 your mind as to whether or not you were going to charge him
16 with any offenses as a result of this accident?

17 A. No, sir.

18 Q. Okay.

19 MR. BARROWCLOUGH: I don't have any other
20 questions, Your Honor.

21 And, Your Honor, we wouldn't have a motion.

22 MR. SPRINGS: Nothing further.

23 THE COURT: You do have a motion?

24 MR. BARROWCLOUGH: No, we don't.

25 THE COURT: Okay.

1 MR. BARROWCLOUGH: Based on his testimony we do
2 not.

3 THE COURT: Okay. Bring in the jury.

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

6 THE COURT: Mr. Springs.

7 MR. SPRINGS: If it please the court.

8 Ladies and gentlemen, I want to tell you what we
9 are going to show you in this trial. I'm going to tell you
10 what we are going to show you with the witnesses up here and
11 the exhibits we put in.

12 We are going to show you that this guy, Jason
13 Franks, tried to kill Edward Mullins. He tried to kill him,
14 attempted to murder him by running him over with an
15 automobile.

16 Mr. Mullins is in jail. Mr. Mullins is no angel.
17 He has a horrible criminal record. He's even been to prison
18 several times. He's in prison now for habitual traffic
19 offender. If you drive with a revoked license enough, you
20 get to wear a suit like that. He's the victim. He has a
21 horrible record and he's been to prison, but he's still a
22 human being, and he's going to be the victim in this case.
23 He's the guy that Jason Franks tried to murder, because --
24 he tried to murder him because Edward Mullins teased him one
25 time. He teased him about his manhood.

1 A week or two before June 7th of this year Edward
2 Mullins was over at Tega Cay at his friend Anthony Valenti's
3 house on Winward Drive. It's down at the bottom part of
4 Tega Cay. You come in off of 160, Gold Hill Road. The big
5 wide boulevard goes down through the middle of Tega Cay.
6 All the way down near the bottom is Windward Drive. They're
7 pretty small homes down there. Edward Mullins' friend,
8 Anthony Valenti, lived down there. And a week or two before
9 this happened Mr. Mullins goes over to his friend's house
10 and this guy, Jason Franks, will do odd jobs for Mr.
11 Valenti. He lived right next door to Mr. Valenti, the
12 friend of Edward Mullins. So a week or two before this
13 happened Mr. Mullins is over there, Mr. Franks is doing odd
14 jobs, Mr. Mullins sees Mr. Franks earrings and he's got a
15 teardrop tattoo at the corner of his eye and he teased him,
16 basically called him a sissy. And for that, for teasing him
17 that time, Mr. Franks decided that he was going to kill Mr.
18 Mullins. Not to his face. He carefully avoided confronting
19 Mr. Mullins to his face. When you look into the evidence,
20 you will conclude he's scared of Mr. Mullins, although Mr.
21 Mullins is not a big guy.

22 So June 7th of this year, about two in the
23 afternoon, Mr. Mullins comes over to his friend Anthony
24 Valenti's house. He rides a moped scooter. His license is
25 revoked for years. He rides his moped over there. It

1 doesn't require a license. He goes into Mr. Valenti's
2 house. Mr. Valenti has a doctor's appointment coming up,
3 and they have agreed that Mr. Mullins was going to go run
4 some errands on his moped. Mr. Valenti was going to go to
5 his doctor, and they were going to meet up back at Mr.
6 Valenti's house later. About two o'clock.

7 Mr. Mullins leaves Mr. Valenti's house, gets on
8 his moped, starts out at Winward Drive to go up to the big
9 wide Tega Cay Drive, four-lane boulevard, the turn lane that
10 goes to Gold Hill Road. Mr. Valenti is coming out of his
11 house right after him. Mr. Mullins pulls off with his
12 moped. Mr. Valenti goes to get in his truck and Jason
13 Franks has seen Edward Mullins pull off and go up the road
14 on his moped, and he figures that's his chance. That's his
15 opportunity, and he runs out of his house and he jumps in
16 his girlfriend's white sport utility vehicle and he follows
17 Mr. Mullins. He actually cuts off Mr. Valenti. Mr. Valenti
18 was getting ready to pull out. The defendant gets in front
19 of him and heads on up. Mr. Valenti in his truck then pulls
20 out. And we end up with Mr. Mullins on his moped tooting
21 along about 25 miles an hour. Jason Franks comes up and
22 gets behind him going the same speed. Mr. Mullins is
23 wearing a helmet. He's over to the far right of his lane
24 and he's just going to get some gas and go to the bank.
25 Jason Franks is holding back behind him, and he hadn't done

1 anything yet, because Mr. Valenti is slowly following too.
2 Mr. Valenti starts to get a bad feeling, like what is he
3 doing behind my friend? Why is he slowly following him like
4 that? Mr. Valenti knows Jason Franks hates Mr. Mullins for
5 teasing him that time. Mr. Valenti follows him. And
6 finally as they start to get up towards Gold Hill Road, Mr.
7 Valenti has got to go to the doctor and he finally pulls out
8 and he pulls around. Then as he goes by he tries to
9 indicate to Mr. Mullins that this guy, he's behind him. And
10 as he goes by him trying to get his attention, look behind
11 you, Mr. Mullins thinks he's just waving and he keeps on
12 going.

13 Mr. Valenti goes on up the road out of sight and
14 Mr. Mullins continues on on his moped and he starting to get
15 up near the more public area of getting up on Gold Hill
16 Road. He's going to pull into the gas station to get gas.
17 All of the sudden behind him he hears roaring of revving of
18 an engine. He hears the sound, he has a chance to look down
19 at his rearview mirror and he sees a white SUV coming up at
20 him and the defendant is driving. That white SUV runs him
21 over, drags the moped up the road, knocks him down the road
22 and Jason Franks leaves. He never stops.

23 People stopped. People come out. They start to
24 help Mr. Mullins and he is in a terrible condition.
25 Terrible condition. And he knows who did it. He's laying

1 on the ground, can't get up. When the ambulance finally
2 gets up there, they have to strap him to a backboard, load
3 him in the ambulance. He said "Jason Franks did this to me.
4 Jason Franks did this to me."

5 The police start calling Jason Franks and say
6 "come on up here and talk to us." Jason Franks comes to the
7 police station and he says "I just feel so bad. A horrible
8 accident. What a horrible accident."

9 You are going to hear all of what Jason Franks
10 told the police line by line, sentence by sentence. And as
11 you hear the evidence in this case, as you hear how that
12 moped was run over and drug down the road and you start to
13 hear Jason Franks sentence by sentence version of what
14 happened, at some point all of you are going to smile and go
15 how utterly ridiculous.

16 That's the case. He tried to kill Edward Mullins
17 by running him down. He didn't kill him. He survived. He
18 was terribly, terribly injured, but he survived and he wants
19 justice. He's come to this courtroom, just like anybody
20 else comes for justice in this courtroom. Record or not,
21 been to prisoner or not, he's still a human being. After
22 hearing all the facts of this case he will get justice.

23 You will have absolutely no problem finding Jason
24 Franks guilty of attempting to murder this man by running
25 him down.

1 THE COURT: Mr. Delaney.

2 MR. DELANEY: If it please the court.

3 The prosecutor has painted a picture of a
4 nightmare; a day of violence, pain, and degradation. In
5 listening to him speak, it seems so clear, but what the
6 evidence in this case will show is that the picture Mr.
7 Springs has presented is going to change, and it's going to
8 change, and it's going to change. It will not be a clear
9 picture.

10 Ladies and gentlemen, the evidence in this case
11 will reveal there is another picture of what happened that
12 day, a picture that Mr. Springs has not shared with you.

13 The evidence and the testimony in this case will
14 show that the State's evidence to support their theory is
15 weak. Mr. Mullins is going to come up here and sit in this
16 chair and he's going to tell you a story. And during the
17 course of telling you that story, he's going to tell you
18 about the injuries he suffered on June the 7th. And he will
19 tell you he had no broken bones, no fractures, no internal
20 injuries, no brain damage, no injuries resulting in
21 permanent impairment. And while he's up in this chair,
22 listen to conversations he had with the police and the EMS
23 worker who were at the scene that day, and ask yourself why
24 did he not tell the truth to the people who were there to
25 try to help him?

1 And there is going to be more changes to come from
2 the picture the prosecutor has presented. The evidence in
3 this case will show that there were many pictures taken,
4 many pictures taken by many different people. And there
5 will be not one picture taken by anybody that shows any
6 broken bones, any fractures, any type of a life threatening
7 injury.

8 And the evidence will show there will not be one
9 picture of any major structural damage to this moped. The
10 evidence will show there will not be one report, written or
11 filed in this case, that documents any major structural
12 damage to this moped.

13 No report to document any type of life threatening
14 injury to Mr. Mullins. No report that lists any witness to
15 this so called intentional act. But you will hear evidence
16 that there is heavy traffic on this road and there were
17 bystanders on the scene. There will be no report, written
18 or filed in this case, that mentions any physical, forensic,
19 or scientific evidence that shows, that demonstrates that
20 this was an intentional act.

21 And there is one final change that you need to
22 know about in this picture that you were presented. Eddie
23 Mullins was treated at Piedmont Medical Center after the
24 accident and the defense will reveal to you what those
25 medical records show.

1 Ladies and gentlemen of the jury, this was an
2 accident.

3 There is not a role in this courtroom that's more
4 important. Your job here today are to be the finders of
5 fact. It's your job to determine the facts of this case
6 based upon the evidence that's presented to you; by also
7 considering what evidence is not presented to you.

8 The majority of evidence that will be presented to
9 you in this case will come from up here. And in determining
10 the facts, it will be your job to give the appropriate
11 weight to the testimony that you hear. It will be your job
12 to determine the credibility of the individuals that get up
13 in that chair. It will be your job to listen for
14 inconsistencies in that testimony.

15 At the close of this case Judge Hayes will
16 instruct you as to the law that you must apply to the facts
17 that you determine. And Judge Hayes will tell you Jason
18 Franks is presumed innocent. He walks into this courtroom
19 veiled in a cloak of innocence, and that cloak can only be
20 removed if you twelve collectively say so.

21 Jason Franks has a Constitutional Right not to
22 testify. Why? Because the State has the burden of proof in
23 this case, and y'all are going to have to hold them to their
24 burden. It is their burden to present evidence to you in
25 this case. Hold them to their burden.

1 The State must prove that Jason Franks is guilty
2 of attempted murder beyond a reasonable doubt. Reasonable
3 doubt -- beyond a reasonable doubt is the burden of proof in
4 this case. What is reasonable doubt? It's been defined as
5 the kind of doubt that would leave a reasonable person not
6 firmly convinced. The kind of doubt that would leave a
7 reasonable person hesitant to act. And this burden, this
8 standard, is so important, because at the end of this case
9 if you are not firmly convinced, you must find Jason Franks
10 not guilty.

11 We have the greatest legal system in the world.
12 The power to render a fair verdict is taken away from the
13 State, is taken away from the defense, is taken away from
14 the judge, and that power is given to you, ladies and
15 gentlemen.

16 This system demands better, Jason Franks deserves
17 better, and what you are going to have to ask yourselves at
18 the end of this case is this. Are you firmly convinced,
19 firmly convinced Jason Franks is guilty of attempted murder?
20 Firmly convinced. And what I say to you, ladies and
21 gentlemen, is this. No way.

22 At the end of this case I will ask you to find
23 Jason Franks not guilty of attempted murder. Thank you.

24 THE COURT: Call your first witness.

25 MR. SPRINGS: Ask Trooper Gibson to come on,

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

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

3 THE COURT: All right. Anything from the State
4 before we stop?

5 MR. SPRINGS: Yes, very briefly. I forgot to
6 mention. In Mr. Franks statement he says "I know I
7 shouldn't have been driving. I don't have a driver's
8 license."

9 Do they object to that, because it is going to
10 come in with the written statement, so I would like to
11 discuss the matter.

