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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Georgetown County
Steven H. John, Circuit Court Judge

RONALD COHEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212923

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF
GENERAL SESSIONS

COUNTY OF GEORGETOWN

THE STATE,
PLAINTIFF

VERSUS
RONALD COHENS,
DEFENDANT

TRANSCRIPT OF RECORD
06-GS-22-354, 355

JUNE 27, 28, 29 & 30 2006
GEORGETOWN SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MICHAEL BAXLEY, JUDGE

APPEARANCES:

MATTHEW MODICA, ESQUIRE
DORIE BIOGLANTI, ESQUIRE
ATTORNEYS FOR THE PLAINTIFF

CHARLES DAVID BARR, ESQUIRE
ATTORNEY FOR THE DEFENDANT

PAMELA OZMENT-CARTEE,
COURT REPORTER

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STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

CASE NO.: 2006-GS-22-354

JUDGE: J. MICHAEL BAXLEY

DATE OF TRIAL 6/27/06

THE STATE

V

RONALD COHEN

ATTORNEY: M. MODICA, ESQ.

ATTORNEY: C. D. BARR, ESQ.

STATE'S EXHIBIT NUMBER	DESCRIPTION	ADMITTED	STATE'S EXHIBIT NUMBER	DESCRIPTION	ADMITTED
1	PHOTOGRAPH	06/28/06	26	PHOTOGRAPH	06/29/06
2	PHOTOGRAPH	06/28/06	27	PHOTOGRAPH	06/29/06
3	PHOTOGRAPH	06/28/06	28	PHOTOGRAPH	06/29/06
4	PHOTOGRAPH	06/29/06	29	PHOTOGRAPH	06/29/06
5	PHOTOGRAPH	06/29/06	30	PHOTOGRAPH	06/28/06
6	PHOTOGRAPH	06/29/06	31	PHOTOGRAPH	06/28/06
7	PHOTOGRAPH	06/29/06	32	PHOTOGRAPH	06/29/06
8	PHOTOGRAPH	06/29/06	33	PHOTOGRAPH	06/29/06
9	PHOTOGRAPH	06/29/06	34	PHOTOGRAPH	06/29/06
10	PHOTOGRAPH	06/29/06	35	PHOTOGRAPH	06/29/06
11	PHOTOGRAPH	06/29/06	36	PHOTOGRAPH	06/29/06
12	PHOTOGRAPH	06/28/06	37	PHOTOGRAPH	06/29/06
13	PHOTOGRAPH	06/28/06	38	PHOTOGRAPH	06/29/06
14	PHOTOGRAPH	06/29/06	39	PHOTOGRAPH	06/29/06
15	PHOTOGRAPH	06/29/06	40	PHOTOGRAPH	06/29/06
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17	PHOTOGRAPH	06/29/06	42	PHOTOGRAPH	06/29/06
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19	PHOTOGRAPH	06/29/06	44	PHOTOGRAPH	06/29/06
20	PHOTOGRAPH	06/29/06	45	PHOTOGRAPH	06/29/06
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22	PHOTOGRAPH	06/29/06	47	PHOTOGRAPH	06/29/06
23	PHOTOGRAPH	06/29/06	48	PHOTOGRAPH	06/28/06
24	PHOTOGRAPH	06/29/06	49	PHOTOGRAPH	06/29/06
25	PHOTOGRAPH	06/29/06	50	PHOTOGRAPH	06/29/06

COURT
REPORTER:

Camila Gomez
M. D. Modica

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

CASE #. 2006-GS-22-354

JUDGE: J. MICHAEL BAXLEY

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ATTORNEY: M. MODICA, ESQ.

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53	PHOTOGRAPH	06/29/06	78	PHOTOGRAPH	06/28/06
54	PHOTOGRAPH	06/29/06	79	911 CD	06/28/06
55	PHOTOGRAPH	06/29/06	80	RULE/05-DR-22-718	06/28/06
56	PHOTOGRAPH	06/29/06	81	CELL PHONE	06/28/06
57	PHOTOGRAPH	06/29/06	82	CELL PHONE	06/28/06
58	PHOTOGRAPH	06/29/06	83	MOLDING	06/28/06
59	PHOTOGRAPH	06/29/06	84	BUMPER	06/28/06
60	PHOTOGRAPH	06/29/06	85	#6 CAR PART	06/29/06
61	PHOTOGRAPH	06/29/06	86	#7 CAR PART	06/29/06
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63	PHOTOGRAPH	06/29/06	88	VHS-TAPE	06/29/06
64	PHOTOGRAPH	06/29/06	89	PHOTOGRAPH	06/30/06
65	PHOTOGRAPH	06/29/06	90		
66	PHOTOGRAPH	06/29/06	91		
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COURT
REPORTER:

Patricia G. Gentry Carter

1 THE COURT: ALL RIGHT, MR. MODICA,
2 PLEASE CALL YOUR CASE, SIR.

3 MR. MODICA: YOUR HONOR, AT THIS
4 TIME THE STATE WOULD CALL THE STATE OF SOUTH CAROLINA
5 VERSUS RONALD COHENS. INDICTMENT NUMBERS: 2006-GS-354.
6 ASSAULT AND BATTERY WITH INTENT TO KILL. AND 2006-GS-
7 22-355. FAILURE TO STOP FOR A BLUE LIGHT.

8 THE COURT: AND, MR. BARR, YOU
9 REPRESENT THE DEFENDANT ON THESE TWO CHARGES?

10 MR. BARR: YES, SIR, JUDGE.

11 THE COURT: ALL RIGHT. WELL, GOOD
12 MORNING. AND I UNDERSTAND THAT YOU HAVE A MOTION?
13 LET THE RECORD REFLECT THAT OUR JURORS HAVE REMOVED
14 FROM THE COURTROOM AND THAT THEY ARE NOT PRESENT.
15 PLEASE GO AHEAD.

16 MR. BARR: PLEASE THE COURT, JUDGE.
17 OUR POSITION IS SIMPLY THAT THE OFFENSES FOR WHICH THE
18 DEFENDANT HAS BEEN INDICTED; THAT IS THE OFFENSE OF
19 ASSAULT AND BATTERY WITH INTENT TO KILL, AND THE
20 OFFENSE OF FAILURE TO STOP FOR A BLUE LIGHT AND SIREN
21 ARE SUFFICIENTLY DETACHED FROM EACH OTHER SUCH TO TAKE
22 THE POSITION THAT THE DEFENDANT WOULD BE DENIED DUE
23 PROCESS IF THIS WAS DONE, SO WE WOULD MOVE TO SEVER
24 THE TWO COUNTS OF THE INDICTMENTS.

25 THE COURT: I'LL GIVE YOU AN OPPORTUNITY

1 TO REPLY. I'LL HEAR FROM MR. MODICA AS TO HIS RESPONSE.
2 GO AHEAD, COUNSEL.

3 MR. MODICA: YOUR HONOR, WHAT I'M GOING
4 TO DO IS VERY BRIEFLY TELL YOU ABOUT THE FACTS SO YOU
5 HAVE AN UNDERSTANDING. THIS INCIDENT HAPPENED ON
6 MARCH 23RD OF 2006, SHORTLY AFTER 7:15 A.M. THE VICTIM
7 WAS ON HER WAY TO WORK. THE VICTIM AND DEFENDANT ARE
8 ESTRANGED HUSBAND AND WIFE, BUT THEY STILL LIVED
9 APPROXIMATELY A HALF A MILE FROM EACH OTHER. THE
10 DEFENDANT SAW THE VICTIM TRAVELING TO WORK, BASICALLY
11 FOLLOWED HER THROUGH HIGHWAY 51 PAST THE JAIL, DOWN
12 701 INTO GEORGETOWN, BLACK RIVER ROAD, WHICH GOES BY
13 THE HOSPITAL, LEFT ON 17 HEADED TOWARDS MYRTLE BEACH,
14 ALSO KNOWN AS CHURCH* STREET, HEADED TOWARDS MYRTLE
15 BEACH.

16 AS YOU KNOW, AS YOU GO UP TOWARDS MYRTLE
17 BEACH, THERE'S TWO BIG BRIDGES THAT LEAD OUT OF
18 GEORGETOWN. THE VICTIM, AS SHE WAS BASICALLY TRAVELING
19 OVER THE SECOND BRIDGE GOING DOWN, WAS ON THE MOBILE
20 PHONE WITH HER MOTHER TELLING HER THAT SHE IS BEING
21 FOLLOWED BY THE DEFENDANT. SHE THEN SEES THE VICTIM
22 COMING QUICKLY, SHE CALLS 911 AND REPORTS WHAT'S
23 HAPPENING AND THAT SHE'S BEING STRUCK FROM BEHIND BY
24 THE DEFENDANT. THE DEFENDANT STRIKES HER TWO TIMES
25 FROM BEHIND, STRIKES HER ON THE RIGHT ON HER DRIVER'S

1 SIDE, HIS PASSENGER SIDE, AND THEN ON THE FOURTH TIME HE
2 STRIKES HER, HE STRIKES HER FROM BEHIND, SHE LOSES
3 CONTROL OF THE VEHICLE, GOES OFF THE ROADWAY, FLIPS
4 OVER, AND HER VEHICLE CRASHES.

5 THE INFORMATION BEING CONVEYED TO THE POLICE
6 DEPARTMENT ABOUT A DESCRIPTION OF THE VEHICLE, WHEN
7 THE POLICE ARRIVED, UPON ARRIVAL THEY FIGURE OUT WHO IT
8 IS AND THEY DO A CHECK AND FIGURE OUT WHERE THE
9 DEFENDANT RESIDES. THEY ARE LOOKING FOR HIM AND IN
10 APPROXIMATELY 15 MINUTES OF THIS INCIDENT, 15, 20 MINUTES
11 OF THIS INCIDENT, THE DEFENDANT IS ATTEMPTING TO BE
12 STOPPED BY A MEMBER OF THE SHERIFF'S DEPARTMENT.

13 HE REFUSES TO COMPLY, HE SPEEDS UP, AND
14 EVENTUALLY STOPS AND IS ARRESTED. HE'S ARRESTED IN THE
15 SAME VEHICLE, THAT VEHICLE IS TOWED AND IMPOUNDED. THE
16 STATE WOULD SUBMIT THAT THIS ALL OCCURRED LITERALLY
17 WITHIN MINUTES; THAT THEY'RE LOOKING FOR HIM, AS THE
18 EVENTS ARE GOING ON. AND THAT IN ITSELF IS RELEVANT, BUT
19 IT'S ALSO RELEVANT THAT THE DEFENDANT FAILED TO STOP
20 FOR THE POLICE, AND THAT WOULD ARGUABLY GO TO THE
21 STATE OF MIND THAT HE IS FLEEING THE SCENE OF CAUSING HIS
22 WIFE TO GO OFF THE ROADWAY, KNOCKING HER OFF THE
23 ROADWAY, AND THEREBY WHAT COULD BE AN INDICATION OF
24 THE DEFENDANT'S STATE OF MIND.

25 IN ADDITION, I WOULD OBVIOUSLY INDICATE TO THE

1 COURT THAT THESE INCIDENTS HAPPENED AT THE SAME TIME.
2 THE FACTS OF ONE CASE WOULD BE PRESENTED IN
3 ACCORDANCE WITH THE OTHER, AND THAT FAILURE TO STOP
4 FOR A BLUE LIGHT IS EVIDENCE THAT SUGGESTS WHY THE
5 POLICE WERE LOOKING FOR HIM IN THE FIRST PLACE, OTHERWISE
6 IT DOESN'T MAKE ANY SENSE WHY THE POLICE PULLED HIM
7 OVER BECAUSE AT THE TIME THAT HE WAS GOING, HE WASN'T
8 SPEEDING. HOWEVER, WHEN THE POLICE TURNED AROUND ON
9 HIM HE BEGAN TO SPEED AWAY FROM THEM.

10 SO THE FACTS OF THE ACCIDENT, AS WELL AS THE
11 FAILURE TO STOP FOR THE BLUE LIGHT, MAKES THE FACTS OF
12 THE FAILURE TO STOP FOR THE BLUE LIGHT RELEVANT WITH
13 REGARD TO THE CHARGE OF ASSAULT AND BATTERY WITH
14 INTENT TO KILL. OF COURSE THERE'S ALL THE ARGUMENTS OF
15 JUDICIAL ECONOMY AND THINGS OF THAT NATURE, BUT I THINK
16 I'VE ESTABLISHED A SUFFICIENT NEXUS TO GIVE TO THE COURT
17 A REASON WHY THESE CASES SHOULD BE TRIED TOGETHER.

18 THE COURT: ALL RIGHT. AND NOW,
19 MR. BARR, DO YOU WISH TO REPLY?

20 MR. BARR: YES, SIR, JUDGE. FIRST OF
21 ALL, YOUR HONOR, I DON'T WANT TO PROLONG THESE
22 PROCEEDINGS, BUT I WOULD JUST SIMPLY SUBMIT TO THE COURT
23 THAT WITH RESPECT TO THE POSITION ON THE FACTS, THAT IN
24 THE BACKGROUND LEADING UP TO THE INCIDENT WHICH
25 ALLEGEDLY OCCURRED ON THE OTHER SIDE OF THE WACCAMAW

1 BRIDGE, WE DISAGREE WITH AS FAR AS HOW THE SITUATION
2 CAME ABOUT.

3 STARTING FROM THE VERY BEGINNING IT IS THE
4 DEFENSE'S CONTENTION THAT THE ALLEGED VICTIM ACTUALLY
5 FOLLOWED THE DEFENDANT, NOT HIM HAVING FOLLOWED HER.
6 NOW AS TO WHEN THE POSITIONS CHANGED, THAT WOULD BE
7 AN ISSUE WE REALLY WON'T KNOW A WHOLE LOT ABOUT UNTIL
8 SUCH TIME AS THE TESTIMONY. BUT CLEARLY AS IT RELATES TO
9 HOW THIS SCENARIO CAME ABOUT, OUR POSITION IS OBVIOUSLY
10 DIFFERENT FROM THE FACTS THAT WERE ARTICULATED TO THE
11 COURT BY THE SOLICITOR.

12 NOW COMING UP TO THE BRIDGE, SINCE THIS
13 INCIDENT SUPPOSEDLY OCCURRED RIGHT AROUND THE
14 DEBORDIEU COLONY* ON HIGHWAY 17. JUDGE, WE WOULD
15 SUBMIT THAT AS RELATES TO FAILURE TO STOP FOR A BLUE
16 LIGHT, WHICH ACTUALLY TOOK PLACE, IF YOU TIME IT OUT,
17 ACTUALLY TOOK IN EXCESS OF A HALF AN HOUR - COUNSEL IS
18 SHAKING HIS HEAD - IF YOU TIME IT OUT, THAT'S EXACTLY
19 WHAT IT COMES TO. IT DEPENDS UPON WHERE YOU START, AND
20 OF COURSE I DON'T KNOW EXACTLY WHEN THE POLICE GOT A
21 DESCRIPTION OF THE VEHICLE THAT THEY WERE SUPPOSEDLY
22 LOOKING FOR. IT'S OUR POSITION THAT AS FAR AS THE VEHICLE
23 THAT THEY WERE LOOKING FOR, THAT THEY DID NOT EVEN
24 KNOW THAT UNTIL THEY WENT AND ACTUALLY INVESTIGATED
25 THE ACCIDENT SCENE, WHICH IS WHERE THE VEHICLE MADE

1 CONTACT. IT WAS SUBSEQUENT TO THAT THAT A BOLO* WENT
2 OUT AND THEY STARTED LOOKING FOR THE DEFENDANT. OF
3 COURSE THE DEFENDANT WAS ALMOST AT HOME. NOW HIS
4 HOME IS OVER , AT LEAST GOING FROM HIGHWAY 17 TO THE
5 LOCATION WHERE THEY WERE, JUDGE, YOU ARE TALKING ABOUT
6 AT LEAST 10 MILES. AND AT THE TIME THAT THIS BLUE LIGHT
7 INCIDENT TOOK PLACE, THAT IS WHERE HE WAS.

8 NOW, YOUR HONOR, I WOULD SUBMIT TO THE
9 COURT, FAILURE TO STOP FOR A BLUE LIGHT, THERE IS NO
10 NECESSITY THAT THE JURY, IF YOU WERE TRYING TO INDICT
11 THEM SEPARATELY, NO NECESSITY THAT THE JURY HAVE ANY
12 BACKGROUND INFORMATION CONCERNING WHAT MAY OR MAY
13 NOT HAVE OCCURRED. THERE IS NO RELATIONSHIP BETWEEN
14 THAT AND THE BLUE LIGHT CHARGES ITSELF, THE BLUE LIGHT
15 CHARGE, WHICH TOOK PLACE SOME 10 MILES AWAY, AND AS I
16 SAID, SUBSEQUENT TO THAT, APPARENTLY STEMS FROM THE
17 LEGALITY, IF YOU LOOK AT IT FROM THE STANDPOINT OF
18 LEGALITY, CERTAINLY THEY WOULD HAVE HAD TO HAVE AT
19 LEAST PROBABLE CAUSE AND REALLY WOULDN'T NEED
20 PROBABLE CAUSE JUST TO STOP AND CHECK, BUT THAT'S ALL
21 THEY NEEDED ONCE THEY TURNED ON THE BLUE LIGHT. SO
22 THOSE TWO THINGS OFFICIALLY DETACH FROM EACH OTHER
23 AND WE CERTAINLY DON'T THINK THAT THE PROOF THAT YOU
24 WOULD NEED, SAY FOR INSTANCE, TO ESTABLISH ASSAULT AND
25 BATTERY WITH INTENT TO KILL HAS ANY DIRECT BEARING ON

1 THE BLUE LIGHT CHARGE.

2 YOUR HONOR, IF YOU WERE TO TIE THE TWO THINGS
3 TOGETHER THE DEFENDANT WOULD BE EXTREMELY PREJUDICED
4 BY BRINGING INTO THIS PROCEEDING, THAT IS WITH THIS ONE
5 JURY, AN ISSUE OF HIM -- FOR WHATEVER REASON -- FAILING
6 STOP FOR A BLUE LIGHT AT A TIME AND AT A DISTANCE WHEN
7 THIS WAS SUBSTANTIALLY A WAY, AND UNCONNECTED
8 DIRECTLY OTHER THAN THERE WAS INFORMATION WHICH
9 WOULD HAVE CAUSED THE LAW ENFORCEMENT OFFICER TO
10 LOOK FOR FOR THIS DEFENDANT. OTHER THAN THAT THERE'S
11 NO NEXUS BETWEEN THE TWO THINGS. AND THE PROOF FOR
12 ONE IS CERTAINLY NOT THE PROOF THAT WE WOULD NEED IN
13 THE OTHER CASE.

14 NOW, OF COURSE, THE SOLICITOR MENTIONED THE
15 DEFENDANT'S STATE OF MIND, JUDGE, I DISAGREE. THAT HAS
16 ABSOLUTELY NOTHING TO DO WITH THE - IT MAY VERY WELL BE
17 THAT THAT COULD BE PROOF, BUT THE COMPELLING ISSUE HERE
18 IS WHETHER OR NOT THE DEFENDANT CAN GET A FAIR TRIAL IF
19 YOU TRY THE TWO THINGS TOGETHER, AND WE DON'T BELIEVE
20 HE CAN.

21 THE COURT: ALL RIGHT, THANK YOU
22 VERY MUCH.

23 MR. MODICA: YOUR HONOR, IF I MAY
24 CITE THE CASE, STATE VERSUS SIMMONS, 573 S.E. 2ND, 856,
25 COURT OF APPEALS 2002 WHERE IT TALKS ABOUT RES JESTAE,

1 AND CONSOLIDATING CASES. IN ADDITION HE ALREADY HAS HIS
2 DISCOVERY, THE CAD* SHEET, WHICH WOULD GIVE YOU A TIME
3 FRAME. IF I COULD HAND THAT UP TO THE COURT, IT TALKS
4 ABOUT THE CALL GOING OUT AT 7:21, AND THEY WERE
5 ALREADY PURSUING HIM AT 7:37 OR 7:38 WHICH IS 15 OR 16
6 MINUTES AFTERWARDS.

7 THE COURT: ALL RIGHT. THANK YOU.

8 MR. BARR: IS THIS TESTIMONY THAT
9 HE'S SUBMITTING, OR WHAT?

10 THE COURT: DO YOU WISH TO LOOK
11 AT IT, SIR?

12 MR. BARR: YES, SIR.

13 THE COURT: COULD I SEE THE CASE
14 THAT YOU WERE CITING, PLEASE?

15 MR. MODICA: YOUR HONOR, I DON'T
16 HAVE IT WITH ME. IT'S WITHIN OUR PROSECUTOR'S DESKBOOK
17 THAT WE HAVE GIVEN PREVIOUSLY TO THE COURT. BUT I DON'T
18 HAVE IT WITH ME, I APOLOGIZE.

19 THE COURT: DO YOU HAVE A SYNOPSIS
20 OF IT?

21 MR. MODICA: YOUR HONOR, IT
22 INDICATES THAT A DEFENDANT'S ACT OF BURGLARIZING A FIRST
23 HOME IS INEXTRICABLY INTERTWINED, IN ATTEMPT TO EVADE
24 THE SECOND HOMEOWNER WHO GAVE CHASE AND SUBSEQUENT
25 CAPTURE BY THE POLICE. SO YOU CAN TELL THE FACTS THAT

1 ARE CLOSELY RELATED AND INDICATIVE OF RES JESTAE AND
2 CONTINUING ACT OF THOSE THINGS.

3 MR. BARR: JUDGE, IF I MIGHT, AND I'M
4 NOT GOING TO BELABOR THIS, BUT I NOTICED THAT THE
5 SOLICITOR INDICATES IN THAT PARTICULAR CASE, AND HE CITES
6 THAT THE FACTS ARE INEXTRICABLY INTERTWINED. AND I'M
7 TRYING TO FIGURE OUT WHAT IT IS ABOUT THIS BLUE LIGHT
8 CHARGE THAT MAKES IT INEXTRICABLY INTERTWINED. BECAUSE
9 ONCE THE BLUE LIGHT AND SIREN WAS APPLIED, THEN QUITE
10 FRANKLY WHATEVER TRANSPIRED AS IT RELATES TO HIS
11 FAILURE TO OBEY, WHICH IS WHAT THE ESSENCE OF THAT
12 OFFENSE IS, THAT HAS NOTHING ABSOLUTELY BY WAY OF
13 PROOF TO DO WITH WHAT TOOK PLACE AT A PRIOR TIME.

14 THE COURT: ALL RIGHT. THE COURT IS
15 GOING TO STEP DOWN FOR A MOMENT AND CONSIDER THIS. WE
16 WILL STEP DOWN FOR APPROXIMATELY 10 MINUTES AND THE
17 COURT WILL BE BACK TO RENDER THE DECISION AND CHOOSE A
18 JURY IN THE CASE OR CASES. THE DEFENDANTS, AND THOSE
19 WITH DEFENDANTS, IF YOU WISH TO TAKE A BREAK AT THIS
20 TIME YOU MAY.

21 (AT THIS TIME THERE WAS A SHORT BREAK)

22 THE COURT: ALL RIGHT, PLEASE BE
23 SEATED, THANK YOU. NOW, MR. MODICA, PLEASE CALL YOUR
24 SECOND CASE FOR TRIAL.

25 MR. MODICA: AT THIS TIME THE STATE

1 WOULD CALL THE STATE OF SOUTH CAROLINA VERSUS RONALD
2 COHENS. UNDER INDICTMENT 2006-GS-22-354. CHARGED WITH
3 ASSAULT AND BATTERY WITH INTENT TO KILL. AND 2006-GS-
4 22-355. FAILURE TO STOP FOR A BLUE LIGHT.

5 THE COURT: AND, MR. BARR, ARE YOU
6 REPRESENTING MR. COHENS WITH REGARD TO BOTH OF THESE
7 CHARGES?

8 MR. BARR: YES, SIR, WITH REGARD TO
9 BOTH THOSE CHARGES.

10 THE COURT: ALL RIGHT. AND HOW
11 DOES THE DEFENDANT PLEAD TO THE CHARGES?

12 MR. BARR: PLEADS NOT GUILTY.

13 THE COURT: ALL RIGHT, THEN THE
14 ISSUES ARE JOINED AND THIS MATTER IS FOR TRIAL. LADIES
15 AND GENTLEMEN, WE ARE NOW GOING TO CHOOSE A JURY IN
16 THE CASE OF THE STATE VERSUS RONALD COHENS. YOU HEARD
17 THE CHARGES, YOU HEARD THE PLEA OF NOT GUILTY, AND WE
18 ARE GOING TO CHOOSE THE JURY FOR A TRIAL THAT WILL BEGIN
19 LATER THIS WEEK, OBVIOUSLY WE WILL NOT BEGIN THIS TODAY.

20 NOW WE WILL LET THE SOLICITOR BEGIN BY
21 INTRODUCING HIMSELF AND THOSE WHO WILL BE PARTICIPATING
22 WITH HIM AT TRIAL, AS WELL AS THE ALLEGED VICTIM IN THE
23 CASE.

24 MR. MODICA: THANK YOU, YOUR
25 HONOR. GOOD MORNING. ONCE AGAIN, I'M ASSISTANT

1 SOLICITOR, MATTHEW MODICA. DURING THE COURSE OF THIS
2 TRIAL, DORIE BIOGLANTI, ALSO A ASSISTANT SOLICITOR WILL BE
3 HELPING ME. THIS IS INVESTIGATOR MICHAEL THACKER OF THE
4 GEORGETOWN COUNTY SHERIFF'S OFFICE. THIS IS MY LEAD
5 ASSISTANT, CONNIE PRESSLEY*. SITTING OVER THERE IS NADINE
6 COHENS, THE VICTIM IN THIS CASE. THANK YOU. JUDGE.