12 MR. BARROWCLOUGH: No, judge, we don't object to
13 that statement.

14 THE COURT: Okay.

15 MR. SPRINGS: That's all we have.

16 THE COURT: Anything else from the defense?

17 MR. BARROWCLOUGH: Yes.

18 Just to put on the record, Mr. Franks had a
19 pending of leaving the scene of an accident with this
20 indictment. And just -- I mean, Mr. Springs and I have
21 talked about this case all last week. Somehow we didn't
22 communicate that he's not going forward on that indictment,
23 which he did pass me a note to that effect while we were
24 preparing for opening statement. So I just want to put that
25 on the record, that it's my understanding that that

1 indictment is going to be dismissed, I guess. I mean, we
2 are not going forward on that charge, right?

3 MR. SPRINGS: I'm not going forward today on the
4 leaving the scene.

5 MR. BARROWCLOUGH: I mean -- today, I mean --

6 THE COURT: Well, what he's telling you is he
7 might go later on that charge. I mean, that's what it
8 appears to me, that that charge is still pending, and
9 depending on what happens in this trial, he's got that in
10 his back pocket, so to speak.

11 MR. BARROWCLOUGH: Well, I guess my position then
12 would be that we would move for a joint --

13 THE COURT: Give me some authority. I don't know
14 that I have the authority to tell the solicitor -- I think
15 the statute is very clear, the solicitor calls their cases
16 as they wish. If you got some case law on that, I will be
17 glad to look at it. I don't think I can tell him what cases
18 to try.

19 MR. BARROWCLOUGH: Can I look at it overnight?

20 THE COURT: Oh, yeah. All right.

21 We will be at ease until 9:30.

22 Can I see the attorneys back in the chambers just
23 for a minute?

24 While they are coming in, Mr. Dunlap was telling
25 me that one of the jurors said they needed to speak to me.

1 Let's ask the one that needs to talk to me to come
2 in.

3 THE CLERK: Okay.

4 I'm still holding the other ones in there.

5 THE COURT: Yes.

6 (Whereupon, Juror Number 118, Noah Jones, entered
7 the courtroom)

8 THE COURT: All right. Mr. Jones, I can't talk to
9 you in private. I have to talk to you -- you can stand
10 right there. I have to talk in front of the attorneys.

11 What do you need to talk to me about?

12 JUROR NUMBER 118: I go to school in Columbia and
13 have an apartment there and that's also where my job is. I
14 haven't been living with my parents for the past three years
15 and they still receive mail with my name on it. I got --
16 they gave me the letter with my name on it.

17 THE COURT: Where is your -- well, you just -- did
18 you talk to Judge Miller about that this morning?

19 JUROR NUMBER 118: No. Well, because --

20 THE COURT: Didn't he ask you --

21 JUROR NUMBER 118: There was other students --
22 there is other students in the room and he said the only
23 reason why you are being excused is if you have school
24 obligations, which I didn't have because we are done with
25 exams, but I still live there and I still have a job there.

1 That's where my current residence is.

2 THE COURT: Well, didn't he ask if you resided in
3 some county other than York?

4 JUROR NUMBER 118: I didn't know if that applied
5 to me since the mail still came to my parents.

6 THE COURT: That's where we are headed.

7 What's on your driver's license?

8 JUROR NUMBER 118: My parents address.

9 THE COURT: You kind of got a dual residency, but
10 you are enough of York County to serve on a jury.

11 JUROR NUMBER 118: Right. I wasn't asking to be
12 taken off, but I don't have -- I don't get paid enough to
13 drive back and forth every day.

14 THE COURT: Well, I can -- all I can do is maybe
15 sympathize with you, because under the law you are entitled
16 to mileage from your home that you have on your driver's
17 license, which is here in York County to here. And I don't
18 know whether you ought to just stay with your folks for
19 these couple of days, if they will have you, and get some of
20 your momma's good home cooking.

21 JUROR NUMBER 118: Well, they have been in Africa.

22 THE COURT: Okay. Well, you got at key. You
23 might -- don't be committing burglary now, but, anyway, I
24 understand your situation, but I'm going to have to ask you
25 to remain with us.

1 JUROR NUMBER 118: Right. I was just saying I
2 didn't know if I could be paid for coming from Columbia or
3 not.

4 THE COURT: We can't pay you. All we can pay is
5 from your York County residence back and forth.

6 JUROR NUMBER 118: All right.

7 THE COURT: But it doesn't hurt to the ask, so
8 don't feel bad, but that's something -- I have been a
9 student. I mean, you know.

10 JUROR NUMBER 118: All right.

11 THE COURT: You have to figure something out or --
12 that's all I can tell you at this point.

13 JUROR NUMBER 118: Okay.

14 THE COURT: Don't feel bad about asking.

15 JUROR NUMBER 118: Thank you.

16 THE COURT: Thank you.

17 We will see everybody in the morning.

18 (Whereupon, proceedings were adjourned to December
19 14, 2010)

20

21

22

23

24

25

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 14, 2010
YORK, SOUTH CAROLINA

8

(VOLUME II)

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
ATTORNEY FOR THE STATE

16

17

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

18

19

20

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

21

22

23

24

25

INDEX

DECEMBER 13, 2010)

WITNESSES	PAGE
JURY VOIR DIRE -- PAGE 38	
JURY PANEL SWORN -- PAGE 54	
(JACKSON V. DENNO HEARING)	
OFFICER MICHAEL SCURLOCK, JR. (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	61
CROSS EXAMINATION BY MR. BARROWCLOUGH	63
OPENING STATEMENT BY MR. SPRINGS -- PAGE 66	
OPENING STATEMENT BY MR. DELANEY -- PAGE 71	
OFFICER DAVID GIBSON (S)	
DIRECT EXAMINATION BY MR. SPRINGS	75
CROSS EXAMINATION BY MR. DELANEY	91
REDIRECT EXAMINATION BY MR. SPRINGS	107

INDEX

(DECEMBER 14, 2010)

WITNESSES	PAGE
ANTHONY VALENTI (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	127
CROSS EXAMINATION BY MR. DELANEY	143
REDIRECT EXAMINATION BY MR. SPRINGS	157
TAYLOR JOHNSON (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	158
CROSS EXAMINATION BY MR. BARROWCLOUGH	162
PATRICIA JOHNSON (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	164
CROSS EXAMINATION BY MR. BARROWCLOUGH	172
REDIRECT EXAMINATION BY MR. SPRINGS	179
RE CROSS EXAMINATION BY MR. BARROWCLOUGH	179
OFFICER MICHAEL SCURLOCK, JR. (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	181
CROSS EXAMINATION BY MR. BARROWCLOUGH	202
REDIRECT EXAMINATION BY MR. SPRINGS	243
RE CROSS EXAMINATION BY MR. BARROWCLOUGH	247
EDWARD RAY MULLINS (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	251
CROSS EXAMINATION BY MR. BARROWCLOUGH	267
STATE RESTS -- PAGE 285	

INDEX

(DECEMBER 14, 2010)

WITNESSES	PAGE
OFFICER VINCE HOLLAND (DW)	
DIRECT EXAMINATION BY MR. BARROWCLOUGH	289
(NO CROSS EXAMINATION)	
KEVIN FORD (DW)	
DIRECT EXAMINATION BY MR. BARROWCLOUGH	293
VOIR DIRE EXAMINATION BY MR. SPRINGS	298
CONT'D D. EXAMINATION BY MR. BARROWCLOUGH	299
CROSS EXAMINATION BY MR. SPRINGS	309
JOE MEDLIN (DW)	
DIRECT EXAMINATION BY MR. BARROWCLOUGH	311
CROSS EXAMINATION BY MR. SPRINGS	315
ANGELA JOHNSON (DW)	
DIRECT EXAMINATION BY MR. DELANEY	317
CROSS EXAMINATION BY MR. SPRINGS	323

INDEX

(DECEMBER 15, 2010)

WITNESSES	PAGE
JEFFERY LEE (DW)	
DIRECT EXAMINATION BY MR. DELANEY	338
(NO CROSS EXAMINATION)	
PHIL LEAZER (DW)	
DIRECT EXAMINATION BY MR. DELANEY	340
CROSS EXAMINATION BY MR. SPRINGS	346
REDIRECT EXAMINATION BY MR. DELANEY	349
WOODROW POPLIN (DW)	
DIRECT EXAMINATION BY MR. DELANEY	350
VOIR DIRE EXAMINATION BY MR. SPRINGS	352
CONT'D DIRECT EXAMINATION BY MR. DELANEY	353
CROSS EXAMINATION BY MR. SPRINGS	359
DEFENSE RESTS -- PAGE 365	
CLOSING ARGUMENT BY MR. BARROWCLOUGH -- PAGE 373	
FINAL ARGUMENT BY MR. SPRINGS -- PAGE 401	
JURY INSTRUCTIONS -- PAGE 415	
JURY VERDICT -- PAGE 439	
SENTENCING -- PAGE 444	
REPORTER'S CERTIFICATE -- PAGE 452	

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	PHOTOGRAPH		128
4	S-2	PHOTOGRAPH		128
5	S-3	PHOTOGRAPH		143
6	S-4	PHOTOGRAPH		85
7	S-5	PHOTOGRAPH		140
8	S-6	PHOTOGRAPH		85
9	S-7	PHOTOGRAPH		140
10	S-8	PHOTOGRAPH		143
11	S-9	PHOTOGRAPH		137
12	S-10	PHOTOGRAPH		143
13	S-11	PHOTOGRAPH		137
14	S-12	PHOTOGRAPH		85
15	S-13	PHOTOGRAPH		85
16	S-14	PHOTOGRAPH		85
17	S-15	PHOTOGRAPH		84
18	S-16	PHOTOGRAPH		78
19	S-17	PHOTOGRAPH		83
20	S-18	PHOTOGRAPH		83
21	S-19	PHOTOGRAPH		83
22	S-20	PHOTOGRAPH		83
23	S-21	PHOTOGRAPH		83
24	S-22	PHOTOGRAPH		83
25	S-23	PHOTOGRAPH		83

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-24	PHOTOGRAPH		83
4	S-25	PHOTOGRAPH		83
5	S-26	PHOTOGRAPH		83
6	S-27	PHOTOGRAPH		83
7	S-28	PHOTOGRAPH		83
8	S-29	PHOTOGRAPH		83
9	S-30	PHOTOGRAPH		83
10	S-31	PHOTOGRAPH		83
11	S-32	PHOTOGRAPH		83
12	S-33	PHOTOGRAPH		83
13	S-34	PHOTOGRAPH		83
14	S-35	PHOTOGRAPH		83
15	S-36	PHOTOGRAPH		83
16	S-37	PHOTOGRAPH		83
17	S-38	PHOTOGRAPH		83
18	S-39	PHOTOGRAPH		83
19	S-40	PHOTOGRAPH		83
20	S-41	PHOTOGRAPH		83
21	S-42	PHOTOGRAPH		83
22	S-43	PHOTOGRAPH		83
23	S-44	PHOTOGRAPH		83
24	S-45	PHOTOGRAPH		83
25	S-46	PHOTOGRAPH		83

1	INDEX			
2	NO.	DESCRIPTION	ID.	EV.
3	S-47	PHOTOGRAPH		83
4	S-48	PHOTOGRAPH		83
5	S-49	PHOTOGRAPH		83
6	S-50	PHOTOGRAPH	15	
7	S-51	PHOTOGRAPH	15	
8	S-52	PHOTOGRAPH	16	
9	S-53	PHOTOGRAPH	16	
10	S-54	PHOTOGRAPH		200
11	S-55	PHOTOGRAPH		83
12	S-56	PHOTOGRAPH		200
13	S-57	PHOTOGRAPH		265
14	S-58	PHOTOGRAPH	16	
15	S-59	PHOTOGRAPH	16	
16	S-60	PHOTOGRAPH	16	
17	S-61	PHOTOGRAPH	16	
18	S-62	PHOTOGRAPH	16	
19	S-63	PHOTOGRAPH		265
20	S-64	PHOTOGRAPH	17	
21	S-65	PHOTOGRAPH		265
22	S-66	PHOTOGRAPH	17	
23	S-67	PHOTOGRAPH	17	
24	S-68	PHOTOGRAPH	17	
25	S-69	PHOTOGRAPH	17	

1	INDEX			
2	NO.	DESCRIPTION	ID.	EV.
3	S-70	PHOTOGRAPH	17	
4	S-71	PHOTOGRAPH	17	
5	S-72	PHOTOGRAPH	17	
6	S-73	PHOTOGRAPH	17	
7	S-74	PHOTOGRAPH	17	
8	S-75	PHOTOGRAPH	17	
9	S-76	PHOTOGRAPH	17	
10	S-77	PHOTOGRAPH		265
11	S-78	PHOTOGRAPH		265
12	S-79	PHOTOGRAPH		265
13	S-80	PHOTOGRAPH		265
14	S-81	PHOTOGRAPH		265
15	S-82	PHOTOGRAPH	18	
16	S-83	PHOTOGRAPH	18	
17	S-84	PHOTOGRAPH	18	
18	S-85	PHOTOGRAPH		265
19	S-86	PHOTOGRAPH		265
20	S-87	PHOTOGRAPH		265
21	S-88	PHOTOGRAPH		265
22	S-89	PHOTOGRAPH	19	
23	S-90	PHOTOGRAPH		265
24	S-91	PHOTOGRAPH		79
25	S-92	PHOTOGRAPH		265

1	INDEX			
2	NO.	DESCRIPTION	ID.	EV.
3	S-93	PHOTOGRAPH	19	
4	S-94	PHOTOGRAPH		265
5	S-95	PHOTOGRAPH	19	
6	S-96	PHOTOGRAPH	19	
7	S-97	PHOTOGRAPH		265
8	S-98	PHOTOGRAPH		265
9	S-99	PHOTOGRAPH	19	
10	S-100	PHOTOGRAPH	19	
11	S-101	PHOTOGRAPH		265
12	S-102	PHOTOGRAPH		265
13	S-103	PHOTOGRAPH	20	
14	S-104	PHOTOGRAPH		265
15	S-105	PHOTOGRAPH		265
16	S-106	PHOTOGRAPH	20	
17	S-107	PHOTOGRAPH	20	
18	S-108	PHOTOGRAPH		265
19	S-109	PHOTOGRAPH	20	
20	S-110	PHOTOGRAPH		265
21	S-111	PHOTOGRAPH		83
22	S-112	VOLUNTARY STATEMENT		194
23	S-113	AERIAL PHOTOGRAPH	125	
24	S-114	VOLUNTARY STATEMENT		158

25

1	INDEX			
2	NO.	DESCRIPTION	ID.	EV.
3	D-1	HOSPITAL RECORD	293	
4	D-2	MEDICAL RECORD		311
5				
6				
7	CT-1	LIST OF EXHIBITS WITHDRAWN	372	
8	CT-2	JURY NOTE	439	
9	CT-3	JURY NOTE	451	
10	CT-4	NOTICE TO SEEK LIFE SENTENCE	451	
11	CT-5	INDICTMENT NO. 2000-GS-46-2557	451	
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, DECEMBER 14, 2010)

2 (Aerial Photograph marked as State's Exhibit No.
3 113 for identification)

4 THE COURT: All right, is the State ready?

5 MR. SPRINGS: Yes, Your Honor, if I may.

6 Our next witness is going to be Mr. Anthony
7 Valenti. Yesterday the court told the defense the defense
8 would be allowed to ask him about some pending charges, and
9 the court was gracious enough to say to the State you are
10 welcome to try to find some law that impacts upon it.
11 Actually I found some law that supports your decision. I'll
12 be glad to share it with you, the annotations. I think I
13 have an ethical obligation to show it. It's in the new
14 version of the book right there at the bottom of the
15 opinion.

16 THE COURT: All right. I appreciate that. I
17 appreciate that.

18 MR. SPRINGS: So they get to ask, but the number
19 11 sticks out in my memory. Mr. Barrowclough said something
20 about 11 pending charges. I'm seeing one, two, three, four,
21 five, six, if you count the dispute with Mr. Jason Franks,
22 the defendant. I would ask that the defense be inquired as
23 to how many pending charges that they think he has?

24 THE COURT: Well, in good conscience they can only
25 ask him about the ones they can verify, so I don't know how

1 they got that number either.

2 MR. BARROWCLOUGH: To be honest with you, I don't
3 remember saying 11. The ones that we have off the county
4 computer would be a total of I think eight sex charges and
5 the ones that --

6 MR. SPRINGS: Well, that's not right, because I
7 went on the county computer and I got --

8 THE COURT: All right. Which county did you go
9 on?

10 MR. SPRINGS: York County.

11 THE COURT: Which county did you go on?

12 MR. BARROWCLOUGH: York County, judge.

13 THE COURT: Let's see where we are.

14 Why don't y'all get together. Just meet in the
15 middle.

16 (Off the record)

17 (Back on the record)

18 THE COURT: You got them?

19 MR. SPRINGS: We are ready.

20 THE COURT: Thank you for calling that to my
21 attention, Mr. Springs.

22 MR. SPRINGS: Yes, sir.

23 The State is ready.

24 THE COURT: Defense ready?

25 MR. BARROWCLOUGH: The defense is ready, Your

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. Winward Drive.

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

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

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. Johnson, put your right hand here and raise your left
16 and take the oath.

17 TAYLOR JOHNSON, 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 Johnson.

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.

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.

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

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 Johnson 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 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

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

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

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?

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).

1 (Whereupon, proceedings were reconvened0.

2 THE COURT: Is the State ready?

3 MR. SPRINGS: The State is ready.

4 THE COURT: Defense ready?

5 MR. BARROWCLOUGH: Defense is ready, Your Honor.

6 THE COURT: Bring in the jury.

7 MR. SPRINGS: Your Honor, my objection hearsay,
8 the defendant's hearsay keeps coming up, so I have provided
9 a brief to the defense and one to the court. And if it
10 keeps coming up, may it will be all right.

11 THE COURT: You are mighty kind. Thank you.

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

14 THE COURT: Call your next witness.

15 MR. SPRINGS: Call Mr. Edward Mullins.

16 Mr. Mullins, come on over here. There is the
17 bible. Raise your right hand and takes the oath.

18 EDWARD RAY MULLINS, having been first duly sworn,
19 testified as follows:

20 MR. SPRINGS: Come on over here and take a seat.
21 Take your time. There is the microphone.

22 I'm going to ask you to keep your voice up and
23 hold that mike up to your mouth, because everybody in this
24 room wants to hear what you have to say.

25

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] South Main Street, 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. [REDACTED] Winward Drive.

13 Q. Winward Drive?

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 morning.

2 (The following takes place outside the presence of
3 the jury panel)

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: This might be a good time for us to
9 have a charge conference, so after you have taken a short
10 break we will meet in my chambers.

11 MR. BARROWCLOUGH: Yes, sir, Your Honor.

12 (Whereupon, proceedings were adjourned to December
13 15, 2010)

14

15

16

17

18

19

20

21

22

23

24

25

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 15, 2010
YORK, SOUTH CAROLINA

8

(VOLUME III)

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
ATTORNEY FOR THE STATE

16

17

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

18

19

20

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

21

22

23

24

25

INDEX INDEX

(DECEMBER 13, 2010)

WITNESSES	PAGE
JURY VOIR DIRE -- PAGE 38	
JURY PANEL SWORN -- PAGE 54	
(JACKSON V. DENNO HEARING)	
OFFICER MICHAEL SCURLOCK, JR. (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	61
CROSS EXAMINATION BY MR. BARROWCLOUGH	63
OPENING STATEMENT BY MR. SPRINGS -- PAGE 66	
OPENING STATEMENT BY MR. DELANEY -- PAGE 71	
OFFICER DAVID GIBSON (S)	
DIRECT EXAMINATION BY MR. SPRINGS	75
CROSS EXAMINATION BY MR. DELANEY	91
REDIRECT EXAMINATION BY MR. SPRINGS	107

INDEX

(DECEMBER 14, 2010)

WITNESSES	PAGE
ANTHONY VALENTI (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	127
CROSS EXAMINATION BY MR. DELANEY	143
REDIRECT EXAMINATION BY MR. SPRINGS	157
TAYLOR JOHNSON (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	158
CROSS EXAMINATION BY MR. BARROWCLOUGH	162
PATRICIA JOHNSON (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	164
CROSS EXAMINATION BY MR. BARROWCLOUGH	172
REDIRECT EXAMINATION BY MR. SPRINGS	179
RE CROSS EXAMINATION BY MR. BARROWCLOUGH	179
OFFICER MICHAEL SCURLOCK, JR. (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	181
CROSS EXAMINATION BY MR. BARROWCLOUGH	202
REDIRECT EXAMINATION BY MR. SPRINGS	243
RE CROSS EXAMINATION BY MR. BARROWCLOUGH	247
EDWARD RAY MULLINS (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	251
CROSS EXAMINATION BY MR. BARROWCLOUGH	267
STATE RESTS -- PAGE 285	

INDEX

(DECEMBER 14, 2010)

WITNESSES	PAGE
OFFICER VINCE HOLLAND (DW)	
DIRECT EXAMINATION BY MR. BARROWCLOUGH	289
(NO CROSS EXAMINATION)	
KEVIN FORD (DW)	
DIRECT EXAMINATION BY MR. BARROCLOUGH	293
VOIR DIRE EXAMINATION BY MR. SPRINGS	298
CONT'D D. EXAMINATION BY MR. BARROWCLOUGH	299
CROSS EXAMINATION BY MR. SPRINGS	309
JOE MEDLIN (DW)	
DIRECT EXAMINATION BY MR. BARROWCLOUGH	311
CROSS EXAMINATION BY MR. SPRINGS	315
ANGELA JOHNSON (DW)	
DIRECT EXAMINATION BY MR. DELANEY	317
CROSS EXAMINATION BY MR. SPRINGS	323

INDEX

(DECEMBER 15, 2010)

WITNESSES	PAGE
JEFFERY LEE (DW)	
DIRECT EXAMINATION BY MR. DELANEY	338
(NO CROSS EXAMINATION)	
PHIL LEAZER (DW)	
DIRECT EXAMINATION BY MR. DELANEY	340
CROSS EXAMINATION BY MR. SPRINGS	346
REDIRECT EXAMINATION BY MR. DELANEY	349
WOODROW POPLIN (DW)	
DIRECT EXAMINATION BY MR. DELANEY	350
VOIR DIRE EXAMINATION BY MR. SPRINGS	352
CONT'D DIRECT EXAMINATION BY MR. DELANEY	353
CROSS EXAMINATION BY MR. SPRINGS	359
DEFENSE RESTS -- PAGE 365	
CLOSING ARGUMENT BY MR. BARROWCLOUGH -- PAGE 373	
FINAL ARGUMENT BY MR. SPRINGS -- PAGE 401	
JURY INSTRUCTIONS -- PAGE 415	
JURY VERDICT -- PAGE 439	
SENTENCING -- PAGE 444	
REPORTER'S CERTIFICATE -- PAGE 452	

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	PHOTOGRAPH		128
4	S-2	PHOTOGRAPH		128
5	S-3	PHOTOGRAPH		143
6	S-4	PHOTOGRAPH		85
7	S-5	PHOTOGRAPH		140
8	S-6	PHOTOGRAPH		85
9	S-7	PHOTOGRAPH		140
10	S-8	PHOTOGRAPH		143
11	S-9	PHOTOGRAPH		137
12	S-10	PHOTOGRAPH		143
13	S-11	PHOTOGRAPH		137
14	S-12	PHOTOGRAPH		85
15	S-13	PHOTOGRAPH		85
16	S-14	PHOTOGRAPH		85
17	S-15	PHOTOGRAPH		84
18	S-16	PHOTOGRAPH		78
19	S-17	PHOTOGRAPH		83
20	S-18	PHOTOGRAPH		83
21	S-19	PHOTOGRAPH		83
22	S-20	PHOTOGRAPH		83
23	S-21	PHOTOGRAPH		83
24	S-22	PHOTOGRAPH		83
25	S-23	PHOTOGRAPH		83