7 THE COURT: THANK YOU. ALL RIGHT,
8 IS THERE ANY MEMBER OF THIS JURY PANEL RELATED TO MR.
9 MODICA WHO INTRODUCED HIMSELF, BY BLOOD OR MARRIAGE,
10 OR RELATED TO ANY OF THE OTHER EMPLOYEES OF THE
11 SOLICITOR'S OFFICE WHO WERE INTRODUCED, OR TO OFFICE
12 THACKER, WHO WAS INTRODUCED, OR HAVE SOME CLOSE
13 BUSINESS, PROFESSIONAL OR SOCIAL CONNECTION TO ANY OF
14 THEM? IF THAT APPLIES TO YOU, PLEASE STAND.

15 (AT THIS TIME A JUROR STANDS)

16 THE COURT: ALL RIGHT, MA'AM,
17 PLEASE TELL ME YOUR NAME.

18 THE JUROR: LANE CROSBY, JUROR 125.
19 AND I DON'T KNOW ANY OF THESE PEOPLE, BUT MY SISTER-IN-
20 LAW DID USED TO WORK IN THE SOLICITOR'S OFFICE.

21 THE COURT: TELL ME, HOW LONG AGO
22 HAS THAT BEEN?

23 THE JUROR: SHE LEFT TO STAY HOME
24 WITH HER BOYS.

25 THE COURT: IS THAT ELYSE* CROSBY

1 WHO WAS A PROSECUTOR?

2 THE JUROR: YES.

3 THE COURT: I'LL ASK YOU MA'AM,
4 WOULD THE FACT THAT MRS. CROSBY WAS PREVIOUSLY
5 EMPLOYED, MAYBE TWO OR THREE YEARS AGO WITH THE
6 SOLICITOR'S OFFICE, WOULD THAT PREVENT YOU FROM GIVING A
7 FAIR AND IMPARTIAL TRIAL IN THIS CASE IF YOU'RE CALLED AS A
8 JUROR?

9 THE JUROR: NO, SIR.

10 THE COURT: THEN I FIND THAT YOU'RE
11 QUALIFIED, MRS. CROSBY. THANK YOU.

12 (AT THIS TIME ANOTHER JUROR STANDS.)

13 THE COURT: AND YES, SIR?

14 THE JUROR: ONE SOLICITOR IS A
15 PATIENT OF MINE IN MY DENTAL PRACTICE.

16 THE COURT: AND, DOCTOR, PLEASE
17 GIVE US YOUR NAME, AGAIN.

18 THE JUROR: DR. JOSEPH.

19 THE COURT: WOULD THAT, IN YOUR
20 OPINION, PREVENT YOU FROM GIVING A FAIR AND IMPARTIAL
21 TRIAL WITH YOUR PROFESSIONAL CONNECTION TO ONE OF THE
22 SOLICITORS?

23 THE JUROR: NO.

24 THE COURT: ALL RIGHT, THEN I FIND
25 THAT YOU'RE QUALIFIED BY YOUR RESPONSE. THANK YOU. OF

1 COURSE, THIS IS A SEPARATE MATTER OUR RECORD IN THE
2 OTHER CASE WOULD SHOW. I BELIEVE - ARE YOU A PRACTICING
3 DENTIST, DR. JOSEPH?

4 THE JUROR: YES.

5 THE COURT: AND YOU ARE A TREATING
6 DENTIST FOR ONE OF THE SOLICITORS, ALL RIGHT. THANK YOU.

7 (AT THIS TIME A JUROR STANDS.)

8 THE COURT: AND MA'AM, PLEASE TELL
9 ME YOUR NAME.

10 THE JUROR: I'M ANITA WEAVER, 194,
11 MY HUSBAND'S ASSISTANT SHERIFF, CARTER WEAVER.

12 THE COURT: AND, MRS. WEAVER, DO
13 YOU BELIEVE THAT WOULD PREVENT YOU FROM GIVING A FAIR
14 AND IMPARTIAL TRIAL IN THIS CASE?

15 THE JUROR: YES, SIR, I DO.

16 THE COURT: AND I WANT TO ASK IT
17 ANOTHER WAY TO YOU; DO YOU BELIEVE THAT YOU WOULD BE
18 UNABLE TO LISTEN TO THE EVIDENCE AND THE WITNESSES HERE
19 AND RENDER YOUR DECISION BASED SOLELY ON THE EVIDENCE
20 AND WITNESSES IN THE CASE AND PUT ANY OTHER INFLUENCES
21 OUT OF YOUR MIND; DO YOU THINK YOU'D BE UNABLE TO DO
22 THAT?

23 THE JUROR: I THINK I'D BE UNABLE TO.

24 THE COURT: WELL, THEN BASED ON
25 THAT I'M GOING TO SET YOU ASIDE IN THIS CASE. PLEASE BE

1 SEATED WITH US BECAUSE OUR CLERK HAS SOME INSTRUCTIONS
2 ABOUT A CIVIL MATTER THAT WILL BE COMING UP SHORTLY.
3 WE WILL REMOVE YOUR NAME FROM THIS JURY, WE THANK YOU
4 FOR YOUR CANDOR. ANYONE ELSE NOW TO RESPOND TO THE
5 QUESTIONS ABOUT THE SOLICITOR'S OFFICE AND PROSECUTING
6 OFFICERS? (NO RESPONSE)

7 ALL RIGHT, THEN SWITCHING NOW TO THE DEFENSE
8 SIDE, MR. BARR, IF YOU WOULD INTRODUCE YOURSELF AND YOUR
9 CLIENT, PLEASE, TO THE JURY.

10 MR. BARR: LADIES AND GENTLEMEN,
11 I'M CHARLES DAVID BARR. I PRACTICE LAW IN KINGSTREE. I
12 PRACTICE WITH MY BROTHER, VERDELL, AND WE PRACTICE IN A
13 FIRM KNOWN AS BARR & BARR. OUR OFFICE IS LOCATED AT 319
14 WEST MAIN STREET. AND I'M HERE TODAY REPRESENTING THE
15 PERSON KNOWN AS THE DEFENDANT IN THIS CASE, MR. RODNEY
16 COHENS, SEATED RIGHT HERE. STAND UP, RODNEY.

17 THE COURT: THANK YOU, AND YOU
18 MAY BE SEATED. I WANT TO FIRST ASK ABOUT COUNSEL,
19 LADIES AND GENTLEMEN. MR. BARR INTRODUCED HIMSELF TO
20 YOU, TOLD YOU HE WAS PRACTICING IN KINGSTREE. I WANT TO
21 ASK YOU IF THERE IS ANY JURY MEMBER RELATED BY BLOOD OR
22 MARRIAGE TO HIM OR HAVE SOME CLOSE BUSINESS,
23 PROFESSIONAL, OR SOCIAL CONNECTION TO HIM, OR EITHER
24 NOW OR IN THE PAST BEEN A CLIENT OF EITHER OF THE
25 ATTORNEYS IN THE BARR AND BARR LAW FIRM OF KINGSTREE. IF

1 THAT APPLIES TO YOU, PLEASE STAND.

2 (AT THIS TIME A JUROR STANDS.)

3 THE COURT: SIR, PLEASE TELL ME YOUR
4 NAME.

5 THE JUROR: JOHN DAVILLA, JUROR NUMBER
6 128, I'M A CHIROPRACTOR, I HAVE AN OFFICE HERE IN
7 GEORGETOWN AND KINGSTREE. I HAVE HAD A CASE WITH MR.
8 BARR IN THE PAST.

9 THE COURT: AND HAVING THAT
10 PROFESSIONAL RELATIONSHIP TO THE BARR ATTORNEYS WOULD
11 THAT PREVENT YOU FROM GIVING A FAIR AND IMPARTIAL TRIAL
12 HERE, IN YOUR OPINION?

13 THE JUROR: NO, SIR.

14 THE COURT: ALL RIGHT, I FIND HE'S
15 QUALIFIED BY HIS RESPONSE. ALL RIGHT, ANYONE ELSE WHO
16 WOULD RESPOND TO THAT? ALL RIGHT, HEARING NONE, I ASK
17 YOU NOW IF THERE'S ANY MEMBER OF THE JURY PANEL RELATED
18 BY BLOOD OR MARRIAGE OR HAVE ANY KIND OF A BUSINESS,
19 PROFESSIONAL, OR SOCIAL CONNECTION TO, OR EVEN BELIEVES
20 THAT YOU MAY KNOW THE DEFENDANT WHO WAS INTRODUCED
21 TO YOU, MR. RONALD COHENS. IF THAT APPLIES TO YOU,
22 PLEASE STAND. LET'S LET THE RECORD REFLECT NO ONE HAS
23 STOOD.

24 AND NOW SWITCHING BACK TO THE PROSECUTION
25 SIDE. EARLIER IN THE CASE YOU WERE INTRODUCED TO THE

1 ALLEGED VICTIM. AGAIN, I USE THE WORD "ALLEGED" BECAUSE
2 IT'S FOR THE JURY TO DETERMINE WHAT'S HAPPENED HERE, TO
3 MRS. NADINE COHENS WHO IS SEATED AT THE FRONT OF THE
4 COURTROOM. MRS. COHENS, WOULD YOU STAND AGAIN,
5 PLEASE? THANK YOU, AND YOU MAY BE SEATED, MA'AM.
6 I ASK YOU NOW, LADIES AND GENTLEMEN, IF THERE'S ANY
7 MEMBER OF THIS JURY PANEL RELATED BY BLOOD OR MARRIAGE,
8 HAVE ANY BUSINESS OR PROFESSIONAL CONNECTION TO, OR
9 THINK YOU MAY EVEN KNOW MRS. NADINE COHENS. IF THAT
10 APPLIES TO YOU, PLEASE STAND.

11 (AT THIS TIME A JUROR STANDS.)

12 THE COURT: ALL RIGHT, MA'AM,
13 PLEASE TELL ME YOUR NAME.

14 THE JUROR: CARMEN FRANKLIN,
15 I'M JUROR NUMBER 30. I KNEW THEM WHEN WE WERE
16 NEIGHBORS.

17 THE COURT: NOW WOULD THE FACT
18 THAT YOU KNOW BOTH THE PARTIES OF INTEREST IN THE CASE,
19 WOULD THAT PREVENT YOU, IN YOUR OPINION FROM GIVING A
20 FAIR AND IMPARTIAL TRIAL IN THIS CASE?

21 THE JUROR: NO, SIR.

22 THE COURT: MA'AM, WOULD THAT PUT
23 YOU IN A DIFFICULT POSITION TO SERVE AS A JUROR IN THIS
24 CASE?

25 THE JUROR: NO.

1 THE COURT: IN YOUR OPINION, DO YOU
2 BELIEVE IT WOULD PUT YOU IN A DIFFICULT OR COMPROMISED
3 POSITION KNOWING THAT YOU ARE NEIGHBORS AND LIVING IN
4 THE COMMUNITY WITH THE DEFENDANTS?

5 THE JUROR: YES, SIR.

6 THE COURT: AND YOU BELIEVE THAT
7 THAT MIGHT COMPROMISE YOU SOMEHOW AS A JUROR?

8 THE JUROR: YES, SIR.

9 THE COURT: WELL, LET'S DO THIS
10 MA'AM, BASED ON WHAT YOU'VE TOLD ME, I'M GOING TO
11 RELEASE YOU AS A JUROR IN THIS CASE. WE WILL REMOVE
12 YOUR NAME FROM THE JURY PANEL SINCE YOU KNOW BOTH OF
13 THE PARTIES. AND YOU DON'T NEED TO RESPOND ANY
14 FURTHER, BUT PLEASE REMAIN WITH US, IF YOU WILL.

15 THE JUROR: THANK YOU.

16 THE COURT: THANK YOU. ANYONE
17 ELSE WHO'D RESPOND ABOUT KNOWING OR HAVING SOME
18 CONNECTION TO MRS. NADINE COHENS? (NO RESPONSE)

19 THE COURT: ALL RIGHT. AGAIN, AS I
20 SAID TO YOU PREVIOUSLY, WE ARE KEEPING A SEPARATE
21 RECORD IN THIS CASE AND I WANT TO SAY TO YOU, AGAIN, SO
22 EVERYONE WILL UNDERSTAND; I HAVE IN MY HAND THE
23 INDICTMENTS IN THIS CASE. THERE ARE ACTUALLY TWO
24 SEPARATE CHARGES THAT HAVE BEEN COMBINED FOR TRIAL.
25 AND THESE INDICTMENTS ARE SIMPLY A DOCUMENT BY WHICH

1 THE SOLICITOR COMMENCES A PROSECUTION AGAINST AN
2 INDIVIDUAL. AND THEY ARE ALLEGATIONS, THEY'RE NOT TO BE
3 ACCEPTED AS FACT OR THE TRUTH OF THE MATTER, THEY'RE
4 NOT EVIDENCE IN THE CASE. THE EVIDENCE IN THE CASE WILL
5 BE WHAT THE WITNESSES SAY AND WHAT THE EXHIBITS IN THE
6 CASE SHOW. BUT THE ALLEGATIONS, AGAIN, WHICH HAVE BEEN
7 DENIED BY THE DEFENDANT, BECAUSE YOU HEARD HIS PLEA OF
8 NOT GUILTY HERE IN OPEN COURT, BUT EVEN IF HE ENTERED NO
9 PLEA, THE DEFENDANT IS PRESUMED INNOCENT HERE BECAUSE
10 THE BURDEN IS ON THE STATE AT ALL TIMES TO PROVE THESE
11 CHARGES.

12 BUT THE ALLEGATIONS STATE AS FOLLOWS; FOR THE
13 FAILURE TO STOP FOR A BLUE LIGHT CHARGE, THAT IN
14 GEORGETOWN COUNTY ON OR ABOUT MARCH 23RD, 2006, THAT
15 RONALD COHENS WHILE OPERATING A MOTOR VEHICLE ON A
16 ROAD, STREET, OR HIGHWAY IN THE STATE OF SOUTH CAROLINA
17 DID FAIL TO STOP HIS MOTOR VEHICLE WHEN SIGNALLED TO DO
18 SO BY A LAW ENFORCEMENT VEHICLE BY MEANS OF A SILENT OR
19 FLASHING LIGHT IN VIOLATION OF SOUTH CAROLINA LAW.

20 AND THE INDICTMENT FOR ASSAULT AND BATTERY
21 WITH INTENT TO KILL STATES - ALLEGES - AS FOLLOWS; THAT
22 ON THE SAME DATE IN GEORGETOWN COUNTY, RONALD COHENS
23 DID, MARCH 23RD, 2006 FELONIOUSLY AND WITH MALICE OF
24 FORETHOUGHT COMMIT AN ASSAULT AND BATTERY UPON THE
25 VICTIM, NADINE COHENS WITH THE INTENT TO KILL THE VICTIM;

1 TO WIT, RAMMING HIS VEHICLE INTO THE VICTIMS VEHICLE
2 WHILE THE VEHICLES WERE IN MOTION, CAUSING THE VICTIMS
3 VEHICLE TO WRECK INTO TREES AND OVERTURN RESULTING IN
4 THE VICTIM HAVING TO SEEK MEDICAL ATTENTION, ALL IN
5 VIOLATION OF SOUTH CAROLINA LAW. THESE ARE THE
6 ALLEGATIONS IN THE INDICTMENT WHICH ARE DENIED BY THE
7 DEFENDANT.

8 I TELL YOU THIS TO ASK YOU THIS; IS THERE ANY
9 MEMBER OF THIS JURY PANEL WHO HAS ANY KNOWLEDGE
10 ABOUT THIS INCIDENT FROM WHATEVER SOURCE, OR ANYBODY
11 THAT KNOWS ANYTHING ABOUT THIS CASE. IF THAT APPLIES
12 TO YOU, PLEASE STAND.

13 (NO RESPONSE FROM THE JURORS)

14 THE COURT: LET THE RECORD REFLECT THAT
15 NO ONE HAS STOOD IN RESPONSE TO THE COURT'S QUESTION.
16 LADIES AND GENTLEMEN, I ASKED YOU THIS QUESTION EARLIER,
17 BUT SOME COUNSEL WERE NOT PRESENT. WELL, ACTUALLY,
18 BEFORE I ASK ANY FURTHER QUESTIONS, MR. MODICA, I'M GOING
19 TO ASK YOU IF YOU WOULD PUBLISH THE NAMES OF POTENTIAL
20 WITNESSES WHO MAY APPEAR FOR THE STATE.

21 MR. MODICA: AS THE COURT INDICATED,
22 THESE MAY BE POTENTIAL WITNESSES DURING THE COURSE OF
23 THIS TRIAL; THEY INCLUDE INVESTIGATOR MICHAEL THACKER,
24 INVESTIGATOR DUSTIN MORRIS, DEPUTY ELI LEONARD, DEPUTY
25 JARED BARDON, CORPORAL BRIAN MCKAY, DEPUTY STEVE

1 SMITH. ALL THOSE ARE MEMBERS OF THE SHERIFF'S
2 DEPARTMENT. ADRIAN DUNMORE IS A MEMBER OF 911 FOR THE
3 COUNTY COMMUNICATIONS. NADINE COHENS, RONNIE LEWIS,
4 KEVIN JOYE, JOYCE PHILLIPS FROM THE SHERIFF'S DEPARTMENT,
5 FREDDIE KINLOCH, AND JENNIFER STONER OF SLED, THE STATE
6 LAW ENFORCEMENT DIVISION.

7 THE COURT: ALL RIGHT. YOU HAVE HEARD
8 THE NAMES OF POTENTIAL WITNESSES FOR THE STATE, AND I
9 ASK YOU, LADIES AND GENTLEMEN, IS ANYBODY RELATED BY
10 BLOOD OR MARRIAGE TO ANY OF THESE INDIVIDUALS OR HAVE
11 SOME CLOSE BUSINESS, PROFESSIONAL, OR SOCIAL
12 CONNECTION TO THEM? IF THAT APPLIES TO YOU, PLEASE
13 STAND. PLEASE LET THE RECORD REFLECT THAT NO ONE HAS
14 STOOD IN RESPONSE TO THE COURT'S QUESTION.

15 ALL RIGHT, I WILL ASK YOU NOW, LADIES AND
16 GENTLEMAN, DOES ANY MEMBER OF THIS JURY PANEL HAVE A
17 MEMBER OF YOUR IMMEDIATE FAMILY WHO IS PRESENTLY
18 EMPLOYED IN LAW ENFORCEMENT? AND WHEN I SAY LAW
19 ENFORCEMENT, I'M TALKING FEDERAL OR LOCAL LAW
20 ENFORCEMENT AND THAT WOULD INCLUDE THE PROBATION,
21 PARDON, AND PAROLE DEPARTMENT IN THAT, ALSO. IF THAT
22 APPLIES TO YOU, PLEASE STAND. IF YOU HAVE AN IMMEDIATE
23 FAMILY MEMBER WHO IS SO EMPLOYED, PLEASE STAND. LET'S
24 LET THE RECORD REFLECT THAT NO ONE HAS STOOD IN
25 RESPONSE TO THE COURT'S QUESTIONS.

1 THE MEMBERS OF THE PANEL, OF COURSE, WERE
2 HERE FOR A PREVIOUS JURY DRAW AND A SERIES OF QUESTIONS
3 WERE ASKED IN THAT JURY DRAW. IS THERE ANYTHING
4 FURTHER NOW FOR JURY QUALIFICATIONS IN THIS CASE FROM
5 THE STATE?

6 MR. MODICA: ONE MOMENT, YOUR
7 HONOR. THE STATE WOULD ADD SIX AND SEVEN FOR OUR VOIR
8 DIRE.

9 THE COURT: ALL RIGHT, AND IS THERE
10 ANYTHING FURTHER FROM THE DEFENSE WITH REGARD TO JURY
11 QUALIFICATIONS?

12 MR. BARR: WE HAVE NO OBJECTION TO
13 SEVEN, WE OPPOSE SIX.

14 THE COURT: ALL RIGHT, I AM GOING TO
15 ASK THE QUESTIONS IN COMBINED FASHION. LADIES AND
16 GENTLEMEN, OF COURSE, THE SOLICITOR AND LAW
17 ENFORCEMENT PERSONNEL WORK TOGETHER, MEANING THAT
18 ONE IS IN APPREHENSION AND ONE IS IN PROSECUTION. I ASK
19 YOU IF THERE'S ANY MEMBER OF THIS JURY PANEL THAT EITHER
20 YOU AS A JUROR OR A MEMBER OF YOUR IMMEDIATE FAMILY TO
21 YOUR KNOWLEDGE HAS HAD SOME TYPE OF ENCOUNTER WITH
22 LAW ENFORCEMENT OR THE SOLICITOR'S OFFICE WHICH MIGHT
23 MAKE IT DIFFICULT FOR YOU TO SERVE AS A JUROR IN THIS
24 COURT AND IN THIS CASE. IF THAT APPLIES TO YOU, PLEASE
25 STAND. I WILL ASK YOU WHETHER THAT COULD BE EITHER A

1 NEGATIVE OR A POSITIVE ENCOUNTER WITH EITHER LAW
2 ENFORCEMENT OR THE SOLICITOR'S OFFICE THAT YOU BELIEVE
3 MAY MAKE YOU AN INAPPROPRIATE JUROR IN THIS CASE. IF SO,
4 PLEASE STAND. ALL RIGHT, LET THE RECORD REFLECT NO ONE
5 HAS STOOD.

6 AND NOW I ASK, LADIES AND GENTLEMEN - AND WE
7 KNOW NOTHING ABOUT THIS CASE, BUT BASED UPON WHAT
8 YOU'VE HEARD, IS THERE ANY MEMBER OF THIS JURY PANEL
9 WHO BELIEVES THAT THEY WOULD NOT BE AN APPROPRIATE
10 JUROR FOR THIS CASE? IF THAT APPLIES TO YOU, PLEASE
11 STAND. AND LET'S LET THE RECORD REFLECT THAT THERE IS
12 NO RESPONSE FROM THE JURY PANEL. THEREFORE, THE COURT
13 IS READY TO PROCEED. ANYTHING FURTHER FROM THE
14 SOLICITOR'S OFFICE?

15 MR. MODICA: NO, THANK YOU, YOUR
16 HONOR.

17 MR. BARR: NO SIR, JUDGE.

18 THE COURT: HOW MANY STRIKES ARE CLAIMED BY
19 THE DEFENSE IN THIS CASE? DEFENSE HAS FIVE STRIKES,
20 COUNSEL?

21 MR. BARR: I THOUGHT WE HAD 10.

22 THE COURT: WHAT SAYS THE STATE?

23 MR. MODICA: I BELIEVE IT'S FIVE AND
24 FIVE, YOUR HONOR.

25 THE COURT: ALL RIGHT, MR.

1 BARR, LET'S TAKE A LOOK AT THAT, JUST A MOMENT PLEASE.
2 ALL RIGHT, MR. BARR, OF COURSE, THE COURT IS AWARE THAT
3 THE ASSAULT AND BATTERY WITH INTENT TO KILL CHARGE
4 DOES NOT QUALIFY FOR 10 STRIKES, AND THEREFORE STRIKES
5 WOULD BE FIVE AND FIVE.

6 MR. BARR: ALL RIGHT, SIR.

7 THE COURT: ALL RIGHT, LADIES AND
8 GENTLEMEN, I'M GOING TO ALLOW THE LAWYERS, IF YOU WISH
9 TO TURN YOUR BACK TO ME, I'M GOING TO LET THE JURORS
10 JUST STAND WHERE THEY ARE RATHER THAN COME FORWARD
11 AND STAND BEFORE THE COURT. STRIKES WOULD BE FIVE AND
12 FIVE WITH THE STATE STRIKING FIRST IN EACH CASE. AND ARE
13 YOU READY, MADAME CLERK?

14 THE CLERK: YES, YOUR HONOR.

15 THE COURT: THEN PLEASE BEGIN.

16 THE CLERK: JUROR NUMBER 34, WHAT
17 SAYS THE STATE?

18 MR. MODICA: PLEASE PRESENT MR.
19 GAINNEY.

20 THE CLERK: WHAT SAYS THE
21 DEFENSE?

22 MR. BARR: SEAT THE JUROR, PLEASE.

23 THE CLERK: JUROR NUMBER 78, MOSES
24 MYERS. WHAT SAYS THE STATE?

25 MR. MODICA: PLEASE EXCUSE MR.

1	MYERS.	
2		THE CLERK: JUROR NUMBER 175,
3	RONALD POPE. WHAT SAYS THE STATE?	
4		MR. MODICA: PLEASE EXCUSE MR.
5	POPE.	
6		THE CLERK: JUROR NUMBER 198, HOYT
7	WILLIAMS,* III. WHAT SAYS THE STATE?	
8		MR. MODICA: PLEASE PRESENT MR.
9	WILLIAMS.	
10		THE CLERK: WHAT SAYS THE
11	DEFENSE?	
12		MR. BARR: PLEASE SEAT THE JUROR.
13		THE CLERK: JUROR NUMBER 15,
14	DWAUN COCHRAN. WHAT SAYS THE STATE?	
15		MR. MODICA: PLEASE PRESENT MRS.
16	COCHRAN.	
17		THE CLERK: WHAT SAYS THE
18	DEFENSE?	
19		MR. BARR: SWEAR THE JUROR, PLEASE.
20		THE CLERK: JUROR NUMBER 64,
21	KAREN LICCIARDELLO. WHAT SAYS THE STATE?	
22		MR. MODICA: PLEASE PRESENT MRS.
23	LICCIARDELLO.*	
24		THE CLERK: WHAT SAYS THE
25	DEFENSE?	

1 MR. BARR: PLEASE EXCUSE THE JUROR
2 FOR THE TRIAL OF THIS CASE.
3 THE COURT: YOU MAY BE SEATED,
4 YOU ARE EXCUSED, MA'AM, THANK YOU FOR YOUR SERVICE.
5 THE CLERK: JUROR NUMBER 45, MARY
6 HARRELSON. WHAT SAYS THE STATE?
7 MR. MODICA: PLEASE PRESENT MRS.
8 HARRELSON.
9 THE CLERK: WHAT SAYS THE
10 DEFENSE?
11 MR. BARR: PLEASE EXCUSE THE JUROR.
12 THE CLERK: JUROR NUMBER 142,
13 DEBORAH HAZEL, WHAT SAYS THE STATE?
14 MR. MODICA: PLEASE PRESENT MRS.
15 HAZEL.
16 THE CLERK: WHAT SAYS THE
17 DEFENSE?
18 MR. BARR: SEAT THE JUROR, PLEASE.
19 THE COURT: I'M SORRY, DID YOU
20 STRIKE OR DID YOU SEAT?
21 THE CLERK: HE SEATED.
22 THE COURT: PLEASE COME FORWARD,
23 MA'AM, THANK YOU.
24 THE CLERK: JUROR NUMBER 62,
25 TIMOTHY LANGSTON, WHAT SAYS THE STATE?