EXHIBITS					
	NO.	DESCRIPTION	ID.	EV.	
1					
2					
3	S-24	PHOTOGRAPH		83	
4	S-25	PHOTOGRAPH		83	
5	S-26	PHOTOGRAPH		83	
6	S-27	PHOTOGRAPH		83	
7	S-28	PHOTOGRAPH		83	
8	S-29	PHOTOGRAPH		83	
9	S-30	PHOTOGRAPH		83	
10	S-31	PHOTOGRAPH		83	
11	S-32	PHOTOGRAPH		83	
12	S-33	PHOTOGRAPH		83	
13	S-34	PHOTOGRAPH		83	
14	S-35	PHOTOGRAPH		83	
15	S-36	PHOTOGRAPH		83	
16	S-37	PHOTOGRAPH		83	
17	S-38	PHOTOGRAPH		83	
18	S-39	PHOTOGRAPH		83	
19	S-40	PHOTOGRAPH		83	
20	S-41	PHOTOGRAPH		83	
21	S-42	PHOTOGRAPH		83	
22	S-43	PHOTOGRAPH		83	
23	S-44	PHOTOGRAPH		83	
24	S-45	PHOTOGRAPH		83	
25	S-46	PHOTOGRAPH		83	

INDEX

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-47	PHOTOGRAPH		83
4	S-48	PHOTOGRAPH		83
5	S-49	PHOTOGRAPH		83
6	S-50	PHOTOGRAPH	15	
7	S-51	PHOTOGRAPH	15	
8	S-52	PHOTOGRAPH	16	
9	S-53	PHOTOGRAPH	16	
10	S-54	PHOTOGRAPH		200
11	S-55	PHOTOGRAPH		83
12	S-56	PHOTOGRAPH		200
13	S-57	PHOTOGRAPH		265
14	S-58	PHOTOGRAPH	16	
15	S-59	PHOTOGRAPH	16	
16	S-60	PHOTOGRAPH	16	
17	S-61	PHOTOGRAPH	16	
18	S-62	PHOTOGRAPH	16	
19	S-63	PHOTOGRAPH		265
20	S-64	PHOTOGRAPH	17	
21	S-65	PHOTOGRAPH		265
22	S-66	PHOTOGRAPH	17	
23	S-67	PHOTOGRAPH	17	
24	S-68	PHOTOGRAPH	17	
25	S-69	PHOTOGRAPH	17	

1	INDEX				
2	NO.	DESCRIPTION	ID.	EV.	
3	S-70	PHOTOGRAPH	17		
4	S-71	PHOTOGRAPH	17		
5	S-72	PHOTOGRAPH	17		
6	S-73	PHOTOGRAPH	17		
7	S-74	PHOTOGRAPH	17		
8	S-75	PHOTOGRAPH	17		
9	S-76	PHOTOGRAPH	17		
10	S-77	PHOTOGRAPH		265	
11	S-78	PHOTOGRAPH		265	
12	S-79	PHOTOGRAPH		265	
13	S-80	PHOTOGRAPH		265	
14	S-81	PHOTOGRAPH		265	
15	S-82	PHOTOGRAPH	18		
16	S-83	PHOTOGRAPH	18		
17	S-84	PHOTOGRAPH	18		
18	S-85	PHOTOGRAPH		265	
19	S-86	PHOTOGRAPH		265	
20	S-87	PHOTOGRAPH		265	
21	S-88	PHOTOGRAPH		265	
22	S-89	PHOTOGRAPH	19		
23	S-90	PHOTOGRAPH		265	
24	S-91	PHOTOGRAPH		79	
25	S-92	PHOTOGRAPH		265	

1	INDEX			
2	NO.	DESCRIPTION	ID.	EV.
3	S-93	PHOTOGRAPH	19	
4	S-94	PHOTOGRAPH		265
5	S-95	PHOTOGRAPH	19	
6	S-96	PHOTOGRAPH	19	
7	S-97	PHOTOGRAPH		265
8	S-98	PHOTOGRAPH		265
9	S-99	PHOTOGRAPH	19	
10	S-100	PHOTOGRAPH	19	
11	S-101	PHOTOGRAPH		265
12	S-102	PHOTOGRAPH		265
13	S-103	PHOTOGRAPH	20	
14	S-104	PHOTOGRAPH		265
15	S-105	PHOTOGRAPH		265
16	S-106	PHOTOGRAPH	20	
17	S-107	PHOTOGRAPH	20	
18	S-108	PHOTOGRAPH		265
19	S-109	PHOTOGRAPH	20	
20	S-110	PHOTOGRAPH		265
21	S-111	PHOTOGRAPH		83
22	S-112	VOLUNTARY STATEMENT		194
23	S-113	AERIAL PHOTOGRAPH	125	
24	S-114	VOLUNTARY STATEMENT		158
25				

1	INDEX			
2	NO.	DESCRIPTION	ID.	EV.
3	D-1	HOSPITAL RECORD	293	
4	D-2	MEDICAL RECORD		311
5				
6				
7	CT-1	LIST OF EXHIBITS WITHDRAWN	372	
8	CT-2	JURY NOTE	439	
9	CT-3	JURY NOTE	451	
10	CT-4	NOTICE TO SEEK LIFE SENTENCE	451	
11	CT-5	INDICTMENT NO. 2000-GS-46-2557	451	
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, DECEMBER 15, 2010)

2 THE COURT: Is the State ready?

3 MR. SPRINGS: Yes, sir.

4 THE COURT: Defense ready?

5 MR. DELANEY: Yes, Your Honor.

6 THE COURT: It looks like all the participants are
7 here.

8 Let's bring in the jury.

9 (The following takes place in the presence of the
10 jury panel)

11 THE COURT: Good morning.

12 THE JURY: Good morning.

13 THE COURT: We are at the stage of the trial, I'll
14 kind of bring you up-to-date, not that you been gone that
15 long that you can't remember, where the defense is
16 presenting witnesses. They have a few more. After that, if
17 the State has any reply, they have a right to do that. If
18 not, then we will be finished with the reception of
19 evidence. At that time we will have to take a break and do
20 some legal issues. And you would wonder why we didn't do
21 these last night or this morning, trials are sort of like
22 football games or other scores where you have certain
23 segments. We can't do one thing until the others are done
24 because you don't sometimes know what you got to address.
25 That doesn't make any sense, but it does to me. Anyway, we

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. [REDACTED] Point Clear Drive, 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 the law that I will deliver to you and tell you why your
2 verdict should be a certain verdict. So we will go ahead
3 and take our morning break at this point and we will send
4 for you in just a little bit.

5 (The following takes place outside the presence of
6 the jury panel)

7 THE COURT: Anything from the State?

8 MR. SPRINGS: No, sir.

9 THE COURT: Defense?

10 MR. DELANEY: No, sir.

11 THE COURT: All right.

12 MR. BARROWCLOUGH: Your Honor, just for purposes
13 of the record, at this time we would renew our motion for
14 directed verdict, and also we would incorporate all our
15 previous objections and simply the State's case and
16 cross-examination of Mr. Mullins through proffer regarding
17 his exploits in West Virginia, as well as our witness, Mr.
18 Ford, not being allowed -- him not being allowed to testify
19 regarding Mr. Mullins being ambulatory at the scene as an
20 exception to the hearsay -- the hearsay exception for the
21 statements made about the treatment. Thank you.

22 THE COURT: I deny the motion for directed
23 verdict. Again I believe the evidence is sufficient for
24 which the jury could reach a conclusion beyond a reasonable
25 doubt that Mr. Franks did, in fact, commit the offense for

1 which he's charged.

2 As far as your placing on the record your other
3 objections, that is done.

4 All right. We have had couple of charge
5 conferences and so I'll allow each side to put on the record
6 anything that they have concerning that.

7 I will go ahead and say that, and ask for
8 comments, we discussed at length whether or not there is a
9 charge of accident that would apply in this case. We
10 determined that under the factual situation the charge of
11 accident, although you can certainly the argument of
12 accident is certainly fair game, but that neither side is
13 requesting a charge on accident.

14 Is that correct Mr. Springs?

15 MR. SPRINGS: That's correct from the State.

16 THE COURT: Mr. Barrowclough?

17 MR. BARROWCLOUGH: Yes, sir, that's correct, Your
18 Honor.

19 THE COURT: All right. We also discussed the
20 lesser included offenses and we discussed it for awhile last
21 night, and then went all else fails I went back and read the
22 statute and found that, of course, under new statute --
23 that's the first time I have dealt with it, quite frankly,
24 that all of the lesser degrees of assault and battery down
25 to third degree, all by statute lesser included offenses,

1 and therefore, they will be charged and reflected on the
2 verdict form.

3 Any comment on that, Mr. Springs?

4 MR. SPRINGS: I would just say that certainly the
5 new statutory assault and battery of a high and aggravated
6 nature would -- even if the code sections didn't
7 specifically say lesser included, I would have said the
8 assault and battery of a high and aggravated nature would
9 certainly be a lesser included on the facts of this case.
10 That's my only comment.

11 MR. BARROWCLOUGH: And my in reading of the law is
12 the same as Your Honor, and that's what we would request.

13 THE COURT: All right.

14 MR. SPRINGS: Deadly weapon with a car.

15 THE COURT: Yes. I looked at the Belcher case and
16 under the facts of this, I do not -- I did not find that it
17 would be responsible or right to charge the inference of
18 malice from the use of a deadly weapon. But in reviewing
19 the statutes under the Omnibus Crimes Bill, I believe, while
20 not charging it as raising an inference, that a charge that
21 an automobile has by our law been defined as a deadly
22 weapon. So I will charge it just like that. I will not
23 relate to it any inference of anything. I will just charge
24 that as a fact for which the jury can consider in regard to
25 the offense.

1 Any comment on that, Mr. Springs?

2 MR. SPRINGS: Not on that. I just --

3 THE COURT: We are going to give you an open floor
4 in just a minute.

5 MR. SPRINGS: All right.

6 THE COURT: Mr. Barrowclough, deadly weapon
7 charge?

8 MR. BARROWCLOUGH: No, Your Honor. The way that I
9 understood that you were going to charge it, I agree that
10 would be appropriate.

11 THE COURT: Okay. Each side seemed to agree on
12 the intent charges. We looked at that, specific intent and
13 criminal intent and -- criminal intent, and more specific,
14 specific intent, so we discussed that.

15 Now, the floor is open to further comments, Mr.
16 Springs.

17 MR. SPRINGS: Just the court is going to give some
18 definitions of malice?

19 THE COURT: I would define -- actually, yes, I
20 would -- I have got -- I have kind of restructured my charge
21 a little bit because of the new laws, but I plan to charge
22 intent and specific intent before I charge the attempted
23 murder.

24 After I charge attempted murder, I'm going to
25 define malice, malice aforethought, express or implied -- or

1 inferred.

2 Then before I get into the lesser included's I'm
3 going to charge -- I'm going to define assault, battery,
4 great bodily injury, and deadly weapon, and then I will
5 charge the lesser includes.

6 MR. SPRINGS: Does your malice aforethought
7 mention that the aforethought could be very quick, just
8 almost instantaneous?

9 THE COURT: Malice aforethought -- let me go back
10 a bit.

11 "Malice aforethought does not require that malice
12 exists for any particular time before the act is committed,
13 but malice must exists in the mind of the defendant just
14 before and at the time the act is committed. Therefore,
15 there must be a combination of previous evil intent and the
16 act." That's what I charge traditionally.

17 MR. SPRINGS: Very good.

18 THE COURT: Anything else?

19 MR. SPRINGS: No, sir.

20 THE COURT: Open floor, Mr. Barrowclough.

21 MR. BARROWCLOUGH: Thank you, Your Honor.

22 Just with regard to our request to charge number
23 one, prior inconsistent statement.

24 THE COURT: Oh, I'm going to charge that. I'm
25 sorry, I forgot. I am going to charge that. That will come

1 after I talk about the witnesses and then credibility of
2 witnesses, but I do have that and I am going to charge it.

3 I have not looked at the Coplin case. I will do
4 that over the break, but if it's necessary, something in
5 there that catches my eye, I'll discuss it with you before,
6 but I have that in there in the charge at this point.

7 MR. BARROWCLOUGH: Yes, sir. Thank you. That's
8 all we have.

9 THE COURT: All right. We will take a break and
10 we will come back and be ready. Is the State going to open
11 or waive opening?

12 MR. SPRINGS: I will not open, unless they require
13 me to open.

14 MR. BARROWCLOUGH: We won't require him.

15 THE COURT: All right. Then the State will close
16 and the defense will open and -- we will take a break.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 MR. SPRINGS: Your Honor, one quick housekeeping
20 matter.

21 THE COURT: Well, we need -- the defendant needs
22 to be out, I believe.

23 (Off the record)

24 (Back on the record)

25 THE COURT: Now you are on the record.

1 MR. SPRINGS: Thank you, sir.

2 Your Honor, our court reporter has pointed out to
3 me that I had a lot more pictures that I was considering
4 putting into evidence and I had them premarked and never
5 used them, actually never discussed them or mentioned the
6 numbers on the record, but he has made a list of those and
7 he would like for me to do something on the record and what
8 I have done is he's listed the numbers of the exhibits we
9 did not admit, didn't talk about. He's noted the one
10 defense exhibit marked for I.D. but not admitted on it. We
11 have made it a Court's Exhibit and I think our court
12 reporter is now satisfied that I have acknowledged all these
13 un-admitted.

14 THE COURT: I don't need to see it.

15 THE COURT: Any comments on that?

16 MR. BARROWCLOUGH: No comment, Your Honor.

17 THE COURT: All right.

18 (List of State's Exhibits marked but not admitted
19 into evidence was marked as Court Exhibit No. 1 for
20 identification)

21 THE COURT: State ready?

22 MR. SPRINGS: Yes.

23 THE COURT: Defense ready?

24 MR. BARROWCLOUGH: Yes, sir, Your Honor.

25 THE COURT: Bring in the jury.

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 Johnson 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 Johnson. 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 Johnson's 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 Signed by the foreperson, dated today's date.

2 Ladies and gentlemen of the jury, if that be your
3 verdict, just say you all by raising your right hand.

4 Let record show that all jurors affirmed the
5 verdict.

6 THE COURT: Anything from the State?

7 MR. SPRINGS: No, sir.

8 THE COURT: Anything from the defense before the
9 jury is dismissed?

10 MR. BARROWCLOUGH: Your Honor, we would ask the
11 jury be polled.

12 THE COURT: All right. Members of the jury panel,
13 the clerk is going to ask you some questions, a more
14 specific question about your verdict. If you would just
15 follow what she asks.

16 THE CLERK: If everyone will please stand.

17 Juror 52, Lisa Cooper, is this your verdict?

18 JUROR NUMBER 52: Yes.

19 THE CLERK: Is it still your verdict?

20 JUROR NUMBER 52: Yes.

21 THE CLERK: Be seated.

22 Number 84, Anita Geddings, is this your verdict?

23 JUROR NUMBER 84: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NUMBER 84: Yes, it is.

1 THE CLERK: Please be seated.
2 Number 169, Kathie Nogosky, is this your verdict?
3 JUROR NUMBER 169: Yes.
4 THE CLERK: Is it still your verdict?
5 JUROR NUMBER 169: Yes.
6 THE CLERK: Please be seated.
7 Number 49, Anne Coney, is this your verdict?
8 JUROR NUMBER 49: Yes.
9 THE COURT: Is it still your verdict?
10 JUROR NUMBER 49: Yes.
11 THE COURT: Please be seated.
12 Number 158, Bonnie Mitchell, is this your verdict?
13 JUROR NUMBER 158: Yes.
14 THE COURT: Is it still your verdict?
15 JUROR NUMBER 158: Yes.
16 THE CLERK: Please be seated.
17 Number 33, Katherine Camden, is this your verdict?
18 JUROR NUMBER 33: Yes.
19 THE CLERK: Is it still your verdict?
20 JUROR NUMBER 33: Yes.
21 THE CLERK: Please be seated.
22 Number 26, Patrice Bryson, is this your verdict?
23 JUROR NUMBER 26: Yes.
24 THE COURT: Is it still your verdict?
25 JUROR NUMBER 26: Yes.

1 THE CLERK: Please be seated.

2 Number 118, Noah Jones.

3 JUROR NUMBER 118: Yes.

4 THE COURT: Is this your verdict?

5 JUROR NUMBER 118: Yes.

6 THE CLERK: Is it still your verdict?

7 JUROR NUMBER 118: Yes.

8 THE COURT: Please be seated.

9 Number 147, Zachary McCorkle, is this your
10 verdict?

11 JUROR NUMBER 147: Yes.

12 THE COURT: Is it still your verdict?

13 JUROR NUMBER 147: Yes.

14 THE COURT: Please be seated.

15 Number 40, Lisa Caveny, is this your verdict?

16 JUROR NUMBER 40: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR NUMBER 40: Yes, ma'am.

19 THE COURT: Please be seated.

20 Number 121, James Keller, is this your verdict?

21 JUROR NUMBER 121: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR NUMBER 121: Yes.

24 THE CLERK: Please be seated.

25 Number 92, Vicky Hagans, is this your verdict?

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

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for YORK County, South Carolina, on the 13th, 14th and 15th days of December, 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

JANUARY 15, 2011

A handwritten signature in cursive script, reading "Michael R. Watts", is written over a horizontal line.

Michael R. Watts
Circuit Court Reporter

CERTIFIED TRUE COPY

FORM 5

2014 AUG 27 PM 4: 15

STATE OF SOUTH CAROLINA

County of

YorkDAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

THE COURT OF COMMON PLEAS

Jason Ray Franks 276389

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Dept. of Corrections-Lieber Correctional Institution, Ridgerville, South Carolina
2. Name and location of Court which imposed sentence York County Court of General Sessions, York, South Carolina
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-46-3461; Attempted Murder
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) December 15th, 2010; Life without Parole (§ 17-25-45)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction and Sentence Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 16th, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No: 2013-UP-020
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Strickland v. Washington 466 U.S. 668, 80 L. Ed2d 674

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Direct Appeal (Denied)

ii. Petition for Rehearing (Denied)

iii. Writ of Certiorari (Denied)

iv. _____

(b) the name and location of the Court in which each was filed:

i. South Carolina Court of Appeals

ii. Same as above

iii. Same as above

iv. _____

(c) the disposition thereof:

- i. Dismissed (July 11, 2012)
- ii. Dismissed (February 21, 2013)
- iii. Dismissed (June 14, 2013)
- iv. _____

(d) the date of each such disposition:

- i. July 11th 2012
- ii. February 21st 2013
- iii. June 14th 2013
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective Assistance of Counsel -- First opportunity to raise "IAC" Cannot raise "IAC" on Direct Appeal
 (b) P.C. is the only avenue at this time.
 (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. BJ Barronclough; P.O. Box 691; York, S.C. 29745 - Asst. York County Public Defender
 ii. Erik D. Delaney - same address as above - Asst. York County Public Defender
 iii. Robert M. Dadek, Chief Appellate Defender, S.C. Commission Indigent Defense, Div. of Appellate Defense, P.O. Box 11589, Columbia, S.C. 29211-1589
 (b) the proceedings at which each such attorney represented you:
 i. Trial
 ii. Trial
 iii. Direct Appeal, Petition for Rehearing, Writ of Certiorari

19. State clearly the relief you seek in filing this application:

Conviction and Sentence Vacated and Remanded For Resentencing Pursuant To Original Deal With Fourteenth and Sixteenth Judicial Circuit Solicitors and SHED, or New Trial, and any other relief the Court may deem appropriate.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Jason Ray Franks #276389, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X Jason Franks 8/21/14

SWORN to and subscribed before me this 21st day of August, 2014.

Lendeen Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Jason Ray Franks, #276389,

2014-CP-46-2815

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on August 26, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the October 14, 2010 term of the York County Grand Jury for Attempted Murder (2010-GS-46-3461). BJ Barrowclough, Esquire and Erik Delaney, Esquire, represented him. On December 13-15, 2010, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable John C. Hayes, III sentenced the Applicant to confinement for Life without parole (LWOP).

A notice of appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Franks, 2013-UP-020 (filed January 16, 2013). The Applicant then filed a petition for writ of certiorari in the South Carolina Supreme Court, but certiorari was denied on May 22, 2014. The Remittitur was issued on June 3, 2014.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. “Ineffective Assistance of Counsel”

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections’ records, and the Record on Appeal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant’s allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant’s attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there

is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

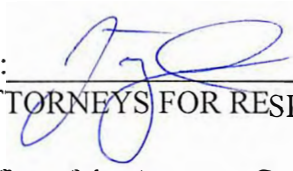
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN

Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February, 2015.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	Case No.: 2014-CP-46-2815
Jason R. Franks,	)	
	)	AMENDED PCR PETITION
Applicant,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

FILED-RECEIVED
2017 OCT 26 AM 10:56
DAVID HAMILTON
C.S.C. P.C.S.
YORK COUNTY, SC

NOW COMES the applicant, by and through his undersigned attorney, and files this amended petition to his PCR Application to more concisely state the specific issues to be raised in his PCR hearing.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges that counsel's performance was ineffective at trial by failing to ask that the law of accident be charged to the jury. Counsel specifically argued that the incident was an accident during opening statement, throughout the trial and during closing argument. However, counsel never asked the Court to charge accident to the jury. As a result, counsel was left with the plain meaning of accident when it came to deliberation. Counsel's performance was clearly deficient and the outcome would have been different had the Judge instructed the jury on accident. Furthermore, by conceding that accident should not be charged in chambers, counsel prohibited the appellate courts from reviewing whether or not the charge would have been proper because it was not preserved for appellate review.

CONSTITUTIONAL CLAIM

The applicant also asserts that his Sixth Amendment right to adequate counsel was violated during the plea negotiation process. Applicant was originally charged under the old

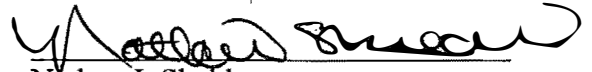
ABWIK statute that did not exist at the time applicant was arrested. Essentially, that crime has been absorbed into what is now Attempted Murder. Applicant was being held at the York County Detention Center when he was initially approached by the Assistant Solicitor E. B. Springs. Solicitor Springs approached applicant and offered him a 1-year active prison sentence if he pled to Hit and Run Involving Injury. At that time, applicant was unrepresented. Applicant accepted the offer, but later rejected the offer stating that he wanted an attorney. Applicant was indicted for attempted murder and served LWOP notice shortly thereafter.

Applicant contends that Solicitor approaching him and offering the year and later revoking that offer based on his rejection of the offer without the benefit of counsel violated his Sixth Amendment right to effective assistance of counsel during the plea negotiation process. The record from trial is not clear at what point he was told he would be served with LWOP notice if he rejected the plea, but it is clear that once he obtained counsel, the offer of one-year was off the table.

The Courts have consistently deemed that the plea negotiation process and rejection or acceptance of a guilty plea are a critical stage in the criminal proceeding. While it is true that no defendant is entitled to a plea offer, in this case an offer was extended and given that the offer went from one year to life without parole, the applicant should have been appointed counsel right away.

As a result, Applicant ended up being tried and convicted on the Attempted Murder and received a life without parole sentence. This violates his Sixth Amendment right to effective assistance during the plea negotiation process.

Respectfully Submitted,



Nathan J. Sheldon
331 E. Main St., Suite 200
Rock Hill, SC 29730
803-909-9343
Attorney for Applicant

October 25, 2017

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-46-02815

JASON R. FRANKS,)
)
 Plaintiff,)
)
 -vs-)
)
 STATE OF SOUTH CAROLINA,)
)
 Defendant.)
 _____)

TRANSCRIPT OF RECORD

April 12, 2022
York, South Carolina

B E F O R E:

Honorable R. Scott Sprouse, Judge.