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LANGSTON.

DEFENSE?

KIMBERLY COX, WHAT SAYS THE STATE?

COX.

DEFENSE?

FROM THE TRIAL OF THIS CASE.

MA'AM, THANK YOU.

CHARLOTTE MOORE, WHAT SAYS THE STATE?

MOORE.

DEFENSE?

MOORE FROM THE TRIAL OF THIS CASE.

BRIGHT, WHAT SAYS THE STATE?

MR. MODICA: PLEASE PRESENT MR.

THE CLERK: WHAT SAYS THE

MR. BARR: SEAT THE JUROR, PLEASE.

THE CLERK: JUROR NUMBER 124,

MR. MODICA: PLEASE PRESENT MRS.

THE CLERK: WHAT SAYS THE

MR. BARR: PLEASE EXCUSE THE JUROR

THE COURT: YOU MAY BE SEATED

THE CLERK: JUROR NUMBER 166,

MR. MODICA: PLEASE PRESENT MRS.

THE CLERK: WHAT SAYS THE

MR. BARR: PLEASE EXCUSE MRS.

THE CLERK: JUROR NUMBER 11, ALTON

1 MR. MODICA: PLEASE EXCUSE MR.
2 BRIGHT.

3 THE CLERK: JUROR NUMBER 83, ADA
4 PAULEY. WHAT SAYS THE STATE?

5 MR. MODICA: PLEASE PRESENT MRS.
6 PAULEY.

7 THE CLERK: WHAT SAYS THE
8 DEFENSE?

9 MR. BARR: SEAT THE JUROR, PLEASE.

10 THE CLERK: JUROR NUMBER 21,
11 DOROTHY CUNNINGHAM, WHAT SAYS THE STATE?

12 MR. MODICA: PLEASE PRESENT MRS.
13 CUNNINGHAM.

14 THE CLERK: WHAT SAYS THE
15 DEFENSE?

16 MR. BARR: SEAT THE JUROR, PLEASE.

17 THE CLERK: JUROR NUMBER 189, MARY
18 TOLSON, WHAT SAYS THE STATE?

19 MR. MODICA: PLEASE PRESENT MRS.
20 TOLSON.

21 THE CLERK: WHAT SAYS THE DEFENSE?

22 MR. BARR: EXCUSE THE JUROR FROM
23 THE TRIAL OF THIS CASE, PLEASE.

24 THE COURT: THE DEFENSE HAS NO
25 STRIKES REMAINING AND ONLY CHALLENGES FOR CAUSE. WHAT

1	NUMBER WAS THAT, MADAME CLERK, THAT LAST JUROR?	
2		THE CLERK: 189. JUROR NUMBER 128,
3	JOHN DAVILLA , WHAT SAYS THE STATE?	
4		MR. MODICA: PLEASE PRESENT MR.
5	DAVILLA.	
6		MR. BARR: NO CAUSE FOR CHALLENGE,
7	SEAT THE JUROR.	
8		THE CLERK: JUROR NUMBER 139,
9	FREDERICK GREEN, WHAT SAYS THE STATE?	
10		MR. MODICA: PLEASE PRESENT MR.
11	GREEN.	
12		MR. BARR: SEAT THE JUROR, PLEASE.
13		THE CLERK: JUROR NUMBER 173,
14	YOLANDA PENDERGRASS, WHAT SAYS THE STATE?	
15		MR. MODICA: PLEASE PRESENT MRS.
16	PENDERGRASS.	
17		THE CLERK: ANY CAUSE FOR
18	CHALLENGE BY THE DEFENSE?	
19		MR. BARR: SEAT THE JUROR.
20		THE CLERK: JUROR NUMBER 153,
21	TIMOTHY JOSEPH, WHAT SAYS THE STATE?	
22		MR. MODICA; PLEASE PRESENT DR.
23	JOSEPH.	
24		THE CLERK: ANY CAUSE FOR
25	CHALLENGE BY THE DEFENSE?	

1 MR. BARR: NO, MA'AM.
2 THE COURT: PLEASE BE SEATED IN THE
3 JURY BOX.
4 THE CLERK: JUROR NUMBER 140,
5 JENNIFER HARRELSON, WHAT SAYS THE STATE?
6 MR. MODICA: PLEASE PRESENT MRS.
7 HARRELSON.
8 THE CLERK: CAUSE FOR CHALLENGE BY
9 THE DEFENSE?
10 MR. BARR: NO, MA'AM.
11 THE CLERK: JUROR NUMBER 80,
12 WOODROW NESBIT, JR.
13 THE COURT: LADIES AND GENTLEMEN,
14 THIS WILL BE OUR ALTERNATE. AND THE STRIKES NOW WILL BE
15 ONE FOR THE STATE AND TWO FOR THE DEFENSE.
16 THE CLERK: WHAT SAYS THE STATE?
17 MR. MODICA: PLEASE PRESENT MR.
18 NESBITT.
19 THE CLERK: WHAT SAYS THE
20 DEFENSE?
21 MR. BARR: WHAT'S THAT NUMBER
22 AGAIN, MADAME CLERK?
23 THE CLERK: 80.
24 MR. BARR: SEAT THE JUROR, PLEASE.
25 THE COURT: AND MADAME CLERK,

1 LET'S CHOOSE A SECOND ALTERNATE BECAUSE OF THE DELAY
2 FOR TRIAL.

3 THE CLERK: JUROR NUMBER 163,
4 FREELAN MCCLELLAN WHAT SAYS THE STATE?

5 MR. MODICA: PLEASE PRESENT MR.
6 MCCLELLAN

7 THE CLERK: WHAT SAYS THE
8 DEFENSE?

9 MR. BARR: SEAT THE JUROR, PLEASE.

10 THE COURT: ALL RIGHT, WELCOME TO
11 THE JURY BOX, LADIES AND GENTLEMEN. ALL RIGHT, ARE THERE
12 ANY OBJECTIONS TO THE JURY DRAW PROCEDURE OR THE
13 STRIKES EMPLOYED BY THE OTHER SIDE? FIRST FROM THE
14 STATE?

15 MR. MODICA: NO, YOUR HONOR.

16 MR. BARR: YES.

17 THE COURT: WAS THAT A YES?

18 MR. BARR: YES, YOUR HONOR.

19 THE COURT: LET ME GET YOU TO COME
20 AROUND TO THE SIDE. JUST ONE MOMENT, LADIES AND
21 GENTLEMEN. ALL RIGHT, THERE HAS BEEN AN ISSUE THAT HAS
22 BEEN PRESENTED THAT I NEED TO RESOLVE OUTSIDE OF THE
23 PRESENCE OF THE JURY. SO WE'RE ACTUALLY GOING TO LET
24 YOU GO DOWN THE HALL TO THE LAW LIBRARY, WE ALREADY
25 HAVE A JURY WAITING IN THE JURY ROOM ON ANOTHER

1 MATTER, AS YOU ARE AWARE. AND I'M GOING TO ASK YOU NOT
2 TO DISCUSS THE CASE BECAUSE WE DON'T KNOW ANYTHING
3 ABOUT THE CASE, BUT JUST ENJOY YOUR BREAK AND WE'LL BE
4 WITH YOU IN JUST A FEW MOMENTS, ALRIGHT? LET'S
5 EVERYONE ELSE REMAIN WHERE WE ARE WHILE THIS JURY
6 DEPARTS THE COURTROOM. JUST FOLLOW MRS. OWENS, IF YOU
7 WILL, SHE'LL TAKE YOU DOWN TO THE LAW LIBRARY.

8 THE COURT: ALL RIGHT, NOW FOR OUR
9 OTHER JURORS WHO ARE HERE, WE'RE GOING TO HAVE TO
10 DISCUSS SOME MATTERS ALSO OUTSIDE OF YOUR PRESENCE.
11 LADIES AND GENTLEMEN, I'M GOING TO ASK YOU TO JUST TAKE
12 A BREAK FOR A FEW MINUTES AND STEP FROM THE COURTROOM.
13 WE'LL LET YOU BACK IN THE AS SOON AS WE CONCLUDE THIS.
14 NOW DEFENDANTS AND THOSE WITH DEFENDANTS, PLEASE
15 REMAIN WHERE YOU ARE. JURORS PLEASE STEP FROM THE
16 COURTROOM, THANK YOU.

17 THE COURT: ALL RIGHT, COUNSEL, I'LL
18 BE WITH YOU IN JUST ONE MOMENT. LET ME DISCUSS A MATTER
19 ABOUT OUR FIRST JURY. ALL RIGHT, THE JURY IS NOW CLEARED
20 FROM THE COURTROOM. THERE IS A BATSON MOTION, AND MR.
21 BARR, I'LL BE GLAD TO HEAR FROM YOU, SIR.

22 MR. BARR: JUDGE, I WANT THE RECORD TO
23 REFLECT THAT IN ADDITION TO OUR BATSON MOTION, THERE IS
24 ALSO ANOTHER MOTION. THAT IS WITH RESPECT TO JUROR
25 NUMBER - THERE ARE NO JURORS IN THE COURTROOM?

1 THE COURT: THERE ARE NONE.

2 MR. BARR: I'M REFERRING TO THE DENTIST.

3 NOW JUST TO MAKE THE RECORD CLEAR, JUDGE, AFTER WE
4 MAKE OUR BATSON MOTION, THE JUROR THAT WE HAD THE
5 CONVERSATION WITH AT THE SIDE BAR IT IS MY
6 UNDERSTANDING AND I THINK I HEARD THAT THE
7 PROSECUTION'S RATIONALE FOR STRIKING THAT JUROR WAS
8 THAT THE JUROR'S BEHAVIOR WAS BIZARRE AT THE TIME WHEN
9 THE JURY PANEL WAS PRESENTED, THAT HIS BEHAVIOR SEEMED
10 TO BE BIZARRE. THAT WAS THE RATIONALE THAT I THOUGHT
11 THAT I HEARD THAT THE PROSECUTION GAVE FOR STRIKING
12 THAT JUROR. AND, JUDGE, WE WOULD SUBMIT THAT THAT
13 RATIONALE IS NOTHING MORE THAN A MERE PRETENSE, THAT
14 THERE'S A LACK OF ANY GENUINE REASON TO STRIKE THAT
15 JUROR. AND FOR THAT REASON WE WOULD SUBMIT THAT THE
16 STRIKING OF THAT JUROR DOES VIOLATE THE TRANSFER.

17 THE COURT: NOW, MR. BARR, LET'S GO BACK
18 SO OUR RECORD WILL BE CLEAR. TELL US WHAT NUMBER JUROR
19 STRIKE ARE YOU COMPLAINING OF IN YOUR BATSON MOTION?

20 MR. BARR: JUROR NUMBER 11.

21 THE COURT: ALL RIGHT, JUROR NUMBER 11
22 WAS THE THIRD STRIKE POSED BY THE STATE, AND YOUR
23 COMPLAINT, AGAIN, IS WHAT COUNSEL?

24 MR. BARR: THAT THE JUROR WAS STRUCK
25 OBVIOUSLY BECAUSE HE WAS A BLACK JUROR, THAT THE

1 RATIONALE GIVEN BY THE SOLICITOR AS TO THE REASON FOR
2 STRIKING FOR THAT JUROR VIOLATES BATSON. HE HAS GIVEN A
3 REASON THAT IS A MERE SHAM AND PRETENSE. WE TAKE THE
4 POSITION THAT THERE IS NO OTHER REASON THAT HE WAS
5 STRIKING THAT JUROR OTHER THAN FOR RACIAL REASONS, AND
6 FOR THAT REASON WE SUBMIT THAT THAT'S IMPROPER.

7 THE COURT: ALL RIGHT. AND THE
8 COURT SHOULD COMMENT HERE ON THE RECORD THAT THERE
9 WAS A SIDEBAR IN WHICH A DISCUSSION WAS HAD ABOUT
10 JUROR NUMBER 78, ALSO AN AFRICAN AMERICAN MALE STRUCK
11 BY THE STATE. THE STATE TOOK THE POSITION THAT HE WAS
12 STRUCK BECAUSE HE HAS CRIMINAL RECORD. AND SO YOU
13 HAVE NO COMPLAINT ABOUT JUROR NUMBER 78 BEING STRUCK,
14 IS THAT CORRECT?

15 MR. BARR: JUDGE, IF THAT JUROR
16 DOES HAVE A CRIMINAL RECORD, OF COURSE THAT'S OBVIOUSLY
17 SOMETHING THAT WE CAN VERIFY AND I WOULD NOT QUESTION
18 THE SOLICITOR CONCERNING HIS RATIONALE IF HE IN FACT
19 REPRESENTS TO THE COURT THAT THAT'S THE REASON THAT HE
20 STRUCK THE JUROR. AND, OF COURSE, HE'S GOT THE CRIMINAL
21 RECORDS OF ALL THE JURORS. SO I'M NOT GOING TO PURSUE
22 THAT. BUT I WILL PURSUE THE ISSUE OF JUROR NUMBER 11, AS
23 WELL AS THE DENTIST. IT IS MY POSITION AS AN OFFICER OF
24 THIS COURT THAT I SAW THE MAN WINK AT THE ASSISTANT
25 SOLICITOR WHEN HE CAME UP HERE. AND FOR THAT REASON,

1 JUDGE, I WOULD MOVE TO DISQUALIFY THAT JUROR, AND TO
2 SUBSTITUTE AN ALTERNATE JUROR.

3 THE COURT: ALL RIGHT, LET'S TAKE
4 THESE ONE AT A TIME. WHAT'S YOUR POSITION ON JUROR
5 NUMBER 11 WHOM YOU STRUCK?

6 MR. MODICA: IF I MAY JUST BACK UP
7 QUICKLY SO THE RECORD'S ABSOLUTELY CLEAR. I DID STRIKE
8 JUROR NUMBER 78, A BLACK MALE, AND AT THE SIDE BAR IS A
9 CRIMINAL RECORD AND ATTACHED TO THE CRIMINAL RECORD IS
10 TWO CRIMINAL ARRESTS DATING BACK TO 1998 AND IT WAS
11 HERE IN GEORGETOWN COUNTY. I ALSO STRUCK NUMBER 175, A
12 WHITE MALE, WHO ALSO HAS AN ARREST WITH NO DISPOSITION.
13 BOTH OF THESE ARE NO DISPOSITIONS. HIS WAS FOR CRIMINAL
14 DOMESTIC VIOLENCE, AND THAT WAS IN 2005, ALSO IN
15 GEORGETOWN COUNTY. SO I STRUCK BOTH OF THOSE
16 INDIVIDUALS FOR THAT REASON.

17 AS IT RELATES TO NUMBER 11, YOU ASKED US
18 BASICALLY QUICKLY TO TELL US WHY AND I TOLD YOU THAT HE
19 ACTED BIZARRE. I CAN BE A LITTLE BIT MORE EXPLICIT IN
20 REGARD TO NUMBER 11. DURING JURY QUALIFICATION
21 YESTERDAY DONE BY JUDGE BREEDEN, NOT BY YOURSELF,
22 OBVIOUSLY, HE STOOD UP, HE WAS LOUD, HE WAS BOISTEROUS,
23 HE SAID HIS FIRST, MIDDLE AND LAST NAME VERY LOUDLY. HE
24 WAS SOMEWHAT ARROGANT. HE SAID THAT HE WAS RETIRED
25 MILITARY, HE BROUGHT TO ATTENTION THAT HE WAS A

1 DISABLED VIETNAM VET AND ACTED AS THOUGH BECAUSE OF
2 THAT HE SHOULD BE GIVEN SOME SPECIAL TREATMENT.

3 IT WAS THE WHOLE WAY HE SAID IT, IT WAS HIS
4 BODY LANGUAGE, IT WAS A COMBINATION OF ALL OF THOSE
5 THINGS. I WOULD ALSO POINT OUT THAT MY NOTES INDICATED
6 THAT HE ALSO INDICATED HE WAS MILITARY POLICE. WELL, YOU
7 KNOW, MILITARY POLICE, RETIRED, MIGHT ARGUABLY HELP THE
8 PROSECUTION BUT I STRUCK HIM BECAUSE HIS OVERALL AFFECT
9 WHEN HE SPOKE YESTERDAY WAS, AS I DESCRIBED, IN
10 SUMMATION UP TO YOU AT THE BENCH, WAS STRANGE AND
11 BIZARRE.

12 HOPEFULLY I FILLED IN A LITTLE BIT FOR YOU WHAT I'M
13 TALKING ABOUT, WHY I STRUCK HIM. AND I CAN ONLY SAY, IF I
14 MAY, ABOUT THE DENTIST, AFTER THE DENTIST WAS SELECTED,
15 MRS. BIOGLANTI AND I LOOKED AT EACH OTHER IN CONVERSING
16 AND HE WALKED BY. SO NEITHER ONE OF US CAN SAY
17 ANYTHING ABOUT WHETHER HE WINKED AT HER, BUT CERTAINLY
18 SHE WASN'T LOOKING AT HIM BECAUSE SHE WAS LOOKING AT
19 ME. NOW IF YOU NEED HER TO STAND UP AND SAY THE SAME
20 THING, I'M SURE SHE WILL.

21 THE COURT: LET'S FOCUS ON JUROR
22 NUMBER 11 FIRST. I FIND THERE HAS BEEN SHOWN A RACE AND
23 GENDER NEUTRAL REASON. DO YOU HAVE A REPLY TO THAT,
24 MR. BARR?

25 MR. BARR: JUDGE, THE REASON GIVEN

1 BY THE SOLICITOR IN OUR ESTIMATION AMOUNTS TO NOTHING
2 MORE THAN A GENERALIZATION THAT COULD VERY WELL HAVE
3 APPLIED TO ANY JUROR WHEREBY A PROSECUTOR IS ALLOWED
4 TO GIVE A SUBJECTIVE IMPRESSION OF HIS PERCEPTION OF THE
5 APPEARANCE OF A JUROR. AND OF COURSE IN THIS CASE
6 THERE WAS NOTHING IN DETAIL MENTIONED CONCERNING THE
7 PARTICULAR - ANYTHING THAT THAT JUROR SAID OR DID THAT
8 WAS IRREGULAR. THE ONLY THING THAT THIS PROSECUTOR HAS
9 SAID -- AND OF COURSE, JUDGE, I REALIZE THE COURT PERHAPS
10 MIGHT BE AT SOMEWHAT OF A DISADVANTAGE INASMUCH AS
11 JUDGE BREEDEN ACTUALLY PRESIDED OVER THE
12 QUALIFICATIONS OF THE JURY.

13 BUT, JUDGE, IT WOULD BE OUR IMPRESSION THAT -
14 OF COURSE, I THINK IF JUDGE BREEDEN WAS ASKED WHETHER
15 OR NOT THAT JUROR WHEN HE PRESENTED HIMSELF PRESENTED
16 HIMSELF IN A BIZARRE MANNER, THEN I'M CONFIDENT THAT
17 HAVING SAT HERE THROUGH THE QUALIFICATION PROCESS AND
18 HAVING HEARD ALL THE QUALIFICATIONS OF ALL THE JURORS, I
19 CANNOT FIND ANYTHING INCONSISTENT WITH THAT JUROR'S
20 APPEARANCE IN TERMS OF HOW HE PRESENTED HIMSELF SUCH
21 THAT HE WOULD BE CONSIDERED TO BE A PERSON WHO
22 PRESENTED HIMSELF IN SOME IRREGULAR MANNER.

23 JUDGE, AGAIN, FOR THE RECORD WE WOULD SUBMIT
24 - AND I DON'T EXPECT MR. MODICA TO COME UP HERE AND SAY,
25 "I STRUCK A MAN BECAUSE HE'S BLACK." I DON'T EXPECT HIM

1 TO SAY THAT. I EXPECT HIM TO DO EXACTLY WHAT HE DID,
2 WHICH WAS TO FORMULATE SOME PRETENTIAL REASON
3 WHEREBY HE WAS ALLOWED TO VIOLATE THE LAW BY STRIKING
4 A JUROR FOR NO OTHER REASON OTHER THAN THE OBVIOUS
5 REASON THAT THAT JUROR IS BLACK.

6 THE COURT: MADAME CLERK, MAY I
7 SEE THE STRIKE SHEET THAT YOU HAVE, THE JURY LIST FOR
8 THIS SECOND JURY, JUST THE ONES THAT HAVE BEEN CHOSEN.
9 THE SECOND JURY THAT'S IN THE LAW LIBRARY. I JUST WANT
10 TO LOOK AT THE MAKEUP OF THE JURY.

11 ALL RIGHT, IN REVIEWING THE GENDER AND THE
12 RACIAL MAKEUP OF THE JURY, THE COURT NOTES THAT THERE
13 IS AN ALTERNATE JUROR WHO IS AN AFRICAN AMERICAN MALE
14 WHO IS SEATED, AND THAT IS JUROR NUMBER 80. AND THE
15 COURT ALSO IS AWARE THAT THERE ARE THREE AFRICAN
16 AMERICAN FEMALES WHO ARE SEATED ON THE JURY. THE
17 COURT FINDS THAT THE REASON GIVEN BY THE STATE FOR THE
18 STRIKE IS A COGNIZABLE* ONE, THAT IT IS GENDER AND RACE
19 NEUTRAL, AND THE COURT DOES NOT FIND ANY PURPOSEFUL
20 DISCRIMINATION IN THE STRIKES EMPLOYED BY THE STATE, NOR
21 IN THE SPECIFIC STRIKE OF JUROR NUMBER 11.

22 AND THE COURT WOULD BE REMISS IF I DID NOT
23 COMMENT IN MAKING THIS RULING THAT IT IS AWARE THAT THE
24 DEFENDANT STRUCK FIVE WHITE FEMALES IN THE COURSE OF
25 THE JURY DRAW, AND THIS IS A CASE WHERE IT IS ALLEGED

1 THAT THE MALE DEFENDANT COMMITTED AN ASSAULT AND
2 BATTERY WITH INTENT TO KILL ON THE FEMALE VICTIM.

3 FOR ALL THESE REASONS THE COURT DENIES THE
4 BATSON MOTION AND WILL SEAT THE JURY AND PROCEED WITH
5 THE JURY THAT WE HAVE. NOW I'LL ALLOW EITHER SIDE TO
6 MAKE A RESPONSE ON THE RECORD, IF YOU WISH, TO THAT
7 RULING SO THAT THE RECORD WILL BE COMPLETE. ANYTHING
8 FROM THE STATE?

9 MR. MODICA: NO, YOUR HONOR.

10 THE COURT: ANYTHING FROM THE
11 DEFENSE?

12 MR. BARR: JUDGE, I ASSUME THAT
13 THAT RULING IS RELATED TO THE DEFENDANT'S FIRST MOTION?

14 THE COURT: THAT'S JUROR NUMBER
15 11. AND IF YOU HAVE SOMETHING FURTHER YOU WISH TO SAY
16 ABOUT---

17 MR. BARR: JUDGE, THE ONLY THING I'D
18 SAY FURTHER ABOUT THAT IS OF COURSE WITH RESPECT TO
19 HOW THE DEFENSE EXERCISED ITS PREEMPTORY CHALLENGES, IS
20 WE'VE GOT A NUMBER OF SCHOOL TEACHERS THAT ARE ON THE
21 JURY. AND FOR THAT REASON IT JUST HAPPENED THAT THEY
22 HAPPENED TO BE WHITE FEMALES. BUT MOST OF THOSE PEOPLE
23 WERE ACTUALLY SCHOOL TEACHERS WHO WE BELIEVE THAT -I
24 HAVE OVER THE 27 YEARS I'VE BEEN PRACTICING LAW, THEY
25 HAVE CONSISTENTLY VOTED TO CONVICT. AND FOR THAT

1 REASON, THAT WAS OUR REASON. I'D JUST SIMPLY STATE THAT
2 FOR THE RECORD. BUT FOR THE RECORD, OUR OBJECTION, I
3 BELIEVE, HAS BEEN PRESERVED.

4 THE COURT: NOW IS THERE ANYTHING
5 FURTHER ON JUROR NUMBER 153, WHICH IS TIMOTHY JOSEPH.
6 YOU ALLEGE THAT THERE WAS A WINK THAT PASSED BETWEEN
7 THEM. ANYTHING FURTHER WITH REGARD TO THAT?

8 MR. BARR: YES, SIR. AS AN OFFICER OF
9 THE COURT, AS I SAID, I WOULD MERELY SUBMIT TO THE COURT
10 THAT I DID SEE THE DENTIST WHO AT THE TIME THAT HE
11 INDICATED THAT - OF COURSE HE DISCLOSED THAT
12 INFORMATION THAT HE WAS THE DOCTOR FOR, I BELIEVE IT WAS
13 ONE OF THE PEOPLE SEATED AT THE PROSECUTION TABLE, I'M
14 NOT SURE EXACTLY WHICH ONE IT WAS. BUT I DO KNOW THAT
15 THAT WAS DISCLOSED, AND OF COURSE I WAS INSTRUCTED
16 THAT WE DIDN'T HAVE ANY MORE STRIKES. AT THAT POINT I
17 ELECTED NOT TO MAKE AN ISSUE OUT OF IT TO TRY TO
18 CHALLENGE THEM FOR CAUSE, BECAUSE I DON'T THINK THE
19 COURT WHEN HE INDICATED THAT HE COULD BE FAIR, THEN OF
20 COURSE, AS I UNDERSTAND IT, THAT'S AS FAR AS THE LAW CAN
21 GO. HOWEVER, WHEN HE CAME THROUGH HERE AND STOOD UP
22 RIGHT HERE AND HE WAS WALKING UP HERE AND WINKING AT
23 THIS WOMAN SITTING AT THE - THE ASSISTANT SOLICITOR,
24 THEN, JUDGE, I DON'T THINK THAT I HAVE ANY OTHER
25 RESPONSIBILITY, OR THAT I CAN DO ANYTHING ELSE OTHER

1 THAN AS AN OFFICER OF THE COURT AND AS A DEFENSE
2 LAWYER FOR MY CLIENT, TO BRING THAT TO THE ATTENTION OF
3 THE TRIAL JUDGE, AND TO AT LEAST ASK, FIRST OF ALL, THAT
4 THAT JUROR NOT BE PUT ON THE SPOT TO SAY, "WELL, NO, I
5 DIDN'T DO IT," BECAUSE I DON'T EXPECT HIM TO ADMIT THAT HE
6 DID IT. AND, SECONDLY, INASMUCH AS WE DO HAVE
7 ALTERNATE JURORS, JUDGE, I WOULD SUBMIT THAT IN THE
8 INTEREST OF FAIRNESS AS IT RELATES TO THIS DEFENDANT
9 GETTING A FAIR TRIAL, THAT AT LEAST UNDER ALL OF THOSE
10 CIRCUMSTANCES THAT WE USE AN ALTERNATE AND EXCUSE
11 THAT JUROR.