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

Mr. Nathan J. Sheldon
Attorney at Law
Attorney for the Petitioner
Rock Hill, South Carolina

Mr. Michael J. Neubauer
Attorney at Law
Attorney for the Respondent
Columbia, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

JASON FRANKS

Mr. Sheldon	7			

Mr. Neubauer		38		

Mr. Sheldon			53	

DONNA SCHWARTZ MADDOX

Mr. Sheldon	57			

Mr. Neubauer		78		

E.B. SPRINGS

Mr. Neubauer	85			

Mr. Sheldon		105		

Mr. Neubauer			131	

Mr. Sheldon				136

B.J. BARROWCLOUGH

Mr. Neubauer	140			

Mr. Sheldon		156		

ERIK DELANEY

Mr. Neubauer	165			

Mr. Sheldon		174		

Closing Statements

Mr. Neubauer	180			

Mr. Sheldon	183			

Certificate	189			

E X H I B I T S

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>ID/AD</u>
C-1	Report of Dr. Maddox	74

(REPORTER'S NOTE: All exhibit admitted into evidence during the course of this proceeding were duly filed with the York County Clerk of Court's office.)

1 THE COURT: All right. Mr. Neubauer, call the next
2 case.

3 MR. NEUBAUER: Thank you, Your Honor. May it please
4 the Court. The next matter is Jason Franks versus State of
5 South Carolina, docket number 2014-CP-46-2815. Applicant is
6 currently confined to the South Carolina Department of
7 Corrections.

8 On October 14th, 2010, applicant was indicted by the
9 York County Grand Jury for attempted murder, indictment
10 number 2010-GS-46-3461. Applicant was represented by B.J.
11 Barrowclough and Erik Delaney of the Sixteenth Circuit
12 Public Defender's Office; Assistant Solicitor E.B. Springs
13 prosecuted the case.

14 On December 13th, 2010, applicant proceeded to trial
15 before the Honorable John C. Hayes, III and a jury.
16 Following trial, the jury found applicant guilty as
17 indicted. As this was applicant's second strike, Judge
18 Hayes sentenced applicant to imprisonment for life without
19 the possibility of parole. Applicant filed a notice of
20 appeal and an appeal was perfected on his behalf. The South
21 Carolina Court of Appeals affirmed applicant's conviction
22 and sentence in an unpublished opinion, filed in January of
23 2013. Applicant filed a petition for a writ of certiorari
24 to the South Carolina Supreme Court. The certiorari was
25 denied on May 22nd, 2013. The remittitur was issued June 3rd

1 of 2014.

2 Just one note, applicant was or originally entered into
3 plea negotiations with the State prior to being appointed an
4 attorney, however, once plea nego- -- initial plea was
5 rejected. Applicant requested the assistance of an attorney
6 and Mr. Barrowclough and Mr. Delaney were appointed at that
7 time.

8 Applicant filed his application for post-conviction
9 relief, alleging ineffective assistance of counsel, that
10 trial counsel failed to ask the law of accident be charged
11 to the jury, claiming counsel consistently argued the
12 incident was an accident during opening and throughout the
13 trial, however, counsel never asked the Court to charge
14 accident to the jury and by conceding that accident should
15 not be charged in chambers, counsel prohibited the appellate
16 courts from reviewing whether or not the charge would have
17 been proper because it was reserved -- was not preserved for
18 appellate review and a constitutional issue that applicant
19 asserts his Sixth Amendment right to counsel was violated
20 during plea negotiations and that indicated applicant was
21 held in the York County Detention Center, where he was
22 originally approached by Solicitor Springs and offered a
23 one-year active prison sentence if he pled to hit and run.
24 At that time applicant was unrepresented. Applicant
25 accepted the offer, but later rejected the offer prior to

1 appearing before a judge. Applicant stated -- or once the
2 offer was rejected, applicant stated he wanted an attorney.

3 Applicant was indicted for attempted murder and served
4 with an LWOP notice shortly after having counsel appointed.
5 Applicant contends the solicitor approached him and offered
6 the year and later revoked that offer based on his -- or and
7 based on his rejection of the offer without the benefit of
8 counsel and I believe these are the allegations that
9 applicant intends to go forward on at this point.

10 THE COURT: Okay. Mr. Sheldon.

11 MR. SHELDON: Thank you, Your Honor. May it please the
12 Court. I agree in summation with what the Attorney General
13 says. There's one pivotal piece of information prior to the
14 current Assistant Attorney General being involved in the
15 case. The transcript from the hearing where the offer was
16 rejected and an attorney was appointed for Mr. Franks is not
17 available. It was purged at -- well, the court reporter at
18 the time, I believe, and I've had a few PCRs and I think
19 this is right, though, was Janet Rich. It's my
20 understanding that she got sick and had to retire or did
21 retire. Her laptop was stolen with all of her files on it
22 and that transcript was one of them and that is not -- it's
23 unrecoverable. We've both tried to get it and it's not
24 available and that is a pivotal part of the proceedings
25 today, but just wanted to make the Court aware that we could

1 go forward 'cause that transcript's never going to be
2 available.

3 THE COURT: Thank you, Mr. Sheldon. Okay. Is the
4 is the applicant ready to proceed?

5 MR. SHELDON: Yes, Your Honor.

6 THE COURT: All Right. Call your first witness.

7 MR. SHELDON: Thank you, Your Honor. We call Jason
8 Frank to the stand.

9 (JASON FRANKS, being first duly sworn, was examined and
10 testified as follows):

11 MR. SHELDON: And, Judge, while he's getting situated,
12 normally I would ask the Court to sort of inform the
13 applicant of the risks of a PCR, but given the fact that he
14 got a maximum life sentence, I just don't think it's
15 necessary. It can't get any worse for him.

16 THE COURT: Yes, sir.

17 MR. SHELDON: Thank you, Your Honor. May it please the
18 Court.

19 DIRECT EXAMINATION

20 JASON FRANKS BY MR. SHELDON:

21 Q. Mr. Frank, please state your name for the record.

22 A. Jason Franks.

23 Q. And spell your last name.

24 A. F-r-a-n-k-s.

25 Q. And so at times it appears Frank. I think even on the

1 SCDC site it's Frank, but it is in fact Franks with an s.

2 A. Yes, sir.

3 Q. Is that right?

4 A. Yes, sir.

5 Q. Okay. And, Mr. Franks, how old are you?

6 A. I'm 40. I'll be 41 June 12th.

7 Q. Okay. And how long have you been incarcerated on this
8 attempted murder?

9 A. Right at twelve years.

10 Q. So would that have been June -- well, arrested in June
11 of 2010, but then, I think, rearrested and incarcerated,
12 essentially, since September of 2010?

13 A. Yes, sir.

14 Q. Okay. I want to take you back all the way to the time
15 of arrest. When were you actually arrested for the
16 attempted murder?

17 A. June 7th of 2010.

18 Q. Is that the date---

19 A. Actually,---

20 Q. ---that the incident occurred?

21 A. ---that was the assault and battery with intent to kill
22 and that was when that originally transpired. The actual
23 attempted murder, I think it came into play somewhere in the
24 latter part of September.

25 Q. Okay. And just --

1 MR. SHELDON: And, Judge, if I may just sort of step
2 out from questioning. I think the Attorney General will
3 agree there is just a little bit, instead of hashing this
4 out through testimony, at the time that Mr. Frank was
5 arrested on June 8th of 2010 or June 7th of 2010, the new
6 omnibus bill had just passed, so there -- assault and
7 battery with intent to kill no longer existed and,
8 essentially, attempted murder codified the ABWIK charge. It
9 was so new, I think it was within a week that it had passed
10 that he was charged under an ABWIK statute that no longer
11 existed. So that when we're talking about ABWIK and
12 attempted murder, we're talking about the same thing. It
13 gets corrected at some point later on, so --

14 MR. NEUBAUER: That's correct, Your Honor.

15 THE COURT: Okay. All right. So noted.

16 MR. SHELDON: Thank you, Judge.

17 Q. So you're arrested on the assault and battery with
18 intent to kill on June 7th of 8th of 2010. Just give the
19 Court, briefly, just a synopsis of what were the facts that
20 you were arrested of that case?

21 A. When I barely hit the guy, like, I was actually calling
22 and reporting it. I was in the processed the reporting the
23 issue when it transpired. I ended up turning myself in. I
24 gave a statement to the officer that requested a statement
25 and then they released me, pending investigation. I was

1 released. I had my mom and my family bring me to and then
2 afterwards I went back home and then the next day they come
3 kicking my door in for assault and battery with intent to
4 kill and, I mean, I went -- I complied. I went on the
5 county jail and I sat in the county jail, I was in there
6 maybe forty-eight hours.

7 Q. Okay. We'll get to that in a minute,---

8 A. All right.

9 Q. ---but go on back. So you said you hit the man. Tell
10 the -- the judge doesn't know anything about this case.
11 Just tell him briefly what you were accused of doing.

12 A. What I was accused of doing was maliciously running
13 this man down in broad daylight with my vehicle, one o'clock
14 in the afternoon, a block and a half from the police
15 department and on Monday afternoon. That's what I was
16 accused of doing.

17 Q. Was he -- and this was in Fort Mill. Is that right?

18 A. Well, yeah, Tega Cay, but yeah, Fort Mill.

19 Q. Were y'all both in vehicles?

20 A. Oh. I was in a vehicle. I was in a Mazda Tribute and
21 he was in -- on a Moped and---

22 Q. Okay.

23 A. ---he was just in front of me, like, I was trying to
24 get around the guy and he kept just -- he'd turned on his
25 turn signal, he'd get in front of me and every time I'd turn

1 my left turn -- 'cause keep in mind I'm driving without an
2 operator's license, so I'm illegal. I'm not supposed to be
3 driving at all. So in Tega Cay I'm going to definitely
4 abide by the law as long -- as much as possible. But this
5 guy was just in front of me and just wouldn't let me around
6 him. Every time I tried to go get around, he'd cut me off
7 and get in front of me. So I thought I'd get slick and turn
8 on the turn signal and make him think I was going one way
9 and try going the other and I clipped his tail end and when
10 I clipped the tail end, he fell off and fell into the middle
11 of the street.

12 Q. Okay. And, ultimately, -- so that's the basis -- you
13 clipping the tail end is the basis for the ABWIK charge. Is
14 that right?

15 A. Yes, sir.

16 Q. And so you were arrested. I think you said you spent
17 forty-eight hours in the detention center?

18 A. I was -- it was a little longer than that. I was in
19 there about forty-eight hours when I was -- when Mr. E.B.
20 Springs approached me.

21 Q. Well, let me back up. So you were arrested and then
22 released and then rearrested on a probation violation.

23 A. Yes.

24 Q. Is that right? How quick do those two arrests occur?

25 A. Back to back.

1 Q. Within a day of each other?

2 A. I mean, I had four arrests within a week.

3 Q. Okay. And so the ABWIK charge, you get out and are
4 immediately rearrested on a separate probation violation.
5 Is that right?

6 A. Yes, sir.

7 Q. And does that probation violation stem from your
8 arrest on the ABWIK?

9 A. Yes, sir.

10 Q. Okay. So it's all related to this incident?

11 A. Yes, sir.

12 Q. And when you're rearrested on that probation violation,
13 how many days had passed at that point before you first met
14 with the prosecutor in this case?

15 A. I'm not -- I'm not -- I mean, I'm not sure, 'cause like
16 I just -- eight years of my incarceration, I don't even
17 recall. I mean, I've been going through some bad mental
18 health issues.

19 Q. And so -- but -- and I understand that. I understand
20 you don't have your file with you and that it was lost---

21 A. Yeah, it's gone.

22 Q. ---in prison. But to the best of your knowledge, how
23 long a period are we talking about before Mr. Springs comes
24 down to the detention center?

25 A. It wasn't long. It wasn't long. It was -- like, I

1 didn't even get a chance to bond out when he came to me with
2 a plea -- the original plea deal.

3 Q. Would you say it was within a day or two?

4 A. Yeah. It was about forty-eight hours.

5 Q. Okay. And at that time Mr. Springs -- what detention
6 center are you at?

7 A. Moss Justice.

8 Q. You're here?

9 A. Yes, sir.

10 Q. And you're locked up?

11 A. Yes, sir.

12 Q. And the prosecutor comes and pays you a visit?

13 A. Uh-huh.

14 Q. Is that right?

15 A. Yes, sir.

16 Q. And what does he say?

17 A. He -- well, they called me up there. I thought -- I
18 actually thought it was a bondsman 'cause I'd been in
19 contact with a few bondsman, and then when I went up there
20 he sat down and he explained to me who he was. He broke
21 down his position and he was explaining to me about the
22 assault and battery with intent to kill and that I could be
23 charged correctly had I not followed his plea bargain and I
24 asked, you know, What are you offering? And he told me he
25 would offer me a year nonviolent and he says, How do you

1 feel about that? You don't need a lawyer or anything? And
2 I said, Well, if I don't need a lawyer and it's just one
3 year nonviolent, I mean, I have no problem with that. I'll
4 take that.

5 Q. Who brought up the issue of having an attorney?

6 A. That would have been him.

7 Q. And what, specifically, did he say? What do you
8 remember?

9 A. Just, specifically, just literally, just that, like,
10 You don't even need an attorney to take you further on this,
11 like, this is something he and I could do.

12 Q. And what was your response to that?

13 A. I mean, the way it sounded to me like, I mean, keep in
14 mind I just hit this guy with my car and they're coming at
15 me with everything they got and they come at me with a year,
16 nonviolent, in my mind I said, you know, hey, maybe these
17 people are actually seeing it from my point of view. So I
18 went ahead and I rolled with the punches, but it didn't turn
19 out that way.

20 Q. Okay. So then what happens? Do you get out of jail at
21 that point?

22 A. I do. I get out. My boss lady and them put money
23 together to get me out so I could be able to -- 'cause I
24 have a son. We'd just lost our son to spinal flu, who was
25 born and died ten days later and that was just five months,

1 six months before this incident happened.

2 Q. When did your son die?

3 A. August 9th of 2009.

4 Q. And this happened in June of 2010?

5 A. Yes, sir.

6 Q. So about ten months later?

7 A. Haven't even recouped yet. Like, she's not even

8 wanting

9 to be in the house, got a lot of bills on me, you know,

10 just so much distraught -- mentally distraught and I was

11 going to mental health. Like, I actually went to the

12 emergency room for mental health, explained to them that I

13 needed help, that I was having outrages. I was not being

14 able to sleep. I was having severe insomnia. I was very

15 depressed. I was contemplating suicide, was a lot of things

16 going on in my plate at that time.

17 Q. And that's -- and so at this point in time, so I want

18 to just -- we're going to kind of bounce around a little

19 bit,---

20 A. All right.

21 Q. ---but right now I want to just focus on the initial

22 meeting with Mr. Springs and is that Mr. Springs sitting in

23 the front---

24 A. Oh, yes.

25 Q. ---row back there?

1 A. That's definitely him.

2 Q. Is that the prosecutor that came down to see you?

3 A. Yes, sir.

4 Q. Okay. And so when Mr. Springs leaves, is -- are you
5 under the -- leaves that detention center that day, are you
6 under -- what are you under the impression is going to
7 happen?

8 A. I don't need a lawyer. I'm going to face one year
9 nonviolent and he'll let me know right about the time before
10 I need to turn myself in.

11 Q. And then you get out?

12 A. And that was it.

13 Q. At what point in time did you hear from Mr. Springs
14 again?

15 A. Once I got -- I had a -- there was a prior murder
16 charge that had transpired. The solicitor over the case
17 then was Randolph Murdaugh over in Beaufort County,
18 Ridgeland area and I was a prime witness to that situation
19 and --

20 Q. And let me stop you. Was that -- did that murder occur
21 in the jail? In the prison?

22 A. It occurred in prison on my last incarceration.

23 Q. So when you say you were a witness, you weren't just
24 hanging out at the scene of a murder down in Beaufort
25 County?

1 A. No.

2 Q. Okay.

3 A. No. This is a cold-blooded murder that transpired
4 right in front of my face in a penitentiary.

5 Q. Did you testify in that trial?

6 A. Yes, sir.

7 Q. Okay. And, ultimately, so -- I'm sorry. I sort of
8 broke you up there. So tell -- just go ahead and continue.
9 So what -- what was your understanding when Mr. Springs left
10 when you were supposed to report back?

11 A. Well, I was just under the impression with him that I
12 was going to be facing a year nonviolent is what I was told.
13 He -- his exact words were that all I need to do is he'd
14 call me on an appointed date and I would have bring my
15 toothbrush and those were his exact words. And then, like I
16 said, when Randolph Murdaugh and this got involved, they
17 were trying to try to help me a little bit along the way
18 and, from what I understood, Mr. Springs and them were not
19 trying to hear that, even though I was real pivotal when it
20 comes to that information on that murder trial.

21 Q. Let me stop you. Let me stop you. So you get arrested
22 in June.

23 A. Uh-huh.

24 Q. What time period or first of all, when was the murder
25 trial?

1 A. During the same -- roughly, about a month, month in
2
3 between. Like, I was going to trial for that while this
4 case was ongoing.

5 Q. So the murder trial was going while you had been
6 charged?

7 A. Uh-huh.

8 Q. And at what -- and please answer yes or no.

9 A. Oh. Yes; yes.

10 Q. She can't record a "uh-huh" or "huh-uh."

11 A. Yes, sir.

12 Q. At what point in time -- like, what point in time did
13 -- is it your understanding that the prosecutor, the head
14 solicitor in Beaufort County, reached out to York County?

15 A. Yes, sir.

16 Q. When was that, roughly?

17 A. I'm not sure. I don't know exactly when it transpired,
18 but Randolph Murdaugh himself pulled me aside and told me
19 that he'd been in contact with E.B. Springs and that they
20 were negotiating, apparently trying to get me into the
21 county jail here to where I could just do my time here.

22 Q. And so was that -- when Mr. Springs first met with you
23 down at the detention center in June, early June of 2010,
24 did he mention anything at all about the murder in Ridgeland
25 prison?

1 A. No, sir. No, sir.

2 Q. When Mr. Springs --

3 MR. SHELDON: I beg the Court's indulgence. Never
4 mind, Judge. I'll get back to that later.

5 Q. All right. So at this point in time -- so then you
6 hear from him. At what point in time were you notified that
7 it's time to plea and to bring your toothbrush, as he put
8 it?

9 A. Oh. It was probably a month or so later. Like, the
10 whole -- the whole point was for me to bulk up financially,
11 be able to -- because I had another child who was to be born
12 and carrying things -- the actual birth, everything was to
13 be okay with him.

14 Q. When was that child due?

15 A. He was due December -- December of --

16 Q. When was he born?

17 A. He was actually born December of 2010. I was in here
18 on trial four days after my son was born. All that --
19 everything that of me trying to be there for him to provide
20 financial stability for him and my family, pretty much
21 failed that.

22 Q. So you end up getting a call from Mr. Springs who tells
23 you it's time to go. Is that right?

24 A. Yes, sir.

25 Q. And did you show up for that hearing?

1 A. I did.

2 Q. And did you meet with Mr. Springs before that?

3 A. I met with him at that moment.

4 Q. Where did y'all meet at?

5 A. In his office.

6 Q. In his office at Moss Justice?

7 A. Yes, sir.

8 Q. In the solicitor's office?

9 A. Yes, sir.

10 Q. And what occurred at that meeting?

11 A. I had the mother of my child and my mother with me at
12 that time and --

13 Q. And let me -- and I'm sorry. I hate to interrupt my
14 own question, but just so the Court's aware, so arrested
15 June 7th, June 8th of 2010. Is it -- are we now in middle of
16 August, 2010?

17 A. Yeah, roughly in that area, like my time mentally is
18 not all that great, but I can tell you what happened.

19 Q. Okay. So what happens at that meeting?

20 A. We go into the office, I explained to him that he -- or
21 explains to me that, again, that he can charge me with
22 attempted murder and do away with the ABWIK and that I told
23 him that's fine, but I needed a lawyer. I need a lawyer to
24 push this. I need a lawyer to be present to help me get
25 through this and he says that's fine and when he did that,

1 he withdrew the assault and battery with intent to kill,
2 recharged me and re-indicted me with attempted murder and
3 within seven hours later I was arrested again and then he
4 come at me with the twelve-year offer.

5 Q. When did go before the judge?

6 A. I know we went that same day, because it was to --

7 Q. So the --

8 A. -- it was to get the lawyer.

9 Q. Was it the same day -- so you were supposed to go
10 before a judge and plead guilty?

11 A. Yes, sir.

12 Q. That didn't happen. Right?

13 A. No, sir.

14 Q. Instead, you went before a judge for what purpose?

15 A. For -- I think it was to get a lawyer, saying that I
16 was indigent and I needed a lawyer.

17 Q. So you walked into Mr. Springs' office, rejected the
18 offer and were given a lawyer that day. Is that right?

19 A. I was -- well, I went downstairs to meet the lawyer,
20 like, to go down there and fill out the paperwork and things
21 I needed to do to be able to get one. Yes.

22 Q. And you went before a judge, right, that day?

23 A. It was something dealing with -- I know I went in front
24 of the judge for -- I want to think it was for the attorney.
25 I'm not sure if it was or if wasn't, 'cause I'm getting that

1 day and my -- my LWOP day time confused.

2 Q. At that point in time did you -- so you were served
3 with life without parole notice at some point after that.
4 Right?

5 A. Yes.

6 Q. Were you even charged with any existing statute at that
7 moment?

8 A. All I know I had was assault and battery with intent to
9 kill. When I denied that, he charged me with attempted
10 murder, full force.

11 Q. So at the time that you withdraw and say you want a
12 lawyer, were you even charged with attempted murder?

13 A. No. That was already -- paperwork being ready to file.

14 Q. How can the solicitor -- maybe this is a better
15 question for him. How can he -- how can we be appointing
16 lawyers on things that don't even exist?

17 A. I mean, I'm definitely in prison with a life sentence
18 for it, so --

19 Q. So -- and we're going to get into the mental health
20 stuff, but I just want to make sure we're accurately
21 portraying the picture. You're arrested; within forty-eight
22 hours of that, Mr. Springs come down and offers you a year.

23 A. Yes, sir.

24 Q. Is that right?

25 A. Yes, sir.

1 Q. And you were incarcerated at that time?

2 A. In orange. Yes, sir.

3 Q. You were not free to leave when he came down there?

4 A. No, sir. I wasn't.

5 Q. You say okay and then you're able to get out. Is that
6 right?

7 A. Yes, sir.

8 Q. You say, no, thanks, I want a lawyer and you end up
9 with an attempted murder LWOP?

10 A. Yes, sir.

11 Q. Okay. At any point in time did you have an opportunity
12 to consult with a lawyer prior to rejecting that one year?

13 A. No. There was no time and --

14 Q. Did you tell Mr. Springs that you wanted a lawyer?

15 A. Well, the way he -- you got to keep in mind this guy's
16 the solicitor. This is the district attorney. This is the
17 guy's everybody interested in. If he tells me I don't need
18 a lawyer, then I'm trusting his judgment that I don't need a
19 lawyer.

20 Q. Did he tell you you didn't need a lawyer?

21 A. He told me that we could do this ourselves, we didn't
22 need a lawyer and if he said anything other than that, I
23 would have got one.

24 Q. Let's -- I'm not finished talking about Mr. Springs
25 just yet. At that -- did Mr. Springs at any point in time

1 show you your discovery before offering you a year?

2 A. No, sir.

3 Q. Did he hand you a warrant for attempted murder, saying
4 this is the actual proper charge?

5 A. No, sir.

6 Q. Did he tell you that the officer had screwed up and
7 what you were charged with no longer existed as a statute?

8 A. No, sir. I was told that I was charged wrong and,
9 basically, in my --

10 Q. Were you told that you were charged with something that
11 doesn't exist?

12 A. No. I was told I was charged wrongly. I later found
13 out on my own, after I'd done caught my life sentence and
14 did some studying, that that's what actually transpired.

15 Q. I want to go back. This is obviously a second strike,
16 so you had been to prison before. Is that right?

17 A. Yes, sir.

18 Q. I think it was a homicide by child abuse charge?

19 A. Yes, sir.

20 Q. When were you sentenced to that charge?

21 A. It was July -- I got locked up June 1st of 2000. It
22 was July of 2001 when I actually caught the ten years behind
23 that.