12 THE COURT: DOES THE STATE WISH TO
13 BE HEARD?

14 MR. MODICA: YOUR HONOR, AS I
15 INDICATED, WE WERE SPEAKING TO EACH OTHER. AND I DON'T
16 KNOW IF YOU NEED TO HEAR THAT FROM MRS. BIOGLANTI. BUT
17 IN ADDITION, NOT THAT I DON'T TAKE MR. BARR'S WORD, BUT
18 JUST TO TAKE IT OUT OF CONTEXT TO GET RID OF A JUROR AND
19 PUT IN ANOTHER JUROR, THAT'S NOT SUFFICIENT. I WOULD
20 SUBMIT THAT YOU WOULD NEED TO CALL THAT JUROR BACK
21 AND QUESTION HIM ABOUT IT.

22 THE COURT: FIRST OF ALL, THE COURT
23 WAS WATCHING THE JURORS AS THEY CAME FORWARD AND DID
24 NOT NOTE WHAT YOU COMPLAIN OF, MR. BARR. I DON'T
25 CHALLENGE YOU ON THAT ISSUE BECAUSE I WASN'T

1 SPECIFICALLY LOOKING TO SEE IF ANY JUROR WAS WINKING AT
2 ANY OF THE ATTORNEYS, BUT THE COURT DID NOT OBSERVE
3 WHAT IT IS YOU STATE YOU OBSERVED.

4 I WILL OUT OF AN ABUNDANCE OF CAUTION BRING THE
5 JUROR BACK IN, AND WITHOUT MENTIONING THE ALLEGATION,
6 WILL SIMPLY INQUIRE AGAIN ABOUT HIS RELATIONSHIP TO THE
7 SOLICITOR'S OFFICE AND SPECIFICALLY TO OUR ASSISTANT
8 SOLICITOR AND THEN MAKE A DECISION BASED ON THAT.

9 MR. BARR: JUDGE, THE ONLY THING
10 THAT I WOULD SAY AT THIS POINT - AND, AGAIN, I WOULD SAY,
11 OF COURSE, I DON'T, I WOULD NOT HAVE ANTICIPATED THAT
12 THE PROSECUTION WOULD ADMIT WHETHER OR NOT THEY DID
13 OBSERVE SUCH CONDUCT. AND, OF COURSE, AS IT RELATES TO
14 THE COURT, I DON'T KNOW THAT THE COURT IS IN A POSITION
15 TO ACTUALLY OBSERVE THESE KINDS OF THINGS WHEN IT
16 COMES TO WITNESSES COMING TO TAKE THE WITNESS CHAIR.
17 HOWEVER, I CAN ONLY RELATE TO THE COURT WHAT I SAW
18 MYSELF. AND, JUDGE, FOR THAT REASON, IN ADDITION TO
19 THAT, WE WOULD TAKE THE POSITION THAT THE COURT TO
20 QUESTION THIS JUROR NOW CONCERNING HIS CONDUCT WOULD
21 OBVIOUSLY BE A SITUATION THAT HE KNOWS THAT IT WASN'T
22 BROUGHT TO THE ATTENTION OF THE COURT BY THE PERSON
23 WHO WAS ON THE RECEIVING END. HE CAN ONLY SURMISE
24 THAT IT WAS BROUGHT TO THE COURT'S ATTENTION BY ME,
25 YOUR HONOR, AND FOR THAT REASON I THINK IT WOULD PUT A

1 CHILLING EFFECT ON THE JUROR IN THIS CASE, AND, YOUR
2 HONOR, QUITE FRANKLY, I DON'T KNOW OF ANY OTHER WAY TO
3 RESOLVE THAT IN A WAY THAT WOULD BE FAIR PARTICULARLY
4 TO THE DEFENDANT AND THE OBLIGATION THAT RELATES TO
5 HIM GETTING A FAIR TRIAL.

6 AND FOR THAT REASON I WOULD JUST ASK THE
7 COURT TO CONSIDER REMOVING THAT JUROR AND REPLACING
8 HIM WITH AN ALTERNATE JUROR. AND THAT'S THE REASON WE
9 HAVE ALTERNATE JURORS. BUT TO QUESTION THAT JUROR AT
10 THIS POINT, I THINK THE ONLY THING IT WOULD DO IS TO MAKE
11 MATTERS WORSE.

12 THE COURT: ALL RIGHT, THANK YOU.
13 ALL RIGHT, THE COURT INTENDS TO ASK DR. JOSEPH ABOUT
14 THIS WITHOUT REFERRING TO THE INCIDENT, COUNSEL. THERE'S
15 NOT GOING TO BE ANY STATEMENT OF ACCUSATION MADE
16 AGAINST ANYONE, IT'S GOING TO BE NEUTRAL WITH RESPECT TO
17 THAT. LET ME PLEASE ASK OUR BAILIFF; IF YOU WOULD PLEASE
18 GO DOWN TO OUR SECOND JURY ROOM AND ASK DR. JOSEPH,
19 JUROR NUMBER 153 TO COME IN, PLEASE.

20 (AT THIS TIME THE JUROR IS BROUGHT BACK IN)

21 THE COURT: DR. JOSEPH, IF YOU
22 WOULD, SIR, JUST COME IN AND STAND, SIR, TO SPEAK IN THE
23 MICROPHONE. AND THANK YOU FOR COMING IN AND SPEAKING
24 WITH ME. I WANTED TO FOLLOW UP ON ONE ISSUE THAT YOU
25 AND I DISCUSSED DURING JURY QUALIFICATIONS, AND I BELIEVE

1 YOU SAID THAT YOU ARE THE DENTIST FOR ATTORNEY
2 BIOGLANTI WHO IS AN ASSISTANT SOLICITOR; IS THAT
3 CORRECT?

4 THE JUROR: YEAH, SHE'S A PATIENT IN
5 MY PRACTICE.

6 THE COURT: AND HOW LONG HAVE YOU
7 BEEN HER DENTIST IN YOUR RECOLLECTION?

8 THE JUROR: ABOUT A YEAR OR SO,
9 SOMEWHERE.

10 THE COURT: AND OVER AND BEYOND
11 THAT PROFESSIONAL RELATIONSHIP, DO YOU HAVE ANY SOCIAL
12 CONNECTION, OR ANY OTHER CONNECTION TO COUNSEL?

13 THE JUROR: NO.

14 THE COURT: AND WHEN'S THE LAST
15 TIME THAT YOU SAW HER IN YOUR OFFICE?

16 THE JUROR: A WEEK OR SO.

17 THE COURT: AND HOW MANY TIMES
18 DO YOU BELIEVE YOU'VE SEEN HER AS A PATIENT IN YOUR
19 OFFICE?

20 THE JUROR: PROBABLY FOUR OR FIVE.

21 THE COURT: NOW, WITH THAT
22 UNDERSTANDING, I WANT TO ASK YOU AGAIN OUT OF AN
23 ABUNDANCE OF CAUTION TO MAKE SURE; WOULD THAT
24 INFLUENCE YOUR DECISION AS A JUROR IN THIS CASE, THE FACT
25 THAT YOU HAVE A PROFESSIONAL RELATIONSHIP WITH AN

1 ASSISTANT SOLICITOR WHO ACTUALLY IS NOT TRYING THE
2 CASE?

3 THE JUROR: NO.

4 THE COURT: AND ASKED YET ANOTHER
5 WAY, WOULD YOU BE ABLE TO PUT THAT OUT OF YOUR MIND
6 AND MAKE YOUR RULING BASED SOLELY ON THE EVIDENCE AND
7 THE TESTIMONY IN THE CASE AS A JUROR, CAN YOU DO THAT?

8 THE JUROR: YES.

9 THE COURT: DO YOU HAVE ANY DOUBT
10 ABOUT YOUR ABILITY TO DO THAT?

11 THE JUROR: NO.

12 THE COURT: ALL RIGHT, AGAIN, DR.
13 JOSEPH, I DIDN'T WANT TO SINGLE YOU OUT BUT I WANTED TO
14 MAKE SURE YOU AND I HAD AN UNDERSTANDING ON THAT
15 ISSUE. THANK YOU FOR COMING BACK IN AND TALKING WITH
16 ME. WE'RE GOING TO LET YOU RETURN TO THE JURY ROOM AND
17 WE'LL BE WITH THE ENTIRE JURY IN JUST A MOMENT. ALL
18 RIGHT, THEN, THE REQUESTED RELIEF WITH REGARD TO JUROR
19 NUMBER 153, DR. JOSEPH, IS DENIED AND THE COURT IS READY
20 NOW TO EMPANEL THE JURY AS OUR JURY IN THIS CASE.

21 NOW THE LAST THING I NEED TO DISCUSS WITH YOU
22 ARE THE INSTRUCTIONS FOR THIS JURY PANEL. I WOULD SIMPLY
23 PROPOSE TO TELL THEM THAT THEY'RE JURY PANEL NUMBER
24 TWO, AND SHOULD CALL BACK AFTER SIX O'CLOCK TONIGHT
25 FOR FURTHER INSTRUCTIONS. WHAT SAYS THE STATE TO

1 THAT?

2 MR. MODICA: YES, YOUR HONOR.

3 THE COURT: DEFENSE, ANY POSITION

4 ON THAT?

5 MR. BARR: NO, SIR.

6 THE COURT: NOW, MRS. WHITE, YOU

7 NEED TO PULL 30 MORE INDIVIDUALS. DO YOU HAVE YOUR

8 LIST? AND DO YOU HAVE THE INSTRUCTIONS READY FOR THOSE

9 INDIVIDUALS? ALL RIGHT, THEN LET'S BRING ALL THE JURY

10 BACK IN. IS THERE ANYBODY ON THIS JURY PANEL NUMBER TWO

11 WHO'S IN YOUR 30 YOU PULLED?

12 THE CLERK: NO, YOUR HONOR.

13 THE COURT: THERE'S NO CROSSOVERS,

14 ARE THERE?

15 THE CLERK: NO, SIR, YOUR HONOR.

16 THE COURT: ALL RIGHT, JURY PANEL

17 NUMBER TWO, LET'S BRING THEM BACK TO THE JURY BOX.

18 (AT THIS TIME THE JURY RE-ENTERS THE COURTROOM)

19 THE COURT: ALL RIGHT, WELCOME

20 BACK TO THE COURTROOM. I KNOW THAT EACH OF YOU FEEL

21 LIKE YOU'VE PROBABLY JOINED THE MILITARY TODAY AS YOU

22 HURRY UP AND WAIT ON THIS AND THAT AND THEN LIKE A PING

23 PONG BALL LEAVE AND COME BACK. LET ME JUST SAY THIS; IF

24 WE WORKED SOMEWHERE IN A FACTORY, WHICH THERE IS

25 NOTHING WRONG WITH WORKING IN A FACTORY, THAT'S A

1 NOBLE JOB, WHERE WE HAD A CERTAIN AMOUNT OF THINGS TO
2 PRODUCE IN A CERTAIN AMOUNT OF TIME, WE WOULD BE IN
3 TROUBLE TODAY, I HAVE TO SAY.

4 BUT WE'RE NOT DOING THAT. WE'RE ENGAGED IN
5 THE FREEDOM AND LIBERTY AND SUBSTANTIAL RIGHTS OF
6 INDIVIDUALS. AND SOMETIMES WE JUST HAVE TO TAKE TIME
7 AND WAIT AND STOP AND YOU HAVE TO WAIT WHILE WE MAKE
8 CERTAIN DECISIONS. AND THANK YOU FOR YOUR
9 UNDERSTANDING OF THIS PROCESS THAT'S SERVED OUR
10 COUNTRY WELL FOR WELL OVER 200 YEARS. AND, AGAIN, I
11 APPRECIATE YOUR UNDERSTANDING AND FORBEARANCE WITH
12 US TODAY.

13 NOW, LADIES AND GENTLEMEN, YOU HAVE BEEN
14 SELECTED IN OUR CASE OF THE STATE VERSUS COHENS. AND
15 YOU WILL BE OUR JURY AND YOU ARE JURY PANEL NUMBER
16 TWO. THE REASON I TELL YOU THAT IS I CANNOT TELL YOU
17 WHEN THIS CASE IS GOING TO START. BUT WHAT I'M GOING TO
18 ASK YOU TO DO IS AFTER SIX O'CLOCK TONIGHT CALL THE JURY
19 NUMBER FOR FURTHER INFORMATION AND ON THAT NUMBER
20 WILL BE INSTRUCTIONS TO JURY PANEL NUMBER TWO. NOW,
21 PLEASE, EVERYONE ELSE, YOU'RE NOT JURY PANEL NUMBER
22 TWO, YOU'RE THE GREATER JURY PANEL. JURY PANEL NUMBER
23 TWO ONLY RESPOND TO WHATEVER THOSE INSTRUCTIONS ARE.
24 IF I COULD TELL YOU NOW WHEN IT WOULD BE, I WOULD TELL
25 YOU NOW, BUT I SIMPLY CANNOT. AND SO PLEASE CALL BACK

1 TONIGHT AFTER SIX O'CLOCK FOR FURTHER INSTRUCTIONS. ANY
2 QUESTIONS? ALL RIGHT, YOU MAY HEAR SOMETHING "JURY
3 PANEL ONE, JURY PANEL NUMBER THREE," THERE'S NO TELLING.
4 JUST DISREGARD ALL THAT. YOU'RE JURY NUMBER TWO, WORRY
5 ONLY ABOUT THAT. YES, SIR?

6 A JUROR: DO YOU HAVE A GENERAL
7 TIMEFRAME?

8 THE COURT: WELL, I DO NOT WANT TO
9 TELL YOU SOMETHING THAT WILL LATER PROVE TO BE
10 INCORRECT. I AM CERTAIN THAT THE CASE THAT WE ARE GOING
11 TO TRY FIRST IS GOING TO BEGIN TODAY, AND MOST LIKELY IT
12 WILL CONSUME THE REMAINDER OF THE DAY AND MOST LIKELY
13 GO INTO SOME PART OF TOMORROW, IF NOT ALL OF
14 TOMORROW. BUT I CAN'T TELL YOU THAT NOW. AND SO ALL I
15 CAN TELL YOU IS THAT YOUR INSTRUCTIONS TONIGHT IS EITHER
16 GOING TO BE TO CALL BACK OR REPORT AT A CERTAIN TIME.
17 THAT MEANS YOU'LL BE FREE UNTIL YOU KNOW, AND THAT'S
18 THE BEST I CAN TELL YOU. PLEASE DON'T CALL BEFORE SIX
19 BECAUSE IT WILL ONLY BE AT THE END OF THE DAY THAT WE
20 KNOW WHERE WE ARE TO GIVE YOU THE MESSAGE.

21 NOW WITH THAT UNDERSTANDING, LET'S EVERYONE
22 ELSE REMAIN WHERE THEY ARE AND THE GOOD NEWS FOR JURY
23 PANEL NUMBER TWO IS YOU'RE FREE TO LEAVE AND BE GONE
24 FOR THE DAY. SO THE REST OF THE DAY IS YOURS, HAVE A NICE
25 DAY LADIES AND GENTLEMEN, JURY PANEL NUMBER TWO.

1 -----THIS CONCLUDED THE PROCEEDINGS FOR DAY ONE-----

2 THE COURT: ARE THERE ANY
3 COMMENTS BEFORE WE BEGIN THE TRIAL OF THE CASE? YES,
4 SIR?

5 MR. MODICA: JUDGE, THERE IS ONE MOTION
6 BEFORE WE BEGIN TESTIMONY. I WOULD MOVE TO SEQUESTER
7 WITNESSES.

8 THE COURT: WE'LL TAKE THAT UP NOW. MR.
9 MODICA, DO YOU HAVE A POSITION ABOUT THE WITNESS
10 SEQUESTRATION?

11 MR. MODICA: OF COURSE I WOULD LIKE TO
12 HAVE THE VICTIM PRESENT. I BELIEVE UNDER THE
13 CONSTITUTION SHE'S ENTITLED TO BE HERE. AND I WOULD
14 ALSO LIKE THE LEAD CASE AGENT TO BE HERE AS WELL.

15 THE COURT: ALL RIGHT, ANYONE ELSE YOU
16 ASK FOR TO BE PRESENT DURING THE TRIAL OTHER THAN THOSE
17 TWO INDIVIDUALS?

18 MR. MODICA: I WOULD LEAVE THE REST IN
19 THE SOUND DISCRETION OF THE COURT.

20 THE COURT: ALL RIGHT, AND MR. BARR,
21 WHOM DO YOU WISH TO REMAIN ON YOUR SIDE OF THE CASE IF
22 SEQUESTRATION IS GRANTED?

23 MR. BARR: JUDGE, THE PEOPLE IN THE
24 COURTROOM WE DO NOT ANTICIPATE USING ANY OF THESE AS
25 WITNESSES, EXCEPT OF COURSE, THE DEFENDANT.

1 THE COURT: THE DEFENDANT HAS THE RIGHT
2 TO BE PRESENT, OBVIOUSLY. THEN THE COURT WILL SEQUESTER
3 THE WITNESSES, AND THIS IS HOW WE WILL DO IT. THE VICTIM
4 HAS THE CONSTITUTIONAL RIGHT TO BE PRESENT, AND
5 THEREFORE THE VICTIM WILL BE ALLOWED TO REMAIN, MRS.
6 COHENS. AND THEN ALSO THE CASE AGENT, THE PROSECUTING
7 AGENT, THE CHIEF OFFICER WILL BE ALLOWED TO REMAIN, THE
8 DEFENDANT WILL BE ALLOWED TO REMAIN. EVERYONE ELSE
9 WHO IS A WITNESS IN THIS CASE I'M GOING TO ASK TO STEP
10 FROM THE COURTROOM AND WE'LL CALL YOU WHEN IT'S YOUR
11 TURN TO TESTIFY. ALL RIGHT, NOW HAVE WE MARKED ANY
12 EVIDENCE? DO WE HAVE EXHIBITS WHICH HAVE BEEN AGREED
13 UPON, OR THERE'S BEEN NO AGREEMENT?

14 MR. MODICA: YOUR HONOR, I'VE PREVIOUSLY
15 MARKED 78 PHOTOGRAPHS THAT MR. BARR IS LOOKING AT.
16 I'VE PREVIOUSLY SHOWED HIM OVER 100 PHOTOGRAPHS, BUT
17 I'VE PARED THEM DOWN TO 78. AND I DON'T KNOW IF HE'S
18 AGREEABLE TO IT. ALSO, I HAVE A 911 CALL FROM THE VICTIM
19 TO DISPATCH. HE HAS A COPY OF THAT, AND I DON'T KNOW IF
20 HE'S AGREEING TO THAT, EITHER.

21 THE COURT: LET'S GIVE MR. BARR A MOMENT
22 TO REVIEW THOSE. ALL RIGHT. COUNSEL, RATHER THAN
23 DELAY FURTHER----

24 MR. BARR: JUDGE, YOU KNOW, I'VE SEEN
25 THESE PHOTOGRAPHS EARLIER. BUT THEY'VE BEEN PARED

1 DOWN AND I AM NOT CERTAIN WHAT ALL IS HERE.

2 THE COURT: WELL, WE'LL JUST FOLLOW THE
3 RULES AND LET THE EVIDENCE BE OFFERED WHEN IT'S OFFERED.
4 IF WE HAVE A LATER TIME TO LOOK AT THIS MAYBE AT THE
5 END OF THE DAY, WE'LL DO THAT. ALL RIGHT, ANYTHING
6 FURTHER NOW BEFORE BRINGING IN THE JURY AND SWEARING
7 THE JURY? MADAME CLERK, WILL YOU BE SWEARING THE JURY
8 FOR US?

9 THE CLERK: YES, SIR.

10 THE COURT: ALL RIGHT, IT APPEARS THAT
11 THE PARTIES ARE READY.

12 MR. MODICA: YOUR HONOR, I DO HAVE A
13 MOTION.

14 THE COURT: COUNSEL, OF COURSE THE
15 JURY--- GO AHEAD, PLEASE.

16 MR. MODICA: I DON'T BELIEVE THEY'RE LONG.
17 FIRST OF ALL, THE VICTIM IN THIS CASE DOES HAVE AN ARREST
18 FOR PETTY LARCENY IN 1985, WAS NOT CONVICTED OF THAT. I
19 WANT TO MAKE CERTAIN THAT COUNSEL DOESN'T ASK HER
20 ABOUT THAT. AND THE SECOND THING IS, YOUR HONOR, THE
21 DEFENDANT WAS SERVED WITH AN ORDER TO SHOW CAUSE IN A
22 FAMILY COURT MATTER WITHIN HOURS OF THIS EVENT. HE WAS
23 SERVED THE NIGHT BEFORE. AND I WOULD LIKE TO INTRODUCE
24 EVIDENCE THAT HE WAS SERVED. AND I'M AWARE THAT HE
25 WAS TAKEN FROM HIS VEHICLE, ACTUALLY, WHEN HE WAS

1 APPREHENDED HE WAS IN HIS VEHICLE. AND THERE'S A LOT OF
2 PAPERS ATTACHED TO IT REGARDING ALLEGATIONS OF WHAT
3 THE CONTEMPT IS ABOUT. WHAT I WOULD REQUEST IS THAT I
4 BE ALLOWED TO SHOW THAT WHO SERVED IT, AND IN ADDITION
5 THAT I HAVE AT LEAST JUST THE FRONT COVER PAGE WHICH
6 INDICATES THAT THERE'S A CONTEMPT OF COURT HEARING
7 REGARDING A RULE TO SHOW CAUSE FOR AN ORDER OF
8 PROTECTION.

9 THE COURT: MR. BARR, DO YOU HAVE A
10 RESPONSE?

11 MR. BARR: YES, SIR, JUDGE, WE OBJECT UPON
12 SEVERAL GROUNDS. FIRST OF ALL AS IT RELATES TO THE
13 DOCUMENT, THE ADMISSIBILITY ITSELF. WE DO HAVE A FOURTH
14 AMENDMENT ISSUE CONCERNING SEARCH AND SEIZURE. IN
15 ADDITION TO THE SEARCH AND SEIZURE ISSUE, A LARGER ISSUE
16 OF RELEVANCE. THESE DOCUMENTS, AS I UNDERSTAND IT IN
17 LARGE PART PERTAIN TO A CONTEMPT OF FAMILY COURT
18 PROCEEDING WHERE THE DEFENDANT WAS HELD IN CONTEMPT
19 FOR VIOLATION OF A FAMILY COURT ORDER OF PROTECTION
20 AND WAS SENT TO JAIL.

21 IT WOULD BE OUR POSITION, JUDGE, WITH RESPECT
22 TO THOSE MATTERS THAT QUITE FRANKLY THEY WOULD BE
23 IRRELEVANT IN THE PROSECUTION OF THIS CASE AND CERTAINLY
24 WE WOULD OPPOSE THE INTRODUCTION OF THOSE ON BOTH
25 GROUNDS.

1 THE COURT: ALL RIGHT, THE COURT WILL AL
2 LOW THAT EVIDENCE BECAUSE IT MAY GO TO INTENT, WHICH
3 WILL BE ONE OF THE PERHAPS CONTESTED IN THE ISSUES IN
4 THE CASE. HOWEVER, MR. MODICA, I WOULD NOT ALLOW YOU
5 TO GO INTO THE FACT THAT THERE WAS AN ULTIMATE
6 DISPOSITION OF THAT THAT RESULTED IN AN ARREST OR
7 INCARCERATION OF THE DEFENDANT BECAUSE THAT WOULD BE
8 PREJUDICIAL. BUT THE EXISTENCE OF THE DOCUMENT AND HIS
9 POSSESSION OF IT I FIND IT APPROPRIATE AND WILL ALLOW YOU
10 TO PUT IT IN FOR THAT LIMITED PURPOSE.

11 MR. MODICA: YES, SIR. AND OF COURSE,
12 JUST THE COVER SHEET, NOT ALL THE DOCUMENTS, BECAUSE
13 THE DOCUMENTS REFER TO BAD ACTS BY THE DEFENDANT, BUT
14 JUST THE COVER SHEET INDICATING WHAT IT IS.

15 THE COURT: VERY GOOD, AND THE COURT
16 SO RULES. ALL RIGHT, LET'S BRING IN THE JURY, PLEASE.

17 MR. BARR: JUDGE, THERE WAS AN ISSUE
18 CONCERNING SEARCH AND SEIZURE ON THAT DOCUMENT.

19 THE COURT: YES, SIR. ARE WE GOING INTO
20 THAT DOCUMENT IN THE OPENING?

21 MR. BARR: NO, SIR.

22 THE COURT: WHEN DO YOU INTEND TO
23 PLACE THAT IN EVIDENCE?

24 MR. BARR: THROUGH THE SECOND WITNESS,
25 THE VICTIM.

1 THE COURT: ALL RIGHT. THE COURT WILL
2 HEAR YOU ON THAT AFTER WE TAKE A BREAK IN THIS MATTER,
3 BUT BEFORE THAT WITNESS TESTIFIES, AND LET YOU BE HEARD
4 ON THE FOURTH AMENDMENT RAMIFICATIONS.