24 Q. So 2001?

25 A. Uh-huh.

1 Q. So you had just -- and please answer yes or no. I know
2 it's hard.

3 A. Yes, sir. Oh. Yes, sir. I apologize. Yes, sir.

4 Q. And so you did I'm guessing about eight and a half on
5 that. Is that right?

6 A. I did a hundred and two months day for day.

7 Q. Okay. And so you end up getting out sometime 2009, two
8 thousand --

9 A. I got out December 31st, 2008.

10 Q. I'm sorry. 2008?

11 A. Yes, sir.

12 Q. Okay. And this happens in June, 2010?

13 A. Yes, sir.

14 Q. Okay. And so what types of -- I want to just -- only
15 talking about your first stint in SCDC,---

16 A. Yes, sir.

17 Q. ---describe for the Court some of the mental health
18 problems that you had over the course of those eight years.

19 A. I've been -- I mean, my mental health goes all the way
20 back to thirteen.

21 Q. We're going to go all the way back, but I specifically
22 want to talk about the time when you were incarcerated the
23 first time.

24 A. I mean, I was -- I was self-mutilating. I was stressed
25 out on a lot of things. I lost my father back there. I

1 lost my son. I lost my grandmother. I was in quite a few
2 riots. I was almost murdered in one and I was witness to
3 another. It was the worse ten years of my life, but as my
4 father would say, I kept my head up and I kept pushing.

5 Q. What types of --

6 A. I survived.

7 Q. What types of mental illness diagnoses have you
8 suffered from?

9 A. I have severe post-traumatic stress disorder, severe
10 depression, --

11 Q. What is that from?

12 A. From my childhood. Very touchy subject, but I was -- I
13 was locked in my room as a child for about two or three
14 years of my life. My mother would feed me and my sister
15 through the door. We communicated through closet walls, so
16 I didn't really have the family life, so to speak, growing
17 up, but it just made me to where I wanted to be alone and
18 away from people, so I stay to myself a lot. A lot of
19 times, even with this incident here, I was at a park where I
20 would just swing 'cause I got locked up at such an early,
21 young age that I didn't get a chance to actually grow and
22 become a man, so all that you see now is what's been
23 developed in prison. I've still not become mature and a man
24 yet.

25 Q. Did you -- and all of that is prior to being in trouble

1 with the legal system. Is that right?

2 A. Yes, sir.

3 Q. I mean, did you grow up with mental health issues?

4 A. Yes, sir.

5 Q. Did you seek treatment? Were you treated for those?

6 A. I was -- I've been given treatment from the State of
7 North Carolina, like, since I was thirteen. I've been a
8 medications, psychotropic medication and receiving anger
9 management courses, classes and everything dealing with
10 that, 'cause I was -- my family said I was an unruly child.
11 I wouldn't listen to anything that they said.

12 Q. What about now? Do you still suffer from mental health
13 issues?

14 A. I'm even worse now. I've -- I've had seven surgeries
15 and five blood transfusions and I've died twice on this bit
16 from self-mutilation. I get so stressed out and it's so
17 sad, that I can't talk to people, so I shut down and I get
18 razor and I cut my stomach open and I remove all my
19 intestines and I cut major arteries and I've suffered from
20 that, but it's a sense of release to keep me from hurting
21 anybody else.

22 Q. Did you -- was the jail aware of the issues that you
23 were having with mental health?

24 A. When I first came in, they were giving me my
25 medications.

1 Q. What type of medication?

2 A. I was -- I came in here with 150 milligram of extended-
3 release of Seroquel and I had a fifteen milligram
4 Mirtazapine, which is also known as Remeron, a fifteen in
5 the morning and thirty at night.

6 Q. Are you still taking those today?

7 A. I am still to this day on both of those.

8 Q. If somebody in the courtroom were testify that anybody
9 can say they're crazy now, but it comes down to what they
10 were like back then, it's just so easy to come in and say
11 you're crazy to get out of prison, would you say that that's
12 what you're doing?

13 A. No. I know that's not what I'm doing.

14 MR. NEUBAUER: Your Honor, I would object. I feel
15 that's a very speculative question that's being asked.

16 THE COURT: Overruled.

17 Q. 'Cause I -- I mean, I heard the prosecutor say it, so
18 we're going to address it and I'll take it up with him.

19 THE COURT: Hold on. Ask the question.

20 Q. Do you think that's fair? Are you just -- are you just
21 now being diagnosed as crazy or as mentally ill? I say
22 crazy, but that's not what I mean. I mean, this is mental
23 illness.

24 A. I mean, going through the physical abuse and the mental
25 abuse that I went through from my father as a child and by

1 being sexually molested from my uncle as a child and for
2 this to transpire for years and me having to live with this
3 and considering the fact that I kept it quiet for thirty
4 years and that now my family has just been made aware of my
5 being molested and they are now pushing me to push issues on
6 that, but I now am dealing with therapy from the street at
7 the Cumbee Center, which is actually I am now the poster
8 child for South Carolina Department of Corrections. So if
9 they feel that if I'm making this up here, then you can deal
10 with them on the street who all -- professionals who deem
11 otherwise.

12 Q. But -- and did you have mental health problems at the
13 time that this was going on?

14 A. I've had mental health issues since I was thirteen.

15 Q. And were those records available at the detention
16 center?

17 A. I don't know.

18 Q. But I mean, did you -- well, let me ask you this: did
19 you make the detention center aware of it?

20 A. I let them know that I was psychotropic medications and
21 they let me get my meds in the county.

22 Q. Did the prosecutor, to the best of your knowledge, talk
23 to you about those medications to make sure that you were
24 given those properly---

25 A. Nobody --

1 Q. ---prior to coming down there without a lawyer?

2 A. Nobody mentioned anything about my medications at all.
3 That's including my lawyers.

4 Q. If somebody would have asked you, would you have
5 answered them?

6 A. Yeah. I'd been glad to. That's very important.

7 Q. How many times did the prosecutor, Mr. Springs, have
8 you evaluated prior to revoking that one-year offer?

9 A. Not a single time.

10 Q. How many times did he ask you if you wanted a mental
11 health evaluation prior to revoking that one-year offer?

12 A. None.

13 Q. How many times did he ask about your mental well-being
14 prior to revoking the one-year offer?

15 A. No one had asked that.

16 Q. But, ultimately, the offer was revoked. Is that right?

17 A. Yes, sir.

18 Q. And the offer was -- is it fair to say that offer was
19 revoked before you ever got to talk to a lawyer?

20 A. Yes, sir.

21 Q. Before you were ever appointed a lawyer. Is that
22 right?

23 A. I did -- yes. Yes, sir.

24 Q. Did that offer come back after Mr. Barrowclough and Mr.
25 Delaney got on the case?

1 A. No, sir.

2 Q. So when Mr. Springs says that you don't need a lawyer,
3 would it be fair to say that it's actually true that if you
4 want a lawyer, I'm going to take this offer away?

5 A. That's the way it looked to me and that's actually how
6 it transpired.

7 Q. Let's move over to the trial. Now, Mr. Barrowclough
8 and Mr. Delaney are here in the courtroom sitting back
9 there. Were those your two lawyers at trial?

10 A. Yes, sir.

11 Q. And how did -- overall, did you communicate with them
12 enough? I mean, was there communication back and forth?

13 A. I mean, I think we did well. I mean, I enjoyed them,
14 you know, they were good guys. I thought they did a
15 excellent job, you know, to the best of their ability, minus
16 the whole -- we just missed the mental health issue. We
17 just missed the major, major issue.

18 Q. Tell me about your conversations about mental health
19 that you had with them.

20 A. I don't recall any.

21 Q. How about at trial? I mean, we've raised the issue of
22 this concept of this charge of accident. Is that right?

23 A. Yes, sir.

24 Q. And that issue's been raised. Was that charged at
25 trial?

1 A. I didn't -- I didn't understand. No, it wasn't. I
2 didn't understand why it wasn't, because my whole theory of
3 defense was based on it being a accident. So if the judge
4 himself was willing to offer an accident jury instruction to
5 the jury himself, why would -- I understand the solicitor
6 not doing it, but why would my team not do it as well, being
7 that my whole theory of defense is based on the theory of
8 accident.

9 Q. Did they explain to you why? Do you have any
10 recollection during trial sort of having that conversation
11 with them?

12 A. The only conversation I remember having about that in
13 the end was with you and that's when you broke down to me
14 about the accidents and what it pertained to, that's when I
15 learned.

16 Q. But overall, would you say that they did a good job
17 communicating trial strategy and things like that?

18 A. Yeah; yeah. I -- yeah. I would say so.

19 Q. Who was lead counsel or were they both kind of the
20 same?

21 A. I don't really know. I just -- I'm not really sure.
22 They kind of bounced back and forth doing, you know -- but
23 --

24 Q. Which one do you like more? B.J. or Erik? No. I'm
25 just kidding.

1 A. B.J. cried with me, man, like, for -- to see B.J. shed
2 tears, being with the background that he has and I knew, you
3 know, coming in that Erik was going to be -- kind of knew
4 Erik, so I knew that he had good backup. I felt comfortable
5 with them guys, but I probably have to say B.J. the most,
6 mostly because he shed tears and he -- I felt like for a
7 brief moment we felt each other's pain.

8 Q. And so -- and going back to this charge of accident or
9 lack thereof, is it fair to say that the whole -- that your
10 primary defense was one of accident?

11 A. Yes, sir.

12 Q. Because it's -- I mean, this stems from a car wreck,
13 right, like, from an accident, from a car accident where you
14 hit somebody's back tire of a Moped?

15 A. Yes, sir.

16 Q. And so it wasn't a situation at trial where you were
17 trying to argue that you weren't there or it was self-
18 defense or anything like that. Right?

19 A. Yes, sir.

20 Q. You needed a defense and it was your understanding that
21 was going to be your defense?

22 A. Yes, sir.

23 Q. What do you think -- had you been given an attorney or
24 had you gotten an attorney, had you chosen to get an
25 attorney at the time of the original arrest, how would

1 things have been different? Like, what do you think
2 transpires differently with the advise of counsel from the
3 get-go?

4 A. I mean, I feel like the way -- the way everything came
5 in, I kind of feel like everything was kind of just kind of
6 rushed in, like, when they come to me going to trial, I feel
7 like it was just rushed in, but regardless of that, I feel
8 like had they known my mental health background and
9 everything that's transpired with my mental health, and they
10 would have gave me a mental health evaluation to make sure
11 that I was mentally stable or unstable to be able to stand
12 trial or not stand trial and nobody did that. I feel like
13 it was just kind of rushed in there and nobody -- just kind
14 of slipped through the cracks somehow or another.

15 Q. You ultimately go to trial on this case in December.
16 Right?

17 A. Uh-huh. Yes, sir.

18 Q. So from June to December is arrest, rejection of the
19 plea, re-arrest, LWOP notice, trial,---

20 A. Life.

21 Q. ---life sentence in, essentially, what amounts to a
22 span of six months?

23 A. Yes, sir.

24 Q. And at no -- you're saying at no point in there did
25 anybody bother researching any of these mental health

1 issues?

2 A. None. Not at all.

3 Q. All these records were there, though. Right?

4 A. Yes, sir. I don't see how -- all them psychotropic
5 medications, they're bringing me my meds everyday to my
6 dorm. If they have knowledge of that and they work here and
7 you work in the same building, why would you not be made
8 aware of that and why would you not have access to that?

9 Q. Describe for the Court sort of your mental state at the
10 time of that first meeting with Mr. Springs as best as you
11 can remember.

12 A. I just came back from the emergency room from telling
13 them people that I had severe insomnia and I had raging
14 outbursts, like I was spazzing out for no reason on anybody.
15 I'd just lost my son. I'd just lost everything that I lost
16 behind all this and just coming back into a new society.
17 I'd been incarcerated for ten years of my life. I don't
18 know how to pay bills. I don't know how to drive a car. I
19 don't know how to do any of that. So I come straight out --
20 and the only reason why I was driving a car that day was to
21 go get gas for a lawnmower to go cut grasses in my
22 neighborhood to be able to pay bills that I was behind on at
23 the time of the death of my son. So I was doing everything
24 one hundred percent correct. I was fighting everything
25 within my power one hundred percent correct and, yeah, I may