5 (AT THIS TIME THE JURY ENTERS THE COURTROOM)

6 THE COURT: LADIES AND GENTLEMEN,
7 WELCOME TO THE COURTROOM. THANK YOU FOR YOUR
8 PATIENCE WITH US TODAY, WE'RE ABOUT 15 MINUTES LATER
9 THAN WE SAID WE WOULD BEGIN THE CASE, BUT WE'VE HAD
10 ANOTHER MATTER THIS MORNING, ANOTHER TRIAL IN PROGRESS.
11 I WILL TELL YOU BEFORE WE EVEN START THAT WE HAVE A
12 JURY THAT'S OUT NOW IN THE FIRST CASE THAT WAS FOR
13 TRIAL AND WE MAY HAVE SOME INTERRUPTION OF THESE
14 PROCEEDINGS WHEN THAT JURY REACHES A VERDICT OR NEEDS
15 SOME RESPONSE OR DIRECTION FROM THE COURT, SO JUST
16 PLEASE BE AWARE OF THAT IN ADVANCE. JUST BE
17 COMFORTABLE, I'LL BE WITH YOU IN ONE MOMENT.

18 LADIES AND GENTLEMEN, OF COURSE WE ARE HERE IN THE
19 MATTER OF THE STATE VERSUS RONALD COHENS FOR TRIAL.
20 WE'RE GOING TO BEGIN THIS TRIAL WITH YOU TAKING THE OATH
21 AS JURORS IN THIS SPECIFIC CASE. PLEASE FOLLOW OUR CLERK,
22 MRS. GRAHAM'S INSTRUCTIONS.

23 (WHEREUPON, AT THIS TIME THE JURY WAS SWORN IN.)

24 THE COURT: ALL RIGHT LADIES AND
25 GENTLEMEN, AGAIN, WELCOME BACK TO THE COURTROOM. I

1 APPRECIATE YOUR RESPONSE TO THE JURY MESSAGE TO
2 REPORT TODAY AT TWO-THIRTY FOR THE TRIAL OF THIS CASE,
3 AND THIS IS WHERE WE FIND OURSELVES NOW.

4 WHAT I WISH TO DO HERE IN THE BEGINNING OF THE
5 CASE IS DISCUSS WITH YOU WHAT I CALL THE INTRODUCTION TO
6 THE TRIAL OF THE CRIMINAL CASE. THIS IS NOT INTENDED TO
7 TAKE THE PLACE OF THE MORE DETAILED CHARGE ON THE LAW
8 THAT I'LL GIVE YOU AT THE END OF THE CASE. IN FACT, THE
9 LAST PERSON YOU'LL HEAR FROM BEFORE YOU RETIRE TO
10 DELIBERATE IN THIS CASE WILL BE ME TO GIVE YOU A DETAILED
11 CHARGE ON THE LAW.

12 BUT THESE ARE A FEW THINGS THAT I BELIEVE YOU
13 WILL NEED TO KNOW IN ADVANCE OF THE TRIAL, AND THUS I
14 CALL IT AN INTRODUCTION TO THE TRIAL OF A CRIMINAL CASE.
15 NOW AS YOU ARE AWARE, THIS IS A CRIMINAL CASE
16 COMMENCED BY THE STATE, THE PROSECUTION. I WILL TELL
17 THAT ONE OF THE TRADITIONS IN OUR COURT IS THAT THE
18 PARTY WITH THE BURDEN OF PROOF SITS CLOSEST TO THE JURY.
19 THE PROSECUTION IS SITTING CLOSEST TO YOU AS YOU CAN SEE
20 HERE IN THE COURTROOM, AND I WILL TELL YOU THAT THE
21 STATE HAS THE BURDEN OF PROOF IN THIS CASE.

22 CASES ARE BASED ON INDICTMENTS. THERE ARE
23 ACTUALLY TWO INDICTMENTS IN THIS CASE; ONE IS FOR
24 ASSAULT AND BATTERY WITH INTENT TO KILL AND THE OTHER
25 ONE IS FOR FAILURE TO STOP FOR A BLUE LIGHT. NOW PLEASE

1 UNDERSTAND THAT THE INDICTMENT, AS WE DISCUSSED WHEN
2 YOU WERE CHOSEN TO SERVE ON THIS JURY, IS SIMPLY A SET OF
3 ALLEGATIONS, AND IS NOT EVIDENCE AND IS NOT TO BE
4 ACCEPTED AUTOMATICALLY AS THE TRUTH OF THE MATTER.

5 THE DEFENDANT HAS PLED NOT GUILTY, IN FACT YOU
6 HEARD THAT HEAR IN THE COURTROOM. THE DEFENDANT HAS
7 PLED NOT GUILTY TO THE CHARGES, MEANING THE DEFENDANT
8 DENIES THE ACCUSATIONS IN THE INDICTMENTS. BUT EVEN
9 ABOVE THAT, IF THE DEFENDANT ENTERED NO PLEA, THE
10 DEFENDANT IS PRESUMED INNOCENT AND THE STATE HAS THE
11 BURDEN OF PROOF TO PROVE THE CHARGES BEYOND A
12 REASONABLE DOUBT, AND THAT IS THE STANDARD THAT THE
13 STATE WILL HAVE TO BEAR.

14 I WILL TELL YOU THAT THE PURPOSE OF THIS TRIAL
15 IS TO DETERMINE WHETHER OR NOT THE STATE IS ABLE TO
16 MEET THAT BURDEN, AND IT IS A HIGH BURDEN. AND I'LL
17 FURTHER TELL YOU THAT THE DEFENDANT IS PRESUMED
18 INNOCENT UNTIL THE STATE -- UNLESS AND UNTIL THE STATE
19 PROVES THE ELEMENTS OF THE CHARGES BEYOND A
20 REASONABLE DOUBT. NOW LET'S TALK A LITTLE BIT ABOUT
21 YOUR ROLE AS JURORS.

22 COUNSEL, I'M GOING TO GET YOU TO LISTEN TO THE
23 COURT'S INTRODUCTION RATHER THAN TALKING AMONG
24 YOURSELVES. NOW, LET'S TALK ABOUT YOUR ROLE IN THIS
25 CASE. YOU ARE THE JUDGES OF THE FACTS. I'M NOT THE

1 JUDGE OF THE FACTS, NO ONE ELSE IN THE COURTROOM IS OR
2 ARE THE JUDGES OF THE FACTS; YOU ARE. I'M THE JUDGE OF
3 LAW. YOU ARE THE JUDGE OF THE FACTS. AND WHAT THAT
4 BASICALLY MEANS IS THIS; YOU WILL LISTEN TO THE EVIDENCE
5 IN THE CASE AND THAT'S WHY THE WITNESSES SIT RIGHT HERE
6 TO TESTIFY AND YOU SIT SO CLOSE TO THEM, SO YOU CAN
7 OBSERVE THE WITNESSES AND HEAR THEM.

8 YOU'LL LISTEN TO THE WITNESSES. YOU WILL
9 DETERMINE THE FACTS OF THE CASE, APPLY IT TO THE LAW
10 THAT I WILL GIVE YOU AT THE END OF THE CASE, AND FROM
11 THAT YOU WILL REACH A VERDICT WHICH WILL BE JUST AND
12 WHICH WILL BE FAIR. NOW LET ME TELL YOU A LITTLE BIT
13 ABOUT THAT, BECAUSE ONE OF THE THINGS YOU'RE GOING TO
14 HAVE TO DO IN DETERMINING WHAT THE FACTS ARE AND
15 REACHING A VERDICT IS TO DECIDE THE CREDIBILITY AND
16 BELIEVABILITY OF THE WITNESSES WHO APPEAR BEFORE YOU.
17 JUST LIKE YOU, I'VE NOT HEARD THE EVIDENCE IN THIS CASE.
18 BUT I WILL TELL YOU THAT IN MANY INSTANCES IN COURT, WE
19 WILL HAVE WITNESSES THAT HAVE OBSERVED OR PARTICIPATED
20 IN AN EVENT THAT WILL DESCRIBE IT IN SUCH A WAY THAT IS
21 INCONSISTENT AND SOMETIMES IS ABSOLUTELY MUTUALLY
22 EXCLUSIVE.

23 WHEN YOU HAVE WITNESSES THAT ARE SAYING
24 THINGS THAT ARE MUTUALLY EXCLUSIVE, YOU WILL HAVE TO
25 DETERMINE WHICH IS THE MOST CREDIBLE AND BELIEVABLE TO

1 DETERMINE WHAT THE FACTS OF THE CASE ARE. NOW I TELL
2 YOU THIS IN ADVANCE SO YOU'LL HAVE AN OPPORTUNITY TO
3 OBSERVE THE WITNESSES AS THEY TESTIFY. AND THE FIRST
4 THING I'LL SAY TO YOU IS YOU USE WHAT CRITERIA IN YOUR
5 GOOD JUDGMENT YOU BELIEVE WOULD BEST INDICATE
6 CREDIBILITY AND BELIEVABILITY.

7 BUT SOME OF THE THINGS YOU MAY WISH TO LOOK
8 TO ARE; WHAT IS THE APPEARANCE OF A WITNESS WHEN THEY
9 TESTIFY; IS IT HESITANT, IS IT STRAIGHTFORWARD, IS IT
10 FORTHCOMING? HOW DID THE WITNESS COME TO KNOW WHAT
11 THEY'RE TALKING ABOUT? WHAT'S THEIR ABILITY TO HAVE
12 OBSERVED WHAT THEY'RE TALKING ABOUT? IS THE WITNESS
13 'TESTIMONY CONSISTENT EVEN WITH ITSELF AND IS IT
14 WEAKENED OR STRENGTHENED BY OTHER EVIDENCE IN THE
15 CASE, AND THEN FINALLY IN LIGHT OF THE GLOBAL EVIDENCE,
16 HOW REASONABLE IS WHAT THAT WITNESS IS SAYING?

17 AND THEN, FURTHERMORE, YOU MAY WANT TO LOOK
18 TO SEE WHETHER OR NOT A WITNESS MIGHT WANT TO HELP OR
19 HURT ONE SIDE OR ANOTHER. BECAUSE, IN OTHER WORDS,
20 MIGHT THAT WITNESS HAVE A BIAS OR A PREJUDICE?

21 NOW, I TELL YOU AGAIN THESE THINGS SO YOU CAN
22 OBSERVE THE WITNESSES AS THEY TESTIFY AND BE IN A
23 POSITION TO DETERMINE THE FACTS AT THE END OF THE CASE.
24 LET ME TELL YOU ABOUT HOW WE'RE GOING TO PROCEED. NOW
25 IN JUST A MOMENT I'M GOING TO CONCLUDE THESE COMMENTS

1 TO YOU AND WE WILL PROCEED FOR BOTH LAWYERS, THE
2 STATE GOING FIRST, TO COME FORWARD IN OPENING
3 STATEMENTS. AFTER OPENING STATEMENTS, THE STATE, THE
4 PROSECUTION WILL CALL THEIR WITNESSES ONE AFTER
5 ANOTHER. EVERY TIME THE PROSECUTION CALLS A WITNESS
6 THERE'LL BE DIRECT EXAMINATION OF THAT WITNESS BY THE
7 SOLICITOR AND THEN CROSS EXAMINATION BY DEFENSE
8 COUNSEL. THE STATE WILL REST AFTER CALLING ALL THEIR
9 WITNESSES, AND THEN THE DEFENSE, NOT REQUIRED TO CALL
10 WITNESSES, NOT REQUIRED TO PUT UP A CASE BECAUSE THE
11 DEFENSE HAS NO BURDEN OF PROOF, BUT IF THE DEFENSE
12 WISHES TO PUT UP A CASE THEY WILL CALL THEIR WITNESSES
13 ONE AFTER ANOTHER JUST LIKE THE STATE DID, SUBJECT TO
14 DIRECT EXAMINATION BY DEFENSE COUNSEL AND CROSS
15 EXAMINATION BY THE STATE.

16 THEN AFTER THE DEFENSE FINISHES WITH THEIR
17 WITNESSES, THE LAWYERS COME BEFORE YOU IN CLOSING
18 STATEMENTS, THEN I GIVE YOU THE CHARGE ON THE LAW AND
19 YOU RETIRE TO DELIBERATE. IN A NUTSHELL, THAT'S HOW
20 WE'RE GOING TO GO FORWARD. NOW I WILL TELL YOU THAT I
21 NORMALLY GO ABOUT AN HOUR AND A HALF BEFORE WE
22 ACTUALLY TAKE A BREAK, BUT WE CAN NEVER KNOW TO THE
23 MOMENT WHEN THAT WILL OCCUR BECAUSE IT DEPENDS ON
24 WHERE WE ARE IN THE TESTIMONY AND WHAT THE STATUS OF
25 THE PROCEEDINGS ARE. BUT IF YOU HAVE A NEED TO TAKE A

1 BREAK BEFORE WE REACH AN HOUR AND A HALF, OR WHATEVER
2 POINT IN TIME, PLEASE DO NOT HESITATE TO RAISE YOUR HAND.
3 I WILL UNDERSTAND WHAT THAT MEANS AND WE WILL TAKE A
4 BREAK AT THAT TIME.

5 I DO THAT FOR TWO REASONS. NUMBER ONE;
6 YOU'RE GIVING YOUR TIME FOR THIS VERY IMPORTANT CIVIC
7 DUTY, AND I WANT YOU TO BE COMFORTABLE ABOUT IT, BUT
8 SECONDLY, I DON'T WANT YOU WORRYING ABOUT SOMETHING
9 ELSE. I WANT YOU TO BE ABLE TO LISTEN TO AND FOCUS ON
10 THE EVIDENCE AND THE WITNESSES IN THE CASE SO THAT YOU
11 CAN RENDER A VERDICT WHICH IS JUST AND FAIR. SO, AGAIN, I
12 SAY TO YOU DON'T HESITATE TO STOP US.

13 NOW WHEN WE DO TAKE A BREAK, PLEASE, DO NOT
14 GO BACK IN THE JURY ROOM AND DISCUSS THE CASE. IT WOULD
15 BE INAPPROPRIATE, FOR EXAMPLE, FOR US TO TAKE ONE
16 WITNESS, THE JURY TAKE A BREAK, GO BACK AND MAKE SOME
17 PRELIMINARY DECISION WHICH THEN DRIVES THE REST OF THE
18 CASE WITHOUT HEARING ALL THE EVIDENCE AND THE
19 WITNESSES. SO PLEASE DON'T DISCUSS THE CASE UNTIL IT'S
20 GIVEN TO YOU AT THE END OF THE CASE OR DELIBERATIONS.

21 TWO MORE THINGS I WANT TO TELL YOU; DURING
22 THE COURSE OF THIS TRIAL WE WILL OPERATE ON A SYSTEM OF
23 RULES OF PROCEDURE THAT WHEN ONE SIDE OR THE OTHER
24 PERCEIVES THAT THE OTHER SIDE IS EITHER BREAKING THEM OR
25 ABOUT TO, THEY WILL CALL IT TO MY ATTENTION BY AN

1 OBJECTION. NOW JUST LIKE YOU, I DON'T KNOW WHEN THE
2 OBJECTIONS ARE GOING TO COME AND I DON'T KNOW WHAT
3 THEY'LL BE UNTIL WE HEAR THEM HERE IN THE COURTROOM.
4 AND WHAT I DECIDE ON AN OBJECTION IS BASED ON MY
5 UNDERSTANDING OF THE LAW, MY TRAINING AS A JUDGE, AND
6 MY EXPERIENCES AS AN ATTORNEY BEFORE I BECAME A JUDGE.
7 BUT I NEVER RULE ON AN OBJECTION TO SOMEHOW SEND YOU A
8 MESSAGE ABOUT HOW I MAY FEEL ABOUT A PARTICULAR ISSUE,
9 OR HOW I MAY FEEL ABOUT THE FACTS.

10 I DON'T HAVE A POSITION ON THE FACTS. IF I DID, I
11 WOULD BE INVADING YOUR PROVINCE. YOU'RE THE JUDGES OF
12 THE FACTS. SO PLEASE UNDERSTAND, THERE'S NEVER A RULING
13 GIVEN IN THE COURTROOM IN SOME EFFORT TO SEND A
14 MESSAGE TO YOU. TAKE NO INFERENCE FROM WHATEVER
15 RULINGS YOU SEE HERE IN THE COURTROOM

16 THE FINAL THING I WANT TO SAY TO YOU IS THIS; IN
17 JUST A MOMENT THE LAWYERS ARE GOING TO COME BEFORE
18 YOU WITH OPENING STATEMENTS AND AT THE END OF THE
19 CASE, IN CLOSING. AND IN OPENING AND IN CLOSING THEY WILL
20 TALK WITH YOU EITHER ABOUT WHAT THEY BELIEVE THE
21 EVIDENCE WILL SHOW OR WHAT IT HAS SHOWN.

22 PLEASE UNDERSTAND THAT WHAT A LAWYER TELLS
23 YOU IN OPENING AND CLOSING IS NOT EVIDENCE. THE EVIDENCE
24 IS WHAT THE WITNESSES SAY AND WHAT THE EXHIBITS SHOW.
25 THERE'S A DISTINCTION THERE. THE LAWYERS ARE ADVOCATES.

1 AND I'M NOT TELLING YOU THEY'RE GOING TO BE DISHONEST
2 WITH YOU, BUT PLEASE UNDERSTAND THE FACT THAT AN
3 ATTORNEY SAYS SOMETHING DOES NOT MAKE IT EVIDENCE.
4 ULTIMATELY YOU DETERMINE WHAT THE EVIDENCE IS AGAIN
5 FROM WHAT THE WITNESSES SAY AND WHAT THE EXHIBITS
6 SHOW.

7 NOW, WITH THAT UNDERSTANDING THAT
8 CONCLUDES THE COURT'S OPENING COMMENTS TO YOU, AND I
9 RECOGNIZE MR. MODICA FOR AN OPENING STATEMENT.

10 MR. MODICA: BY THE GRACE OF GOD, OR
11 WHATEVER; BY LUCK, BY KARMA, OR WHATEVER YOU WANT TO
12 CALL IT, IT IS A MIRACLE THAT THE VICTIM, NADINE COHEN, IS
13 SITTING IN THIS COURTROOM IN FRONT OF YOU TODAY BECAUSE
14 HER HUSBAND OF 11 YEARS ATTEMPTED TO KILL THE MOTHER
15 OF HIS CHILDREN.

16 AND IF ANY ONE OF YOU CAME UPON THIS WRECK,
17 YOU WOULD THINK---

18 MR. BARR: OBJECTION, YOUR HONOR.

19 THE COURT: ON WHAT BASIS, COUNSEL?

20 MR. BARR: COUNSEL IS ARGUING.

21 THE COURT: ALL RIGHT, COUNSEL, I'M GOING
22 TO DIRECT YOU NOT TO BE ARGUMENTATIVE IN OPENING
23 STATEMENT, JUST GIVE A ROADMAP OF WHAT YOU BELIEVE THE
24 EVIDENCE WILL SHOW. SUSTAINED.

25 MR. MODICA: THIS PHOTOGRAPH CLEARLY

1 INDICATES THAT A HORRIBLE , HORRIFIC WRECK OCCURRED
2 WHICH THIS VICTIM MIRACULOUSLY SURVIVED. NOW DURING
3 THE COURSE OF THIS TRIAL SOME MAY REFER TO THIS AS AN
4 ACCIDENT. I MAY EVEN DO THAT BY MISTAKE BECAUSE THAT IS
5 A TYPICAL WORD WE USE WHEN WE SEE SOMETHING LIKE THAT.
6 BUT AN ACCIDENT IMPLIES THAT SOMEBODY WAS INADVERTENT
7 OR SOMEBODY MADE A MISTAKE. IT DOESN'T APPLY WHEN YOU
8 REPEATEDLY RAM THE BACK OF THE WOMAN THAT YOU
9 MARRIED, WHEN YOU REPEATEDLY RAM THAT VEHICLE AT A
10 HIGH RATE OF SPEED ON ROUTE 17 UNTIL THAT PERSON LOSES
11 CONTROL AND ENDS UP IN AN ACCIDENT.

12 AND IT IS A MIRACLE THAT SHE WALKED OUT OF
13 THAT - DIDN'T WALK OUT, CRAWLED OUT OF THAT TURNED-
14 OVER VEHICLE WITH THE ASSISTANCE OF OTHERS AND
15 MANAGED NOT TO BE SERIOUSLY HURT. AND WHAT WE THINK
16 OF AS -- WHEN I SAY ATTEMPTED MURDER, ASSAULT AND
17 BATTERY WITH INTENT TO KILL IS LIKE ATTEMPTED MURDER.
18 AND THIS CASE IS NO DIFFERENT THAN HAVING A DEFENDANT
19 WHO FIRED A WEAPON AT A VICTIM, WINGED HER BUT DID NOT
20 KILL HER. THE SAME INTENT IS INVOLVED IN THIS CASE. IT'S
21 JUST A DIFFERENT MECHANISM BY WHICH TO ACCOMPLISH THE
22 MINDSET WITH MALICE AFORETHOUGHT TO CAUSE AN ASSAULT
23 AND BATTERY OF ANOTHER INDIVIDUAL. AND THE OTHER
24 INDIVIDUAL, AS THE JUDGE WILL TELL YOU IN HIS INSTRUCTIONS,
25 DOESN'T HAVE TO DIE, DOESN'T HAVE TO BE SERIOUSLY

1 INJURED.

2 I WOULD SUBMIT IN THE PREPARATION OF THIS CASE,
3 THE DEFENSE IS GOING TO ARGUE TO YOU THAT THE CHARGE
4 SHOULD BE ASSAULT AND BATTERY OF A HIGH AND
5 AGGRAVATED NATURE, WHICH IS A LESSER INCLUDED OFFENSE.
6 PAY ATTENTION DURING THE COURSE OF THIS TRIAL TO WHAT
7 HAS TRANSPIRED, HOW MUCH TIME GOES BY. BECAUSE MALICE
8 OF FORETHOUGHT MEANS ANY MOMENT BEFORE YOU PULL A
9 TRIGGER OR YOU HIT THE CAR, IT JUST MEANS THE SECOND, THE
10 TIME PERIOD YOU FRAMED IN YOUR MIND THAT YOU WERE GOING
11 TO DO THAT. SO IT DOES NOT HAVE TO BE A LONG PERIOD OF
12 TIME. MALICE IS BASICALLY ILL WILL, TO PREY UPON ANOTHER
13 HUMAN BEING.

14 WHAT IS MORE DEPRAVED THAN RAMMING THE BACK
15 OF YOUR ESTRANGED WIFE'S VEHICLE TO THE POINT WHERE IT
16 LOSES CONTROL AND ENDS UP LIKE THAT? NOW YOU'RE GOING
17 TO HEAR FROM THE TESTIMONY THAT HE STRUCK HER NOT
18 ONCE, NOT TWICE, NOT THREE TIMES, BUT FOUR TIMES UNTIL
19 SHE LOST CONTROL AND RAN OFF THE ROAD. YOU'RE GOING TO
20 FIND THAT THIS HAPPENED OVER A PERIOD OF TIME. YOU
21 ACTUALLY WILL BE ABLE TO LISTEN TO THE 911 CALL WHEN
22 SHE'S ON THE PHONE WITH THE OPERATOR SCREAMING AND
23 PLEADING FOR HELP. AND YOU WILL HEAR THE PHONE GO DEAD
24 AS THE DEFENDANT TRIED TO SNUFF OUT HER LIFE. POWERFUL.
25 YOU WILL HEAR THAT. BUT THE DEFENSE IS GOING TO CLAIM

1 THAT THIS WAS AN ACCIDENT. NO ACCIDENT, KEEP YOUR EYE
2 ON THE BALL WITH REGARD TO THAT. AND THEY MAY CLAIM
3 TO YOU THAT IT WAS THE VICTIM FOLLOWING THE DEFENDANT
4 RATHER THAN THE OTHER WAY AROUND. KEEP YOUR EYE ON
5 THE BALL, PAY ATTENTION DURING THE COURSE OF THIS TRIAL
6 AND TESTIMONY AND SEE IF THAT'S THE CASE.

7 THE VICTIM WAS ON HER WAY TO WORK. SHE LIVES
8 OVER IN OAKLAND* AND TRAVELED DOWN 51, 701 THROUGH
9 GEORGETOWN, THE BLACK RIVER ROAD, 17, ON HER WAY TO
10 MYRTLE BEACH TO GO TO WORK AT A REGULAR DESIGNATED
11 TIME PERIOD. IT IS THE DEFENDANT WHO -- BASICALLY WAS
12 SPYING ON HER, WAITING UNTIL SHE LEAVES, PARKING AT THE
13 END OF THE ROAD WHEN SHE PASSES BY, CUTTING THROUGH
14 PLACES SO HE GETS IN FRONT AND BEHIND HER. THIS IS WHAT
15 YOU WILL SEE DURING THE COURSE OF THIS TRIAL.

16 ALL OF THAT -- WHEN YOU HEAR THESE THINGS - IS
17 LETTING YOU GO INTO THE MIND OF THE DEFENDANT IN TERMS
18 OF WHAT HIS INTENT WAS, HOW HE FELT ABOUT HIS WIFE AND
19 WHAT HE WANTED TO SEE DONE TO HER. IF THAT IS NOT TRUE,
20 AFTER THIS HORRIFIC ACCIDENT OCCURS -- AND LUCKILY SHE IS
21 NOT HARMED BADLY -- IF IT WAS AN ACCIDENT YOU WOULD
22 EXPECT A PERSON TO STOP, WOULDN'T YOU? THIS ACCIDENT
23 HAPPENED GOING NORTH TOWARDS MYRTLE BEACH. AND
24 YOU'RE GOING TO FIND OUT THAT THE ONLY WAY TO GET BACK
25 TO WHERE THEY LIVE IS TO GO SOUTH DOWN 17 AND TRAVEL

1 BACK THE WAY I JUST EXPRESSED ON BLACK RIVER ROAD.

2 AND WHEN THE POLICE CATCH UP TO THE
3 DEFENDANT, YOU'RE GOING TO SEE THINGS AND HEAR THINGS IN
4 THIS CASE THAT YOU NORMALLY DON'T HEAR ON THE STAND.
5 YOU'RE GOING TO SEE HIM ELUDING THE POLICE. YOU'RE GOING
6 TO HEAR THE POLICE OFFICER RADIOING, "HE'S SPEEDING UP,
7 HE'S GOING OVER 70," YOU'RE GOING TO SEE AND FOLLOW
8 ALONG AS IF YOU'RE IN THE POLICE CAR. AND FROM THAT YOU
9 SHOULD LEARN, AGAIN, WHAT THE STATE OF MIND OF THE
10 DEFENDANT WAS. HERE HE'S COMMITTED THIS HORRIFIC ACT.
11 AND IF IT WAS TRULY AN ACCIDENT HE WOULD HAVE STOPPED,
12 CALLED 911, AND REMAINED. BUT INSTEAD HE RUNS LIKE A
13 DOG.

14 THAT'S WHAT THIS CASE IS ABOUT. THAT IS A
15 MAJOR OVERLOAD. THERE'S A LOT MORE I CAN TELL YOU. BUT
16 THEN, YOU KNOW, WHAT IS THE POINT IN LISTENING IF I'M GOING
17 TO TELL YOU EVERYTHING? BUT I THINK I'VE SET OUT FOR YOU
18 THE ISSUES IN THIS CASE. I THINK IF YOU FOLLOW ALONG AND
19 KEEP YOUR EYE ON THE BALL WITH REGARD TO THOSE ISSUES;
20 MALICE OF FORETHOUGHT, ACCIDENT, THESE KIND OF THINGS, IF
21 YOU FOLLOW ALONG BY THE END OF THIS CASE THERE'LL BE
22 ONLY ONE TRUE VERDICT THAT SPEAKS THE TRUTH, AND
23 THAT'S GUILTY OF ASSAULT AND BATTERY WITH INTENT TO
24 KILL, AND GUILTY OF FAILURE TO STOP FOR A BLUE LIGHT.
25 THANK YOU FOR YOUR ATTENTION.

1 THE COURT: THANK YOU, MR. MODICA.

2 BEFORE WE TAKE THE DEFENSE OPENING STATEMENT, I'M
3 ADVISED THAT OUR JURY NUMBER ONE HAS A VERDICT. LADIES
4 AND GENTLEMEN, WHAT I'M GOING TO ASK YOU TO DO IS TO
5 STEP BACK TO YOUR JURY ROOM, WE'LL TAKE THE VERDICT IN
6 THE OTHER MATTER AND THEN RESUME THESE PROCEEDINGS AS
7 QUICKLY AS WE CAN. PLEASE DON'T DISCUSS THE CASE.
8 THANK YOU FOR YOUR UNDERSTANDING.

9 (AT THIS TIME THE JURY LEFT THE COURTROOM)

10 THE COURT: ALL RIGHT, WELCOME
11 BACK TO THE COURTROOM. LADIES AND GENTLEMEN, LET ME
12 SAY TO YOU UNTIL WE CHOOSE A FOREPERSON OF THE JURY,
13 THE JURORS ARE FREE TO MOVE AROUND WITHIN YOUR SEATS
14 THERE. YOU DON'T HAVE TO SIT WHERE YOU'RE SITTING NOW.
15 OUR ALTERNATES, I WOULD ASK THAT YOU REMAIN IN THE
16 ALTERNATE CHAIRS, BUT IF THE OTHER JURORS WISH TO MOVE
17 AROUND AMONGST THEMSELVES, YOU'RE FREE TO DO SO AS
18 YOU COME AND GO.

19 YOU WILL RECALL AT THE END OF OUR INITIAL
20 SESSION THE STATE HAD GIVEN ITS OPENING STATEMENT. NOW
21 WE TURN TO THE DEFENSE FOR OPENING STATEMENT. MR.
22 BARR, YOU MAY PROCEED.

23 MR. BARR: LADIES AND GENTLEMEN,
24 LET ME JUST TAKE THIS OPPORTUNITY TO INTRODUCE MYSELF;
25 I'M CHARLES DAVID BARR AND I PRACTICE LAW IN KINGSTREE.

1 I'M THE DEFENSE LAWYER, AND I REPRESENT MR. RONALD
2 COHENS, HE'S THE PERSON REFERRED TO AS THE DEFENDANT.
3 NOW WITH RONALD IN THE COURTROOM TODAY IS HIS MOTHER
4 AND SEVERAL OF HIS BROTHERS, AND ONE OF HIS NIECES, AND
5 SOME OTHER FAMILY MEMBERS. AND, YOU KNOW, LET ME JUST
6 SAY AT THE OUTSET, THAT, YOU KNOW, I'VE TRIED DIFFERENT
7 CASES WITH MR. MODICA BEFORE, AND I LOVE THE WAY HE
8 STARTED THIS CASE WITH TALKING ABOUT A MIRACLE FROM
9 GOD. AND I JUST, YOU KNOW, I DON'T WANT TO GIVE HIM TOO
10 MUCH CREDIT, AND I DON'T WANT TO GIVE HIM TOO MUCH
11 CREDIT, BUT I DON'T BELIEVE THAT THIS CASE INVOLVED
12 ANYTHING MIRACULOUS FROM GOD. NOW IF YOU TALKED
13 ABOUT THE MIRACLE OF WAKING UP THIS MORNING OR THE
14 MIRACLE OF SALVATION FROM GOD, THAT'S ONE THING.

15 BUT IN ANY SITUATION WHERE PEOPLE HAVE DONE
16 LESS THAN THEY ORDINARILY WOULD BE REQUIRED TO DO, YOU
17 WIND UP WITH SOME BAD CONSEQUENCES; IN OTHER WORDS,
18 SOMETIMES YOU GIVE YOUR WORD AND YOU DON'T KEEP IT, YOU
19 WIND UP HAVING TO PAY. AND JUST LIKE ANYTHING WRONG, IT
20 HAS CONSEQUENCES. NOW THIS SITUATION INVOLVES TWO
21 PEOPLE WHO OVER 14 YEARS AGO STOOD UP BEFORE GOD AND
22 TOOK AN OATH TO LOVE AND TO CHERISH ONE ANOTHER UNTIL
23 DEATH DO THEM PART.

24 WELL, IT DIDN'T QUITE WORK OUT THAT WAY. THEY
25 HAD MARITAL PROBLEMS. AS A RESULT OF HAVING THE

1 MARITAL PROBLEMS - OF COURSE THEY HAD THE MARITAL
2 PROBLEMS, NUMBER ONE, THEY WERE DISOBEDIENT TO THE
3 OATH THAT THEY TOOK. THEY WERE DISOBEDIENT TO THE
4 OATH THAT THEY TOOK. I DON'T THE EVIDENCE WILL SHOW
5 ANYTHING OTHER THAN THAT. AS A RESULT OF THAT THEY
6 WENT OFF ON THEIR INDIVIDUAL COURSES, AND AS A RESULT OF
7 GOING OFF ON THEIR INDIVIDUAL COURSES, THEY FORGOT THE
8 OATH THAT THEY TOOK. GOD'S HANDS DID NOT CAUSE THIS, IN
9 FACT HE IS WHAT SUSTAINS US, BUT THEY GOT IN TROUBLE
10 BECAUSE THEY WERE DISOBEDIENT. THEY DIDN'T KEEP THE
11 OATH THEY TOOK.

12 NOW, LET ME JUST SAY, LADIES AND GENTLEMEN,
13 I'LL TALK TO YOU A LITTLE BIT MORE ABOUT THAT LATER ON,
14 BUT LET'S GET DOWN TO BUSINESS. AND AS YOUR HONOR'S
15 ALREADY TOLD YOU, AND I LOVE THE INSTRUCTIONS, HIS
16 PRELIMINARY INSTRUCTIONS WERE JUST EXCELLENT. I'M NOT
17 GOING TO SAY A WHOLE LOT, I AM JUST GOING TO CONFIRM A
18 FEW THINGS BECAUSE THERE'S A COUPLE THINGS I WANT TO
19 TALK TO YOU ABOUT IN TERMS OF PRINCIPLES. I DON'T WANT
20 TO TALK ABOUT THE FACTS OF THIS CASE, I DON'T KNOW
21 WHAT ALL THE FACTS ARE GOING TO BE.

22 UNLIKE MR. MODICA, I'M NOT GOING TO PROMISE
23 YOU ANYTHING. THE ONLY THING THAT I CAN PROMISE YOU IS
24 AS A DEFENSE LAWYER I'M HERE TO SEE MY CLIENT HAS A FAIR
25 TRIAL. I'M HERE TO REPRESENT HIM. NOW DURING THE COURSE

1 OF THAT REPRESENTATION, YOUR HONOR'S ALREADY TOLD YOU
2 THAT THERE'LL BE TIMES WHEN THE PROSECUTION TABLE AND I
3 WILL DISAGREE ABOUT MATTERS OF LAW. BUT HIS HONOR WILL
4 RESOLVE THOSE ISSUES.

5 LADIES AND GENTLEMEN, YOU 12 PEOPLE ARE THE
6 TRYER OF THE FACTS IN THIS CASE. THERE ARE THINGS THAT
7 YOU ARE GOING TO HAVE TO DECIDE IN THIS CASE THAT ARE
8 LEFT FOR YOU AND YOU ALONE. AS JURORS YOU HAVE TAKEN
9 AN OATH, AND WHEN I SAY DISOBEDIENCE - I TELL YOU IT'S A
10 DEFENSE LAWYER'S DREAM TO TALK TO PEOPLE ABOUT
11 DISOBEDIENCE. BECAUSE, SEE, THIS DIDN'T JUST START
12 YESTERDAY, BUT THERE IS SOMETHING IN US THAT MAKES US
13 WANT TO DO THINGS OUR OWN WAY. WE DON'T WANT TO
14 LISTEN TO ANYBODY. WHEN WE WENT THROUGH THE
15 SCREENING PROCESS TO TRY TO SELECT 12 PEOPLE, WE TRIED
16 TO FIND 12 PEOPLE THAT COULD BE FAIR AND IMPARTIAL, 12
17 PEOPLE THAT COULD SIT DOWN AND LISTEN TO THE FACTS,
18 AND IN SPITE OF WHAT'S CLAIMED BY THE PROSECUTION ABOUT
19 GOD COMING DOWN AND PUTTING THINGS IN HIS HANDS, IN
20 SPITE OF THAT 12 PEOPLE THAT COULD SIT DOWN AND LISTEN,
21 BE OBJECTIVE, TAKE THE LAW AS HIS HONOR GIVES IT TO YOU,
22 NOT WHAT YOU BELIEVE IT TO BE, AND COME BACK WITH A
23 VERDICT WHICH SPEAKS THE TRUTH BASED ON THE LAW AND
24 THE EVIDENCE.

25 NOW THAT MIGHT SOUND EASY, BUT IT'S NOT.

1 BECAUSE I'M TELLING YOU IN THIS FLESH WE ATTEMPT TO DO
2 THINGS OUR OWN WAY AND NOT TO TAKE THE LAW AS HIS
3 HONOR GIVES IT TO YOU. THERE IS NO QUESTION IN MY MIND
4 THAT IF YOU DISCHARGE YOUR DUTIES AND RESPONSIBILITIES AS
5 JURORS AND THE TRYERS OF THE FACTS AND YOU TAKE THE
6 LAW THAT IS APPLICABLE TO THIS CASE WHERE THIS
7 DEFENDANT IS CHARGED WITH TWO OFFENSES; ONE ASSAULT
8 AND BATTERY WITH INTENT TO KILL AND THE OTHER FAILURE
9 TO STOP FOR A BLUE LIGHT, IF YOU TAKE THE LAW AS HIS
10 HONOR GIVES IT TO YOU AS APPLICABLE TO THOSE OFFENSES
11 AS RELATES TO A TRIAL IN THIS STATE, AND IF YOU APPLY THE
12 FACTS AS YOU FIND THEM TO BE COLLECTIVELY, NOTICE I SAY
13 COLLECTIVELY BECAUSE PART OF THIS PROCESS REQUIRES THE
14 INPUT OF EACH AND EVERY ONE OF YOU; IN OTHER WORDS, AT
15 SOME POINT YOU ARE GOING TO HAVE TO COME TO AN
16 AGREEMENT, A CONSENSUS REGARDING THE ISSUES THAT WILL
17 BE IN DISPUTE. AND LADIES AND GENTLEMEN, I SUBMIT TO
18 EACH AND EVERY ONE OF YOU, YOU'RE GOING TO HAVE TO
19 PARTICIPATE IN THOSE DELIBERATIONS.

20 THAT REQUIRES INPUT FROM EVERYBODY, BECAUSE
21 EVERYBODY'S NOT GOING TO AGREE. HIS HONOR INDICATED TO
22 YOU A FEW MINUTES AGO, HE TALKED ABOUT CREDIBILITY.
23 WELL, I THINK CREDIBILITY IS GOING TO BE AN ISSUE IN THIS
24 CASE BECAUSE I THINK BASED ON THE TESTIMONY THAT YOU'RE
25 GOING TO HEAR, YOU'RE GOING TO HEAR SOME PEOPLE - AND

1 YOU KNOW IT ALWAYS AMAZES ME, 26 YEARS AGO I STOPPED
2 SWEARING ON THE BIBLE, STARTED AFFIRMING, BECAUSE OF
3 WHAT YOU GET IN THE COURTROOM SOMETIMES. NOW YOU'RE
4 GOING TO HEAR SOME THINGS IN THIS COURTROOM DURING THIS
5 TRIAL THAT YOU'RE GOING TO WONDER HOW IN THE WORLD DID
6 THEY HAPPEN THAT WAY.

7 NOW, AGAIN, THAT'S WHERE THIS THING OF
8 DISOBEDIENCE COMES IN. BECAUSE HIS HONOR WILL INSTRUCT
9 YOU, AND HE'S ALREADY DONE SO TO AN EXTENT IN HIS
10 PRELIMINARY INSTRUCTIONS, THAT AS JURORS YOU HAVE TO
11 DECIDE WHO'S TELLING THE TRUTH. HOW DO YOU DO THAT?
12 YOU USE YOUR GOOD COMMON SENSE. YOU USE THAT SAME
13 THING THAT HAS ENABLED YOU THIS FAR TO BE ABLE TO
14 DETERMINE WHEN SOMEBODY IS TELLING YOU THE TRUTH AND
15 WHEN SOMEBODY IS LYING TO YOU. AND YOU USE THAT TO
16 DETERMINE WHEN YOU'RE GETTING THE TRUTH IN THIS CASE
17 AND WHAT THE FACTS ARE AND HOW YOU APPLY THE LAW AS
18 HIS HONOR'S GOING TO GIVE IT TO YOU. THAT'S WHAT YOU
19 USE; YOUR GOOD COMMON SENSE. YOU DON'T USE ANYTHING
20 ELSE.

21 HOW DO YOU DETERMINE THAT? WELL, THE
22 DEMEANOR OF THE WITNESSES, HOW THE PERSON PRESENTS
23 THEMSELVES, THEIR ABILITY TO RECALL THINGS. IN OTHER
24 WORDS - AND YOU KNOW SOMETHING I'VE FOUND? I'VE FOUND
25 OVER THE YEARS THAT THERE'S NOTHING LIKE SITTING DOWN

1 EYEBALL TO EYEBALL AND LOOKING AT A PERSON AND MAKING
2 A DETERMINATION AS TO WHETHER OR NOT THEY'RE TELLING
3 THE TRUTH. THEIR EYES ARE THE WINDOWS OF THE SOUL. AND
4 IF ANYBODY HAS ANY DECENCY IN THEM, YOU ARE GOING TO SEE
5 IT. OH, YEAH, YOU'RE GOING TO SEE SOMETHING TO LET YOU
6 KNOW. NOW IN YOUR SITUATION I DON'T KNOW WHAT YOU
7 USE, BUT I'M SURE THERE'S SOMETHING THAT YOU USE. HIS
8 HONOR HAS ALREADY GIVEN YOU A FEW THINGS.

9 IN ADDITION TO THE ISSUE CREDIBILITY, LADIES AND
10 GENTLEMEN, ONE OF THE THINGS I JUST, YOU KNOW, AS IT
11 RELATES TO THIS PROCESS -- AND, SEE, RIGHT NOW HIS HONOR
12 INDICATED TO YOU THAT THE DEFENDANT IS PRESUMED TO BE
13 INNOCENT RIGHT NOW. BUT SOME OF YA'LL MIGHT NOT LIKE
14 THAT. UNTIL HE'S BEEN TRIED, MR. MODICA TOLD YOU ALL
15 ABOUT HOW THIS CAR TURNED OVER; AND YET HERE THEY SAY
16 PRESUMED INNOCENT.

17 WELL I TELL YOU RIGHT NOW AS YOU'RE SITTING
18 WHERE YOU'RE SITTING, THIS GENTLEMEN, MR. RONALD COHENS
19 IS PRESUMED INNOCENT. AND THAT'S JUST NOT JUST
20 SOMETHING THAT I'M SAYING, IT IS A PRESUMPTION, IT IS THE
21 SUBSTANTIVE RIGHT THAT ANY DEFENDANT IS ENTITLED TO.
22 THE PRESUMPTION OF INNOCENCE. THAT MEANS THAT RIGHT
23 NOW IN THIS TRIAL THAT'S STARTED, HE IS PRESUMED
24 INNOCENT AND IT IS THE PROSECUTION'S BURDEN, IT IS THIS
25 TABLE'S BURDEN TO PRESENT TO YOU EVIDENCE TO PROVE HIM

1 GUILTY BEYOND A REASONABLE DOUBT IF YOU ARE TO FIND HIM
2 GUILTY. HE HAS NOT RESPONSIBILITY TO PRESENT ANY PROOF.
3 AND THE PROSECUTION HAS THE BURDEN OF PROVING EACH
4 AND EVERY ELEMENT OF THE OFFENSE OF ASSAULT AND
5 BATTERY WITH INTENT TO KILL. AND I TELL YOU THAT
6 ASSAULT AND BATTERY WITH INTENT TO KILL IN SOUTH
7 CAROLINA IS AN UNLAWFUL ACT OF VIOLATING THE PERSON OF
8 ANOTHER WITH MALICE. IN OTHER WORDS, EVERYTHING
9 EXCEPT THE DEATH OF A PERSON. EVERYTHING EXCEPT FOR
10 DEATH, THAT'S WHAT ASSAULT AND BATTERY - AND, OF
11 COURSE, FAILURE TO STOP FOR A BLUE LIGHT AND SIREN IS JUST
12 WHAT IT SOUNDS LIKE. WHEN AN OFFICER SIGNALS YOU,
13 YOU'VE GOT TO STOP WITHIN A REASONABLE TIME, YOU CAN'T
14 JUST IGNORE HIM AND KEEP ON GOING.

15 NOW, LADIES AND GENTLEMEN, I'M GOING TO SIT
16 DOWN NOW AND I'M GOING TO LET THE PROSECUTION START
17 PRESENT THEIR CASE. THERE'S JUST ABOUT TWO OTHER
18 THINGS THAT I WANT TO TALK TO YOU ABOUT. NOW, ONE OF
19 THOSE IS REASONABLE DOUBT, AND THE OTHER THING, LADIES
20 AND GENTLEMEN, IS WHAT YOU ARE GOING TO HAVE TO DECIDE
21 AS RELATES TO WHETHER OR NOT THE PROSECUTION PROVES
22 THEIR CASE; THAT IS THE GUILTY BEYOND A REASONABLE
23 DOUBT. TWO THINGS SEEMS TO BE THE SAME THING, BUT IT'S
24 DIFFERENT.

25 AT SOME POINT HIS HONOR WILL INSTRUCT YOU THAT IN

1 SOUTH CAROLINA THAT A REASONABLE DOUBT IS A KIND OF
2 DOUBT -- AND I HOPE HE DOES, DEPENDS ON WHICH CASE LAW
3 HE FOLLOWS - TO CAUSE A PERSON TO HESITATE; THAT'S
4 WHAT REASONABLE DOUBT IS. IN OTHER WORDS, HE IS GOING
5 TO TELL YOU AT THE END OF THE CASE IF YOU ARE NOT
6 CONVINCED BEYOND A REASONABLE DOUBT THAT THE
7 PROSECUTION HAS PROVEN THE DEFENDANT GUILTY, THEN YOU
8 MUST RENDER A VERDICT OF NOT GUILTY. AND NOT JUST ANY
9 DOUBT, BUT IN OTHER WORDS IF YOU ARE NOT FIRMLY
10 CONVINCED -- NOW NOTICE I SAID "FIRMLY," IF YOU'RE NOT
11 FIRMLY CONVINCED OF PROOF OF HIS GUILT, THEN YOU HAVE TO
12 FIND HIM NOT GUILTY.

13 YOUR HONOR WILL INSTRUCT YOU THAT IN SOUTH
14 CAROLINA IF THERE IS A DOUBT AS TO WHICH WAY YOU OUGHT
15 TO GO, THAT SHOULD BE RESOLVED ON BEHALF OF THE
16 DEFENDANT. AGAIN, THAT MIGHT BE SOMETHING THAT YOU
17 MIGHT NOT WANT TO RECEIVE. YOU MAY NOT WANT TO BE
18 AMENABLE TO THAT, BUT I ASK YOU PLEASE, LADIES AND
19 GENTLEMEN, THAT'S IS THE LAW IN SOUTH CAROLINA, AND
20 THAT'S WHAT WE NEED FROM EVERYBODY, AND THAT'S WHAT
21 WE NEED IN THIS CASE.

22 AND I ASSURE YOU THAT AS IT RELATES TO THIS
23 CRIMINAL JUSTICE PROCESS, A PROCESS THAT YOU ARE A PART
24 OF THIS AFTERNOON, AIN'T NOBODY CAN COMPLAIN IF YOU DID
25 THAT. AND THAT IS JUST WHAT WE ALL ASK THAT YOU DO.

1 ON BEHALF OF MR. COHENS, I WANT TO THANK YOU FOR YOUR
2 SERVICE. WE HOPE THIS EXPERIENCE, THIS JURY SERVICE, WILL
3 BE ONE THAT YOU WILL WALK AWAY FROM HERE BEING MORE
4 ENLIGHTENED ABOUT THIS CRIMINAL JUSTICE PROCESS THAN
5 YOU ARE NOW. LET ME JUST ALSO SAY THAT WITH RESPECT TO
6 YOUR DUTIES AND RESPONSIBILITIES, LADIES AND GENTLEMEN,
7 WE ONLY ASK THAT YOU LISTEN TO THE EVIDENCE AND THAT
8 YOU TAKE THE LAW AS TO THE PRESUMPTION OF INNOCENCE,
9 AND THAT YOU NOT MAKE UP YOUR MIND UNTIL YOU HAVE
10 HEARD EVERYTHING IN THIS CASE.

11 THERE IS NO DOUBT IN MY MIND THAT IF YOU TAKE IT
12 AS YOUR HONOR GIVES IT TO YOU, YOU'LL FIND THAT THERE IS
13 NO ASSAULT AND BATTERY WITH INTENT TO KILL, AND IN SPITE
14 OF WHAT MR. MODICA SAYS, WE'RE NOT HERE LOOKING FOR
15 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.
16 AND I THINK YOU WILL FIND THE DEFENDANT DID NOT VIOLATE
17 THE LAW IN SOUTH CAROLINA. BUT THAT WILL BE SOMETHING
18 YOU WILL HAVE TO DECIDE. THANK YOU.

19 THE COURT: ALL RIGHT. THE
20 PROSECUTION MAY START WITH THE FIRST WITNESS.

21 MR. MODICA: YES, YOUR HONOR. AT
22 THIS TIME THE STATE WOULD CALL ADRIAN DUNMORE.

23 Thereupon, ADRIAN DUNMORE, being
24 first duly sworn, testified as follows:

25 DIRECT EXAMINATION BY MR. MODICA:

1 Q STATE YOUR NAME FOR THE RECORD.

2 A ADRIAN ANTONIO DUNMORE.

3 Q GOOD AFTERNOON, MR. DUNMORE.

4 A GOOD AFTERNOON.

5 Q IS THIS THE FIRST TIME YOU'RE TESTIFYING IN COURT?

6 A THAT IS CORRECT.

7 Q A LITTLE NERVOUS?

8 A YES, AM.

9 Q OKAY, I'LL TRY AND MAKE IT EASY ON YOU. PLEASE TELL OUR
10 JURY, SIR, WHERE YOU'RE EMPLOYED AND IN WHAT CAPACITY,
11 AND HOW LONG.

12 A I AM EMPLOYED AT GEORGETOWN COUNTY 9-1-1-. I'VE BEEN
13 THERE FOR A YEAR AND EIGHT MONTHS.

14 Q AS AN OPERATOR?

15 A THAT IS CORRECT.

16 Q TELL OUR JURY A LITTLE BIT ABOUT THE DUTIES AND
17 RESPONSIBILITIES OF A 9-1-1 OPERATOR.

18 A MY DUTIES AS A-9-1-1 OPERATOR IS TO TAKE CALLS, DECIPHER
19 HOW I'M GOING TO PUT THEM OUT, AND TRY TO GIVE THE
20 PEOPLE HELP TO THE BEST OF MY KNOWLEDGE.

21 Q AND DOES THAT INCLUDE COMMUNICATING WITH THE VICTIMS
22 OR POTENTIAL VICTIMS OR WITNESSES ON CALLS?

23 A THAT IS CORRECT.

24 Q AND DOES THAT INCLUDE COMMUNICATION WITH LAW
25 ENFORCEMENT AND WHERE AND WHAT'S GOING ON?

- 1 A THAT IS CORRECT.
- 2 Q NOW, I WANT TO DIRECT YOUR ATTENTION TO MARCH 23RD OF
- 3 2006 AND ASK YOU IF YOU WERE WORKING AS A 9-1-1
- 4 OPERATOR ON THAT DAY?
- 5 A THAT IS CORRECT.
- 6 Q I MAY BE PUTTING YOU ON THE SPOT, BUT DO YOU REMEMBER
- 7 WHAT YOUR TOUR OF DUTY WAS THAT DAY; WHAT HOURS YOU
- 8 WORKED?
- 9 A I WORKED FROM EIGHT O'CLOCK THAT NIGHT, EIGHT P.M. TO
- 10 EIGHT A.M. THAT NEXT MORNING.
- 11 Q OKAY, NOW MORE SPECIFICALLY I WANT TO DIRECT YOUR
- 12 ATTENTION TO A CALL THAT CAME IN AT APPROXIMATELY 7:21
- 13 A.M. ON THAT DAY. THERE WAS CALL FROM A WOMAN?
- 14 A THAT IS CORRECT.
- 15 Q REGARDING WHAT WAS TRANSPIRING ON HIGHWAY 17 HERE IN
- 16 GEORGETOWN?
- 17 A THAT IS CORRECT.
- 18 Q AND WERE YOU THE DISPATCHER THAT TOOK THAT 9-1-1 CALL
- 19 FROM THE VICTIM?
- 20 A THAT IS CORRECT.
- 21 Q AND AMONG OTHER THINGS DID YOU DISPATCH INFORMATION TO
- 22 LAW ENFORCEMENT AS TO WHAT WAS GOING ON?
- 23 A YES, I DID.
- 24 Q DURING THE COURSE OF TIME THAT YOU WERE DISPATCHING THE
- 25 INFORMATION, DID YOU DISPATCH TO LAW ENFORCEMENT THE

1 SUBJECT WHO ALLEGEDLY WAS RESPONSIBLE?

2 A THAT IS CORRECT.

3 Q AND WHAT NAME DID YOU GIVE OUT TO THE POLICE?

4 A I GAVE OUT A RONALD COHEN AS THE SUBJECT.

5 Q POTENTIALLY INVOLVED?

6 A RIGHT.

7 Q NOW WHEN YOU FIRST RECEIVED THE 9-1-1 CALL WHAT TIME
8 WAS THAT SPECIFICALLY?

9 A THAT WAS AT 7:21.

10 Q SPECIFICALLY. DO YOU HAVE A MORE SPECIFIC TIME?

11 A IT WAS -

12 Q ARE YOU LOOKING AT SOMETHING TO REFRESH YOUR
13 RECOLLECTION?

14 A THAT IS CORRECT. I'M LOOKING AT THE CAD* DETAIL FROM
15 THAT DAY FROM THE CALL THAT I TOOK.

16 Q TELL OUR JURY WHAT THE CAD DETAIL IS.

17 A THE CAD IS EXACTLY WHAT I'VE ACTUALLY DONE OVER THE
18 COURSE OF TIME. THIS IS A DETAILED LOG OF WHAT GOES ON
19 FROM THE TIME THAT I ANSWER THE PHONE IT AUTOMATICALLY
20 LOGS IT DOWN ON THAT SHEET.

21 Q COMPUTER GENERATED?

22 A THAT IS CORRECT.

23 Q OKAY. WHAT TIME EXACTLY, SIR?

24 A THE TIME EXACTLY WAS - THE INCOMING CALL WAS AT 07-
25 2132.

1 Q IN LAYMAN'S TERMS THAT 7:21 A.M., WITH 32 SECONDS?

2 A THAT IS CORRECT.

3 Q NOW WHEN YOU FIRST RECEIVED THIS CALL WAS THERE A
4 PROBLEM IN THE TRANSMISSION?

5 A NO, THERE WASN'T.

6 Q DID SOMETHING HAPPEN TO THE CALL?

7 A AS FAR AS?

8 Q WHILE YOU WERE TALKING DID SOMETHING HAPPEN?

9 A THE CALL CAME IN, IT WAS A FRANTIC CALLER ON THE OTHER
10 LINE.

11 Q I DON'T WANT YOU TO SAY WHAT, BUT DID SOMETHING HAPPEN
12 WHILE YOU WERE SPEAKING TO THE CALLER?

13 A YES, WE GOT DISCONNECTED.

14 Q OKAY. AFTER YOU GOT DISCONNECTED WHAT DID YOU DO?

15 A I TRIED NUMEROUS TIMES TRYING TO GET BACK IN CONTACT
16 WITH THAT SUBJECT THAT I LOST CONTACT WITH.

17 Q THE FIRST TIME YOU CALLED BACK WERE YOU ABLE TO GET A
18 HOLD OF THE VICTIM?

19 A YES, I WAS.

20 Q DID SOMETHING HAPPEN TO THAT CALL?

21 A THAT IS CORRECT.

22 Q WHAT HAPPENED TO THAT CALL?

23 A I LOST HER SOMEHOW, PHONE LOSS.

24 Q DISCONNECTED?

25 A DISCONNECTED.

1 Q DID YOU THEN TRY AND CALL -- BY THE WAY; WHEN THE CALL
2 COMES IN, IN SOME CASES EVEN IF IT'S A CELL PHONE, DO YOU
3 SEE THAT PHONE NUMBER ON YOUR DISPLAY?

4 A YES, I DO.

5 Q AND IS THAT HOW YOU WERE ABLE TO CALL BACK?

6 A THAT IS CORRECT.

7 Q AFTER YOU LOST THE CALL THE SECOND TIME, I BELIEVE YOUR
8 TESTIMONY WAS THAT YOU CALLED ON TWO OR THREE TIMES
9 AFTER THAT?

10 A THAT IS CORRECT.

11 Q ANY LUCK GETTING BACK IN CONTACT WITH THE CALLER?

12 A AFTER THE SECOND TIME THERE WAS NO LUCK GETTING BACK IN
13 CONTACT WITH HER.

14 Q ALL RIGHT, NOW WITHOUT SAYING, I DON'T WANT YOU TO SAY
15 WHAT HAPPENED DURING THE COMMUNICATION, BUT DID IT
16 APPEAR TO YOU WHEN YOU WERE SPEAKING TO THE INDIVIDUAL
17 THAT IT WAS IN PROGRESS?

18 A THAT IS CORRECT.

19 Q NOW, DURING THE COURSE OF THESE EVENTS, DID THERE COME
20 A TIME THAT AS PART OF DISPATCHING TO LAW ENFORCEMENT
21 THAT YOU BECAME AWARE THAT THE POTENTIAL SUBJECT
22 INVOLVED WAS BEING FOLLOWED BY POLICE?

23 A COULD YOU RESTATE THAT QUESTION?

24 Q SURE. DID THERE COME A TIME WHEN YOU WERE DISPATCHING
25 COMMUNICATIONS WITH LAW ENFORCEMENT, NOT WITH THE

1 CALLER, BUT WITH LAW ENFORCEMENT, THAT THERE WAS
2 COMMUNICATIONS ABOUT A POLICE VEHICLE FOLLOWING A
3 POTENTIAL SUBJECT—

4 MR. BARR: OBJECTION, HEARSAY,
5 JUDGE.

6 MR. MODICA: I'M NOT ASKING FOR
7 CONTENT, I'M ASKING DID IT OCCUR. AND OF COURSE HE'S
8 COMMUNICATING THE INFORMATION AS WELL SO IT WOULDN'T
9 BE HEARSAY AS TO HIM.

10 THE COURT: COUNSEL, I'M GOING TO
11 OVERRULE THE OBJECTION, BUT NOT AS TO WHAT WAS SAID.
12 BUT I WILL ALLOW THAT QUESTION. GO AHEAD.

13 BY MR. MODICA:

14 Q AGAIN, DON'T SAY WHAT WAS SAID, BUT WAS THERE
15 COMMUNICATION BETWEEN YOU AND LAW ENFORCEMENT
16 ABOUT A POTENTIAL SUBJECT IN THIS CASE BEING FOLLOWED
17 BY LAW ENFORCEMENT?

18 A THAT IS CORRECT.

19 Q PLEASE TELL US, AND IF YOU NEED TO USE THE CAD SHEET,
20 TELL US WHAT TIME THAT OCCURRED. AGAIN, I'M LOOKING FOR
21 SPECIFICS.

22 A IT'S GOING TO BE AT THE TIME THAT THE SUBJECT WAS BEING
23 FOLLOWED WOULD BE AT ZERO SEVEN THIRTY-FIVE, AND
24 SPECIFIC TIME WOULD BE AT ZERO SEVEN THIRTY-FIVE, FIFTY-
25 EIGHT.

1 Q NOW IN THE COURSE OF THE COMMUNICATION THAT YOU HAD
2 WITH LAW ENFORCEMENT WAS THERE A TIME THAT THERE WAS
3 AN INDICATION THAT THERE WAS AN ARREST OF AN
4 INDIVIDUAL?

5 A THAT IS CORRECT.

6 Q AND WHAT TIME WAS THAT?

7 A ZERO SEVEN THIRTY-NINE, AND THE SPECIFIC TIME FOR THAT IS
8 GOING TO BE ZERO THIRTY-NINE ZERO THREE.

9 Q AND FROM THE INFORMATION DID THAT TURN OUT TO BE
10 RONALD COHENS?

11 A THAT IS CORRECT.

12 Q I'M SHOWING YOU WHAT'S ALREADY BEEN MARKED AS STATE'S
13 EXHIBIT NUMBER 79. A CONTAINER WITH A C.D. INSIDE OF IT,
14 AND I ASK YOU IF YOU WOULD INDICATE TO OUR JURY WHETHER
15 OR NOT YOU RECOGNIZE THAT C.D. OR COMPACT DISC?

16 A THIS C.D. HERE CONTAINS THE 9-1-1 CALL FROM THE DATE
17 WHICH WE'RE HERE AT THIS TIME ABOUT.

18 Q AND THAT INCLUDES THE CALL THAT YOU REFERRED TO AND T
19 OLD THIS JURY ABOUT, AND YOUR ATTEMPTS TO CALL HER
20 BACK?

21 A THAT IS CORRECT.

22 Q HAVE YOU HAD AN OPPORTUNITY TO LISTEN TO THAT?

23 A YES, I HAVE.

24 Q IS THAT A FULL AND COMPLETE AND UNEDITED OR UNCHANGED
25 CONVERSATION OF THINGS THAT YOU DID RELATIVE TO YOUR

1 TESTIMONY THAT OCCURRED BACK ON MARCH 23RD OF 2006?

2 A THAT IS CORRECT.

3 MR. MODICA: YOUR HONOR, AT THIS
4 TIME I WOULD MOVE STATE'S EXHIBIT NUMBER 79 INTO
5 EVIDENCE.

6 THE COURT: IS THERE OBJECTION?

7 MR. BARR: NO, SIR.

8 THE COURT: ALL RIGHT, 79 IN
9 EVIDENCE WITHOUT OBJECTION.

10 (DEFENDANT'S EXHIBIT #79 INTRODUCED INTO EVIDENCE.)

11 MR. MODICA: THANK YOU VERY MUCH.

12 ANSWER ANY QUESTIONS COUNSEL MIGHT HAVE FOR YOU AT
13 THIS TIME, PLEASE.

14 CROSS EXAMINATION BY MR. BARR:

15 Q YOU SAID YOU WERE REFRESHING YOUR MEMORY WITH WHAT?

16 A THE CAD DETAIL FROM THE COMPUTER SYSTEM.

17 Q AND BASED ON THE INFORMATION THAT YOU'VE GOTTEN, THE
18 9-1-1 CALL CAME IN AT 7:21.

19 A THAT IS CORRECT.

20 Q AND YOU FOUND OUT THAT MR. COHENS WAS BEING PURSUED
21 AT 7:35?

22 A THAT IS CORRECT.

23 Q AND HE HAD BEEN ARRESTED AT 7:39?

24 A THAT IS CORRECT.

25 Q AND HE WAS BEING PURSUED BY DEPUTIES FROM THE

1 GEORGETOWN COUNTY SHERIFF'S DEPARTMENT?

2 A THAT IS CORRECT.

3 Q SO WOULD YOU NOT AGREE THAT BASED ON THE NUMBERS
4 THAT YOU'VE GOT THAT HE WAS ARRESTED 14 MINUTES AFTER
5 YOU GOT THE CALL?

6 A THAT IS ABOUT THE TIME.

7 Q OR PURSUED 14 MINUTES AFTER YOU GOT THE CALL AND
8 ARRESTED IN 18 MINUTES?

9 A OKAY. I MEAN, THAT IS PRETTY MUCH THE TIMEFRAME BETWEEN
10 THE TWO.

11 MR. BARR: THANK YOU, SIR.

12 THE COURT: IS THERE REDIRECT?

13 MR. MODICA: NO, SIR. HE'S ON DUTY
14 NOW AND I WOULD ASK THAT HE BE RELEASED FROM HIS
15 SUBPOENA.

16 THE COURT: ANY OBJECTION?

17 MR. BARR: NO, SIR.

18 THE COURT: ALL RIGHT, SIR, YOU'RE
19 FREE TO LEAVE. ALL RIGHT, LADIES AND GENTLEMEN, BEFORE
20 WE CALL OUR NEXT WITNESS WE'RE GOING TO TAKE OUR
21 AFTERNOON BREAK FOR ABOUT 15 MINUTES NOW,
22 APPROXIMATELY. I'M GOING TO LET YOU GO TO THE JURY ROOM.
23 IF THERE'S SOMEONE WHO WISHES TO STEP OUTSIDE TO TAKE
24 A SMOKE BREAK, WE'LL MAKE THAT AVAILABLE FOR YOU.
25 PLEASE DON'T DISCUSS THE CASE, BUT ENJOY YOUR BREAK.

1 LET'S EVERYONE ELSE REMAIN WHERE WE ARE WHILE OUR JURY
2 DEPARTS THE COURTROOM.

3 (AT THIS TIME THERE WAS A BRIEF RECESS.)

4 THE COURT: ALL RIGHT, MR. MODICA,
5 DID YOU WANT TO TAKE UP THE FOURTH AMENDMENT ISSUE
6 NOW? IS THIS COMING IN THE NEXT WITNESS?

7 MR. MODICA: YES.

8 THE COURT: ALL RIGHT, MR. BARR, I'LL
9 BE GLAD TO HEAR FROM YOU, SIR.

10 MR. BARR: JUDGE, I'VE LOOKED AT THE
11 AFFIDAVIT---

12 THE COURT: MY COURT REPORTER
13 SAYS SHE CAN'T HEAR YOU. PLEASE FACE THIS WAY SO WE
14 CAN BE SURE TO PICK UP YOUR ARGUMENTS, THANK YOU,
15 COUNSEL. THERE'S ALSO SOME BACKGROUND NOISE. ALL
16 RIGHT, NOW, AGAIN, THIS ISSUE IS - OF COURSE THE FOURTH
17 AMENDMENT USUALLY PRESENTS WITH SOMETHING THAT IS A
18 BASIS OF PROSECUTION AND EVIDENCE OF CRIME AS OPPOSED
19 TO A DOCUMENT THAT IS NOT THE ROOT OF THE CRIME, SO
20 TELL ME HOW THE FOURTH AMENDMENT APPLIES HERE,
21 COUNSEL.

22 MR. BARR: I THINK THAT THE
23 PROPERTY THAT THE PROSECUTION IS SEEKING TO PUT INTO
24 EVIDENCE IS PROPERTY OF THE DEFENDANT, AND I THINK THAT
25 IT WAS SEIZED IN VIOLATION OF HIS FOURTH AMENDMENT

1 RIGHT. IT WAS SEIZED, APPARENTLY, REPORTEDLY WITH A
2 WARRANT, AND QUITE FRANKLY I THINK THAT THE WARRANT
3 WAS ISSUED AND THE WARRANT WAS OBTAINED AFTER AN
4 ILLEGAL SEARCH. AND OF COURSE IF THE PROSECUTION
5 INTENDS TO PUT THE PERSON WHO OBTAINED THE WARRANT
6 ON THE WITNESS STAND TO HAVE HIM SWEAR AS TO HOW THAT
7 WAS OBTAINED, JUDGE, THAT MIGHT VERY WELL SATISFY.

8 THE COURT: WELL, LET ME ASK YOU,
9 COUNSEL, THIS DOCUMENT YOU'RE TALKING ABOUT IS A PUBLIC
10 RECORD, IS IT NOT, MR. MODICA?

11 MR. MODICA: YES.

12 THE COURT: DO YOU HAVE A
13 RESPONSE AS TO HOW IT WAS OBTAINED AND WHETHER THERE
14 WAS A WARRANT ISSUED, AND AT WHAT TIME THAT WARRANT
15 WAS ISSUED?

16 MR. MODICA: YOUR HONOR, THERE IS A
17 SEARCH WARRANT, AND THERE'S A RETURN AND MR. BARR HAS
18 SEEN THOSE DOCUMENTS. AND IT'S SIGNED BY JUDGE PYATT,*
19 OUR LOCAL MAGISTRATE HERE, AND THE RETURN IS ON THE
20 SAME DAY AT 3:55 P.M. AND THERE WERE A NUMBER OF ITEMS
21 TAKEN, AND ONE OF THE ITEMS WAS THE FAMILY COURT
22 PAPERS THAT THE STATE WOULD SUBMIT WERE SERVED UPON
23 THE DEFENDANT THE DAY BEFORE. THE ONLY OTHER ITEMS
24 THAT THE STATE INTENDS TO INTRODUCE IS THE DEFENDANT'S
25 CELL PHONE THAT WAS TAKEN FROM THE VEHICLE. THE

1 IMPORTANCE OF THAT IS BECAUSE IT SHOWS THAT HE MADE
2 THE CALL FROM THAT PHONE TO HER. AND ALL THE OTHER
3 DOCUMENTS, ALTHOUGH THERE ARE SOME PHOTOGRAPHS OF
4 THE VEHICLE, WE DO NOT INTEND TO INTRODUCE ANY OTHER
5 ITEMS INTO EVIDENCE.

6 THE COURT: WELL LET'S GO BACK TO
7 THE QUESTION, THOUGH; WAS THERE A WARRANT AND WAS
8 THIS DOCUMENT DISCOVERED BEFORE THE WARRANT WAS
9 ISSUED AND OBTAINED BEFORE THE WARRANT WAS ISSUED?

10 MR. MODICA: NO. I'M SORRY, I MEANT
11 BY GOING ON THE TIMES, THE WARRANT WAS OBTAINED AND
12 THEN THERE WAS A SEARCH OF THE VEHICLE.

13 THE COURT: MR. BARR, I'M GOING TO
14 DENY YOUR FOURTH AMENDMENT OBJECTION TO IT. AGAIN,
15 THIS IS A PUBLIC DOCUMENT FOUND WITHIN THE VEHICLE
16 PURSUANT TO AN APPROPRIATE SEARCH WARRANT, I'M TOLD
17 BY MR. MODICA, SO I DON'T HAVE ANY OTHER EVIDENCE OTHER
18 THAN YOU SAY THERE'S A PROBLEM WITH IT. BUT I DON'T HAVE
19 ANY EVIDENCE OF THAT PROBLEM.

20 MR. BARR: JUDGE, AS I SAID, I WOULD
21 CERTAINLY REQUEST THAT I BE PERMITTED TO ASK UNDER OATH
22 THE OFFICER WHO OBTAINED THE WARRANT BECAUSE I LOOKED
23 AT THE SEARCH WARRANT AND THE AFFIDAVIT AND THE
24 SEARCH WARRANT ACTUALLY ALMOST SPECIFICALLY REQUESTS
25 THAT THEY BE GIVEN PERMISSION TO SEIZE THE EXACT ITEMS,

1 APPARENTLY THEY ALREADY HAD. AND I'M TALKING ABOUT
2 THE CELL PHONE, IN PARTICULAR, THE CELL PHONE, ALL THE
3 ITEMS SPECIFICALLY MENTIONED; THE ITEMS THAT WERE
4 ACTUALLY IN THE VEHICLE, AND IT'S THE FIRST TIME THAT I
5 HAVE EVER SEEN A SEARCH WARRANT OBTAINED WHEREBY THE
6 EXACT ITEMS THAT ARE IN THE VEHICLE ARE STATED IN THE
7 SEARCH WARRANT OR THE AFFIDAVIT AS THE TO THE OBJECTS
8 THAT ARE SUBJECT TO SEIZURE.

9 THE COURT: ALL RIGHT, LET ME,
10 RATHER THAN HAVE A QUESTION/ANSWER SESSION HERE, YOUR
11 OFFICER THAT OBTAINED THE WARRANT, IS HE PRESENT IN THE
12 COURTROOM?

13 MR. MODICA; YES. YOUR HONOR, IF I
14 MAY BACK UP FOR A MOMENT. OF COURSE, AFTER THE
15 DEFENDANT WAS ARRESTED, THE VEHICLE WAS SEARCHED
16 INCIDENT TO ARREST AND THE POLICE LOOKED IN IT. NOW I
17 DON'T KNOW WHETHER OR NOT THEY COMMUNICATED TO THE
18 INVESTIGATOR THOSE DOCUMENTS WERE IN THERE OR NOT, BUT
19 THEY WOULD HAVE HAD PERMISSION TO SEARCH THE VEHICLE
20 INCIDENT TO ARREST ANYWAY. HE GETS THE SEARCH
21 WARRANT, THE SEARCH WARRANT GETS THE DOCUMENTS, SO
22 THEY WOULD HAVE COME IN ANYWAY REGARDLESS OF
23 WHETHER OR NOT THEY GOT A SEARCH WARRANT BECAUSE IT'S
24 A VEHICLE WHICH IS EASILY MOVEABLE. I WOULD SUBMIT THEY
25 DIDN'T EVEN NEED TO GET A SEARCH WARRANT, BUT THEY

1 WENT THAT EXTRA STEP, THEY HAD THE CAR TOWED TO THE
2 IMPOUND AT THE SHERIFF'S DEPARTMENT, THEY THEN GOT THE
3 SEARCH WARRANT, WENT BACK AND GOT THESE DOCUMENTS.

4 MR. BARR: JUDGE, THE VEHICLE WAS
5 AT THE DEFENDANT'S MOTHER'S RESIDENCE. QUITE FRANKLY,
6 THERE WAS NO REASON TO EVEN TOW THE VEHICLE---

7 MR. MODICA: THE VEHICLE ITSELF IS
8 PART OF THE CRIME.

9 MR. BARR HE WAS UNDER ARREST.
10 THERE WOULD HAVE BEEN NO REASON TO TWO THE VEHICLE,
11 OTHER THAN THE FACT THAT THEY HAD ALREADY LOOKED IN
12 THERE AND SAW WHAT WAS IN THERE AND THEN WENT BACK
13 AFTER THAT AND GOT THE SEARCH WARRANT TO GET THE
14 ITEMS AFTER THEY HAD ALREADY CONDUCTED AN ILLEGAL
15 SEARCH. AND THAT'S HOW THEY GOT THE EVIDENCE.

16 MR. MODICA: WELL, AGAIN, I WOULD
17 SUBMIT THAT THEY WERE ENTITLED TO SEARCH THE VEHICLE
18 INCIDENT TO ARREST. THE VEHICLE ITSELF IS THE WEAPON
19 USED IN THE CRIME. BUT THERE'S NO QUESTION THAT EVEN IF
20 THEY DIDN'T GET A SEARCH WARRANT THAT THEY WERE
21 ENTITLED TO SEIZE THAT VEHICLE.

22 THE COURT: ALL RIGHT, MR. BARR, THE
23 COURT FINDS THAT THERE IS NOT SUFFICIENT EVIDENCE BEFORE
24 ME TO SUPPRESS THIS DOCUMENT. I WILL GIVE YOU CROSS
25 EXAMINATION ON THESE ISSUES WHEN THE OFFICER TAKES THE

1 STAND. AND IF SOMETHING COMES OUT IN CROSS EXAMINATION
2 THEN THE COURT WILL RESPOND TO IT APPROPRIATELY. BUT I
3 CAN'T IMAGINE THAT THERE WOULD BE A BASIS TO SUPPRESS
4 UNDER THESE CIRCUMSTANCES THIS DOCUMENT THAT YOU'RE
5 REFERRING TO, AS WELL AS THE CELL PHONE.

6 MR. BARR: JUDGE, THE DOCUMENTS I
7 UNDERSTAND THE PROSECUTION IS SEEKING TO GET INTO
8 EVIDENCE IS THE RULE TO SHOW CAUSE. AND I UNDERSTAND
9 THAT YOU RULED EARLIER THAT THE DOCUMENT THEY ARE
10 SEEKING TO GET INTO EVIDENCE RELATED TO INTENT, BUT I DO
11 NOT SEE HOW THE RULE TO SHOW CAUSE WHICH WAS YET TO
12 BE SERVED ON THE DEFENDANT, OR THE RULE TO SHOW CAUSE
13 - AND IT WAS ACTUALLY SERVED UPON HIM; AS I UNDERSTAND
14 IT, AT THE JAIL - I DON'T' SEE HOW THAT IS RELEVANT.

15 THE COURT: WELL I MISUNDERSTOOD.
16 BECAUSE I THOUGHT HE JUST FINISHED SAYING THAT IT CAME
17 OUT OF THE DEFENDANT'S VEHICLE, SO IT WOULD HAVE TO
18 HAVE BEEN SERVED ON HIM OR IN HIS POSSESSION FOR IT TO BE
19 RETRIEVED FROM THE VEHICLE. SO FOR THESE REASONS THE
20 COURT DOES FIND THAT THIS - AND IT IS THE STATE'S POSITION
21 THAT THIS IS PART OF THE ISSUE OF INTENT, AND PROBATIVE
22 AND RELATIVE TO THAT ISSUE. AND THEREFORE, THE COURT
23 WILL ALLOW IT. THE OBJECTION IS NOTED FOR THE RECORD,
24 MR. BARR.

25 MR. BARR: THANK YOU, JUDGE.

1 MR. MODICA: YOUR HONOR, VERY
2 QUICKLY WITH REGARD TO THAT; YOU CAN SEE THAT I'VE
3 REMOVED IT FROM THE EVIDENCE FOLDER. IT'S VOLUMINOUS,
4 BUT I SHOWED ONE PAGE TO MR. BARR, WHICH IS ACTUALLY THE
5 RULE TO SHOW CAUSE CITATION FOR CONTEMPT OF COURT,
6 PROTECTION FROM DOMESTIC ABUSE. THAT'S THE ONLY PAGE
7 THAT I INTEND TO INTRODUCE INTO EVIDENCE BECAUSE OTHER
8 PAGES WOULD INDICATE PRIOR BAD ACTS OF THE DEFENDANT
9 WHICH HE'S NOT ON TRIAL FOR.

10 THE COURT: ALL RIGHT, SO DONE.
11 LET'S GO AHEAD AND MARK IT IN ADVANCE. YOU'LL HAVE TO
12 LAY AN APPROPRIATE FOUNDATION, COUNSEL, AND AT THAT
13 POINT WE'LL TAKE UP THE ISSUE OF THE ADMISSION. ALL
14 RIGHT, ANY OTHER ISSUES BEFORE WE BRING IN THE JURY?
15 HEARING NONE, PLEASE BRING IN THE JURY.

16 (THE JURY ENTERS THE COURTROOM)

17 THE COURT: WELCOME BACK, LADIES
18 AND GENTLEMEN. MR. MODICA, CALL YOUR NEXT WITNESS.

19 Thereupon, NADINE COHENS, being first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. MODICA:

22 Q STATE YOUR FULL NAME.

23 A NADINE COHENS.

24 Q GOOD AFTERNOON.

25 A GOOD AFTERNOON.

1 Q I'M SURE YOU'RE VERY NERVOUS. TAKE TAKE YOUR TIME, MAKE
2 SURE YOU UNDERSTAND WHAT'S BEING ASKED OF YOU, ANSWER
3 THE QUESTIONS, MAKE SURE YOU SPEAK LOUDLY ENOUGH, AND
4 ANSWER "YES," OR "NO," OKAY?

5 A YES.

6 Q UNFORTUNATELY I HAVE TO START BY ASKING YOU A DELICATE
7 QUESTION AND ASK YOU HOW OLD YOU ARE.

8 A I'M 38.

9 Q ARE YOU PRESENTLY MARRIED?

10 A SEPARATED.

11 Q FROM WHO?

12 A FROM MY HUSBAND, RONALD COHENS.

13 Q AND FOR THE RECORD, CAN YOU INDICATE TO OUR JURY
14 WHETHER OR NOT YOU SEE HIM HERE IN THE COURTROOM
15 TODAY?

16 A YES.

17 Q CAN YOU POINT HIM OUT TO ME AND DESCRIBE SOMETHING HE'S
18 WEARING?

19 A HE'S SITTING OVER THERE WEARING A YELLOW SHIRT.

20 Q NOW CAN YOU TELL US WHEN YOU GOT MARRIED?

21 A AUGUST THE 26TH, 1994.

22 Q WHICH YEAR, '94?

23 A '94.

24 Q OKAY. AND PRIOR TO THAT, HOW LONG DID YA'LL DATE FOR?

25 A ABOUT THREE YEARS.

- 1 Q DID YOU HAVE ANY CHILDREN?
- 2 A TWO, TWO BOYS.
- 3 Q AND ARE THEY WITH THE DEFENDANT?
- 4 A NO, THEY LIVE WITH ME.
- 5 Q IN OTHER WORDS, ARE THEY HIS CHILDREN?
- 6 A YES.
- 7 Q AND TELL US HOW OLD THEY ARE AND WHAT THEIR NAMES ARE,
- 8 PLEASE.
- 9 A * IS 11 YEARS OLD AND * IS EIGHT
- 10 YEARS OLD.
- 11 Q BOTH BOYS?
- 12 A YES.
- 13 Q AND ARE YOU WORKING, MA'AM,?
- 14 A YES.
- 15 Q WHERE DO YOU WORK?
- 16 A MYRTLE BEACH.
- 17 Q WHAT DO YOU DO AND WHERE?
- 18 A I WORK AT TROPICAL SEAS AT THE FRONT DESK.
- 19 Q THAT'S A MOTEL/HOTEL?
- 20 A A HOTEL.
- 21 Q OKAY. AND THAT'S IN MYRTLE BEACH?
- 22 A YES.
- 23 Q ABOUT HOW LONG HAVE YOU BEEN WORKING THERE?
- 24 A SINCE OCTOBER OF LAST YEAR.
- 25 Q AND PRIOR TO THAT WHERE WERE YOU WORKING?

1 A PEEBLES* IN GEORGETOWN.

2 Q THAT'S A CLOTHING STORE?

3 A YES.

4 Q AND ARE YOU TAKING ANY COLLEGE CLASSES, OR HAVE YOU
5 TAKEN ANY COLLEGE CLASSES?

6 A EXCUSE ME, I DIDN'T HEAR YOU.

7 Q DO YOU TAKE ANY COLLEGE CLASSES?

8 A YES.

9 Q ARE YOU TAKING CLASSES NOW?

10 A NO.

11 Q NOW DID THERE DURING THE COURSE OF YOUR MARRIAGE,
12 WITHOUT BEING SPECIFIC, WERE YOU HAVING PROBLEMS WITH
13 THE MARRIAGE?

14 A YES.

15 Q AND HAD YOU PRIOR TO THIS INCIDENT, MARCH 23RD OF 2006,
16 HAD YOU LEFT THE DEFENDANT A NUMBER OF TIMES PRIOR TO
17 THAT?

18 Q HOW MANY TIMES HAD YOU LEFT?

19 A FOUR.

20 Q AND DID YOU GET BACK WITH HIM?

21 A YES.

22 Q WHY DID YOU GET BACK WITH HIM?

23 A BECAUSE HE TOLD ME HE WOULD CHANGE.

24 MR. BARR: OBJECTION, YOUR HONOR.

25 HEARSAY.

1 THE COURT: COUNSEL, WHAT DO YOU
2 SAY TO THAT?

3 MR. MODICA: JUST TRYING TO
4 DEVELOP A SHORT BACKGROUND.

5 THE COURT: SUSTAIN THE OBJECTION.

6 BY MR. MODICA:

7 Q DID YOU RETURN TO HIM?

8 A YES.

9 Q DID THINGS GET BETTER?

10 A NO.

11 Q WHEN DID YOU DECIDE PRIOR TO MARCH 23RD OF 2006 TO MOVE
12 OUT FOR GOOD?

13 A NOVEMBER THE 4TH OF '05.

14 Q AND DID YOU GET CUSTODY OF YOUR CHILDREN?

15 A YES.

16 Q AND DID A FAMILY COURT JUDGE ISSUE A MUTUAL ORDER OF
17 PROTECTION FOR YOU AND YOUR HUSBAND, THE DEFENDANT?

18 A YES.

19 Q NOW DID THERE COME A TIME THAT AFTER JANUARY OR IN
20 JANUARY OF 2006 THAT YOU PETITIONED THE FAMILY COURT
21 FOR AN ORDER TO SHOW CAUSE REGARDING HIS BREACHING THE
22 ORDER OF PROTECTION?

23 A YES.

24 Q CAN YOU TELL US WHETHER YOU WERE AWARE WHETHER OR
25 NOT LAW ENFORCEMENT WAS ATTEMPTING TO SERVE HIM WITH

1 THAT NOTICE OF THE ORDER TO SHOW CAUSE?

2 A YES.

3 Q CAN YOU TELL US WHETHER YOU WERE AWARE WHETHER THEY
4 WERE HAVING DIFFICULTY SERVING THAT NOTICE?

5 A YES.

6 Q AND YOUR COURT DATE HAD TO BE PUSHED BACK?

7 A YES.

8 Q NOW WHAT I'M GOING TO DO IS I WANT TO DIRECT YOUR
9 ATTENTION TO MARCH 22ND, 2006 ABOUT NINE P.M. AND
10 BEFORE WE TALK ABOUT THAT, COULD YOU TELL OUR JURY IN
11 WHAT COMMUNITY YOU WERE LIVING?

12 A THE OAKLAND COMMUNITY IN BROWN'S FERRY* SECTION.

13 Q AND SPECIFICALLY WHAT ADDRESS IS IT?

14 A I'M LIVING WITH MY MOTHER ON NUMBER , .

15 Q AND IS IT ON A CORNER?

16 A YES.

17 Q THE CORNER OF WHAT AND WHAT?

18 A TRAIL AND FUZZY* DRIVE.

19 Q AND THE DEFENDANT BACK ON MARCH 22ND OF 2006, WHERE
20 WAS HE LIVING?

21 A .

22 Q NOW IN RELATION TO WHERE YOU'RE LIVING WITH YOUR
23 MOTHER, ABOUT HOW FAR AWAY DOES THE DEFENDANT LIVE?

24 A ABOUT A HALF A MILE.

25 Q IN ORDER TO GET OUT OF THE OAKLAND COMMUNITY WHERE

1 THE DEFENDANT RESIDES, CAN YOU TELL OUR JURY WHETHER
2 OR NOT HE HAS TO PASS YOUR RESIDENCE?
3 A YES.
4 Q BECAUSE THAT'S THE ONLY WAY OUT THAT WAY?
5 A YES.
6 Q NOW AGAIN DIRECTING YOUR ATTENTION TO MARCH 22ND OF
7 2006 ABOUT NINE P.M., CAN YOU TELL US WHETHER OR NOT
8 YOU OBSERVED MEMBERS OF THE SHERIFF'S DEPARTMENT
9 TRAVELING DOWN THE ROAD?
10 A YES, I SAW WHEN THEY PASS BY MY MOTHER HOUSE LEAVING
11 OUT FROM DOWN FUZZY DRIVE PASSED BY NUMBER
12 TRAIL, GOING OUT.
13 Q GOING OUT?
14 A ON FUZZY DRIVE.
15 Q AND HE WAS COMING FROM THE DIRECTION WHERE YOUR
16 HUSBAND THE DEFENDANT WAS RESIDING?
17 A YES.
18 Q AFTER YOU SAW THAT DEPUTY SHERIFF, DID THERE COME A TIME
19 WHEN YOU SAW THE DEFENDANT ON MARCH 22ND?
20 A YES.
21 Q ABOUT HOW MUCH TIME WENT BY?
22 A ABOUT TWO MINUTES LATER.
23 Q WHERE DID YOU SEE HIM AND WHAT WAS GOING ON?
24 A HE PASSED BY MY MOTHER HOUSE ON NUMBER TRAIL.
25 Q HOW DID HE PASS BY?

1 A IN HIS VEHICLE.

2 Q WHAT KIND OF VEHICLE DID HE DRIVE?

3 A AN '86 HONDA CAR.

4 Q CAN YOU TELL US WHAT COLOR IT WAS?

5 A BLUE.

6 Q AND BACK THEN, MARCH 22ND, WHAT KIND OF VEHICLE WERE
7 YOU DRIVING?

8 A A 2002 WHITE CHEVROLET BLAZER.

9 Q NOW WHAT I WANT TO DO IS ASK YOU ABOUT YOUR WORK.
10 COULD YOU TELL OUR JURY WHAT TIME YOU WOULD LEAVE
11 YOUR HOUSE TO GO TO WORK AT TROPICAL SEAS?

12 A I LEAVE EVERY MORNING AT SEVEN A.M.

13 Q BACK IN 2005 AND 2006 WHAT KIND OF EMPLOYMENT DID
14 YOUR HUSBAND HAVE?

15 A LOGGING.

16 Q AND FROM HAVING LIVED WITH HIM AND HIM BEING A LOGGER,
17 WHAT TIME DID HE USUALLY GET UP AND LEAVE TO GO TO
18 WORK?

19 A BETWEEN FIVE AND FIVE-THIRTY.

20 Q AND YOU WERE WORKING AT TROPICAL SEAS WHEN YOU WERE
21 STILL WITH YOUR HUSBAND?

22 A YES.

23 Q SO WOULD IT BE FAIR TO SAY THAT YOU KNEW WHAT TIME HE
24 HAD TO BE AT WORK?

25 A YES.

1 Q NOW, WHAT I WANT TO DO IS DIRECT YOUR ATTENTION TO
2 MARCH 23RD, 2006 AT ABOUT SEVEN A.M. WILL YOU PLEASE
3 TELL OUR JURY WHAT YOU WERE DOING.

4 A AT SEVEN A.M. I WAS GETTING INSIDE MY BLAZER TO GET READY
5 TO GO TO WORK AND I SAW MY HUSBAND, RONALD, PASS BY.

6 Q HOW'D HE PASS BY?

7 A DRIVING HIS CAR, '86 HONDA CAR.

8 Q WHAT DID YOU DO THEN?

9 A I GOT IN MY BLAZER AND STARTED GOING TO WORK DOWN
10 FUZZY* DRIVE IN THE OAKLAND COMMUNITY.

11 Q OKAY. I WANT YOU TO BEGIN TO TELL OUR JURY WHAT ROUTE
12 OF TRAVEL YOU WOULD NORMALLY TAKE TO GET TO MYRTLE
13 BEACH.

14 A WHEN I LEAVE OUT OF OAKLAND, I GO DOWN FUZZY DRIVE, I
15 GET ON OAKLAND ROAD.

16 Q HELP US OUT AND TELL US WHICH WAY YOU WOULD GO, LEFT
17 OR RIGHT. ON FUZZY DRIVE, WHAT'S THE NEXT ROAD YOU COME
18 TO?

19 A OAKLAND ROAD.

20 Q WHEN YOU GET THERE WHICH DIRECTION DO YOU GO, LEFT OR
21 RIGHT?

22 A LEFT.

23 Q THEN WHERE DO YOU GO?

24 A DOWN OAKLAND ROAD. THEN I GET AT THE END OF OAKLAND
25 ROAD I MAKE A LEFT TURN ON HIGHWAY 51.

1 Q KEEP GOING.

2 A I TRAVEL DOWN HIGHWAY 51, THEN I MAKE A RIGHT TURN ON
3 TO 701. AND I GO DOWN 701. WHEN I GET TO - THERE'S AN
4 EXIT RIGHT THERE BY THE SCOTCHMAN STATION THAT PUTS
5 YOU ON BLACK RIVER ROAD. AND I GO DOWN BLACK RIVER
6 ROAD AND AT THE END AT THE STOP LIGHT I MAKE A LEFT
7 TURN TO GET ON HIGHWAY 17 NORTH TO GO TOWARDS MYRTLE
8 BEACH.

9 Q NOW ON MARCH 23RD, 2006 ABOUT SEVEN WHEN YOU WERE
10 LEAVING YOU SEE YOUR HUSBAND GO BY. TELL US AGAIN THE
11 ROUTE OF TRAVEL YOU TAKE AND WHAT, IF ANYTHING, YOU
12 OBSERVED.

13 A WHEN I WAS GOING DOWN FUZZY DRIVE TO GET ON OAKLAND
14 ROAD, WHEN I GOT TO THE END OF OAKLAND ROAD I SAW MY
15 HUSBAND RONALD PARK ON THE SIDE BY ST, PAUL A.M.E.
16 CHURCH, THE OLD CHURCH.

17 Q SO WE UNDERSTAND YOU COME TO OAKLAND ROAD AND
18 HIGHWAY 51 AT A "T?"

19 A YES.

20 Q AND WHERE IS THIS CHURCH LOCATED IN REGARD TO THAT
21 INTERSECTION? IF YOU TAKE THE POSITION THAT YOU'RE ON
22 OAKLAND ROAD AT THE STOP SIGN.

23 A IT'S ON THE LEFT SIDE OF THE END OF OAKLAND ROAD.

24 Q SO WHAT IS THE INTERSECTION THAT THE CHURCH IS ON?

25 A HIGHWAY 51 AND OAKLAND ROAD.

1 Q AND WHERE DID YOU SEE YOUR HUSBAND IN REGARD TO THE
2 CHURCH, AND WHAT DID YOU SEE HIM DO?

3 A HE WAS PARKED ON THE END OF OAKLAND ROAD ON THE SIDE
4 OF ST. PAUL CHURCH, THE OLD CHURCH, AND I SAW WHEN HE
5 PICKED UP HIS CELL PHONE.

6 Q WHAT DID HE DO WITH HIS CELL PHONE?

7 A I SAW HIM START DIALING.

8 Q NOW WHAT?

9 A THEN MY CELL PHONE RING AND I SAW IT WAS SHOWING A
10 PRIVATE NUMBER BECAUSE I KNOW HE ALWAYS BLOCKS HIS
11 NUMBER, SO I CUT MY PHONE OFF.

12 Q THEN WHAT?

13 A THEN I MADE A LEFT TURN ON HIGHWAY 51. I WAS GOING
14 DOWN 51---

15 Q JUST IN CASE PEOPLE AREN'T FAMILIAR WITH THAT AREA, IF
16 YOU'RE GOING DOWN 51 IS THAT WHEN YOU PASS THE JAIL ON
17 THE LEFT HAND SIDE?

18 A YES.

19 Q AND YOU GET ALL THE WAY TO THE END AND THERE'S A
20 FRANCES MARION* STORE AND THAT'S 701?

21 A YES.

22 Q I'M SORRY TO INTERRUPT YOU, I JUST WANTED TO MAKE SURE
23 THEY WERE AWARE OF WHERE YOU'RE TALKING ABOUT. YOU'RE
24 TRAVELING DOWN 51 TOWARDS 701, PLEASE CONTINUE.

25 A AS I WAS GOING DOWN HIGHWAY 51 A LITTLE PAST THE

1 JAILHOUSE, WHEN I LOOK IN MY REARVIEW MIRROR I SAW MY
2 HUSBAND RONALD. THERE WAS THREE CARS BETWEEN US AND I
3 SAW HIM PASSING THE THREE CARS, AND HE GOT DIRECTLY IN
4 FRONT OF ME. AS WE WAS GOING DOWN 51 WE GOT TO THE
5 END OF HIGHWAY 51 THAT GOES ON TO 701, BOTH OF US.

6 Q CAN YOU TELL US HOW MANY LANES HIGHWAY 51 IS?

7 A IT'S TWO LANES.

8 Q SO HE'S GOING OVER THE BROKEN YELLOW LINE AND CROSSING
9 AND PASSING OTHER CARS AND GETS BACK OVER IN FRONT OF
10 YOU?

11 A YES.

12 Q OKAY. I'M SORRY, I DIDN'T MEAN TO INTERRUPT YOU. YOU GET
13 TO THE END OF 51 WHERE THE FRANCIS MARION STORE IS AND
14 701 IS, CORRECT, TAKE IT FROM THERE. HE'S RIGHT IN FRONT
15 OF YOU; IS THAT CORRECT?

16 A HE'S IN THE FRONT OF ME.

17 Q GO AHEAD AND TELL US.

18 A AND BOTH OF US MADE A RIGHT TURN ON TO 701. HE WAS IN
19 THE RIGHT LANE, WHICH IS THE SLOW LANE. WHEN I SAW MY
20 WAY CLEAR I GOT INTO THE LEFT LANE, WHICH IS THE FAST
21 LANE, I PASSED HIM BECAUSE TRAFFIC WAS FLOWING IN THE
22 LEFT LANE, SO I PASSED HIM, HE WAS STILL IN THE RIGHT LANE.
23 WE GOT STOPPED BY THE FIRST LIGHT, WHICH IS IN KINGSTON,*
24 BUT HE WAS STILL BEHIND ME.

25 Q OKAY. NOW WHEN YOU TAKE A RIGHT ON TO 701 THE FIRST

1 TRAFFIC LIGHT IS WHERE?

2 A RIGHT THERE WHERE YOU TURN TO GO TO KINGSTON
3 ELEMENTARY SCHOOL.

4 Q HAD YOU PASSED HIM IN THE LEFT LANE AT THAT POINT?

5 A YES, I HAD ALREADY PASSED HIM.

6 Q GO AHEAD, KEEP GOING.

7 A THE LIGHT TURNED GREEN AND WE CONTINUED DOWN 701. I
8 STAYED IN THE LEFT LANE, HE WAS BEHIND ME IN THE RIGHT
9 LANE. WE PASSED THROUGH TWO MORE LIGHTS, THE ONE BY
10 THE CHINESE RESTAURANT, AND THEN THERE'S ANOTHER LIGHT
11 TO TURN TO GO TO THE POST OFFICE. AND WE'RE STILL ON
12 701. I MERGED WHEN I GOT UP TO THE INTERSECTION TO GET
13 ON BLACK RIVER ROAD, I MERGED IN THE FAR LEFT LANE. HE
14 WAS STILL IN THE RIGHT LANE, BUT I DON'T KNOW AT WHAT
15 POINT HE GOT INTO THE LEFT LANE TO KEEP GOING STRAIGHT
16 TOWARD FRAZIER* STREET. I STOPPED TO WAIT ON TRAFFIC, I
17 SAW WHEN HE CUT THROUGH SCOTCHMAN STATION, AND WHEN
18 I SAW MY WAY CLEAR I GOT ON BLACK—

19 Q WAIT. WHERE'S THE SCOTCHMAN STATION?

20 A IT'S RIGHT THERE BETWEEN 701 AND BLACK RIVER ROAD.

21 Q IT KIND OF GOES IN A V-SHAPE AND THE SCOTCHMAN IS RIGHT
22 THERE?

23 A YES.

24 Q SO HE GOES INTO THE SCOTCHMAN, YOU'RE AT 701 WAITING TO
25 TAKE A LEFT, YOU TAKE A LEFT AND WHAT HAPPENED WHEN

1 YOU TOOK THE LEFT ON BLACK RIVER ROAD?

2 A AFTER I TOOK A LEFT ON BLACK RIVER ROAD, AND AS I TOOK A
3 LEFT ON BLACK RIVER ROAD, HE WAS DIRECTLY IN THE FRONT
4 OF ME.

5 Q HOW DID HE GET IN FRONT OF YOU?

6 A THROUGH THE SCOTCH STATION.

7 Q HOW DID HE DO THAT -- WE WEREN'T THERE -- SO HOW DID HE
8 COME OUT OF THE STATION, WHAT DID HE DO, TAKE A LEFT OR
9 RIGHT?

10 A WHEN HE CAME THROUGH SCOTCHMAN'S STATION HE MADE A
11 RIGHT TURN ON TO BLACK RIVER ROAD.

12 Q AND WHERE WAS HE IN RELATION TO YOU?

13 A HE WAS DIRECTLY IN FRONT OF ME.

14 Q PLEASE KEEP GOING.

15 A AND WE WENT DOWN BLACK RIVER ROAD, AND THERE'S A STOP
16 LIGHT ON THE END OF BLACK RIVER ROAD THAT WILL PUT YOU
17 ON HIGHWAY 17 NORTH. THE LIGHT TURNED RED, SO WE WERE
18 STOPPED IN TRAFFIC ON BLACK RIVER ROAD. WHEN THE LIGHT
19 TURNED GREEN HE MADE A LEFT TURN ONTO HIGHWAY 17
20 NORTH. I MADE A LEFT TURN, ALSO. HE WAS IN THE RIGHT
21 LANE, I WAS IN THE LEFT LANE.

22 Q SO THAT'S A FOUR LANE HIGHWAY?

23 A YES.

24 Q OKAY, PLEASE KEEP GOING.

25 A I PASSED HIM ON HIGHWAY 17 GOING TOWARD MYRTLE BEACH,

1 AND I CONTINUED DOWN HIGHWAY 17 NORTH. WHEN I GOT ON
2 THE FIRST BRIDGE, LIKE ON THE HUMP PART OF THE BRIDGE
3 THAT'S WHEN I SAW HIM, HE WAS COMING TOWARD THAT WAY.
4 HE WAS IN THE RIGHT LANE AND I SAW HIM PASSING CARS?

5 Q HOW WAS HE PASSING CARS?

6 A HE WAS MANEUVERING IN AND OUT.

7 Q LIKE ZIG-ZAGGING?

8 A YES.

9 Q AND HE GOT IN THE LEFT LANE. AND WHEN I GOT OFF THE
10 FIRST BRIDGE AND WAS GETTING READY TO GO ON THE SECOND
11 BRIDGE I SAW HIM, HE WAS DIRECTLY BEHIND ME IN THE LEFT
12 LANE. HE HAD SPEED COMING FAST. AND I CALLED MY MOM
13 AND I TOLD HER HE WAS FOLLOWING ME. AND THAT'S WHEN
14 HE BUMPED ME THE FIRST TIME IN THE BACK.

15 Q HE BUMPED YOU?

16 A HE RAMMED INTO ME IN THE BACK OF MY REAREND, IN THE BACK
17 OF MY BUMPER. AND I HANG UP WITH MY MOM BECAUSE I TOLD
18 HER I WAS GETTING READY TO CALL 911. AND WHEN I CALLED
19 911 I TOLD THEM THAT MY HUSBAND WAS RAMMING UP INTO
20 ME, HE WAS TRYING TO RUN ME OFF THE ROAD. AND I WAS
21 STILL ON THE PHONE WITH 911 AND SOMEHOW HE RAMMED ME
22 THE SECOND TIME IN THE BACK AND SOMEHOW WE GOT
23 DISCONNECTED. 911 THEY CALLED ME BACK AND I STILL WAS
24 TELLING THEM THAT HE WAS TRYING TO RUN ME OFF THE ROAD.
25 I GOT INTO THE RIGHT LANE AND HE WAS IN THE LEFT LANE,

1 AND THAT'S WHEN HE HIT ME ON MY DRIVER'S SIDE WITH HIS
2 CAR, HE CAME OVER INTO THE LEFT LANE. AND I WAS STILL ON
3 THE PHONE.

4 Q WHAT LANE WERE YOU IN?

5 A I HAD MOVED OVER INTO THE RIGHT LANE.

6 Q WHAT LANE WAS HE IN?

7 A HE WAS IN THE LEFT LANE.

8 Q AND HOW DID HE HIT YOU?

9 A AT THAT TIME HE HIT ME ON THE SIDE, MY DRIVER'S SIDE.

10 Q HOW DID HE DO THAT?

11 A WITH HIS CAR. HE CAME OVER INTO THE RIGHT LANE AND I WAS
12 STILL ON THE PHONE WITH 911. AT THAT TIME I SPEED UP
13 BECAUSE THERE WAS ALL THE OTHER VEHICLES ON THE
14 HIGHWAY AND I WAS TRYING TO AVOID HITTING OTHER PEOPLE
15 AND I ALSO WAS TRYING TO GET OUT OF HIS WAY BECAUSE I
16 WAS SCARED. AND SO AT THAT TIME I GOT BACK INTO THE
17 LEFT LANE AND HE WAS DIRECTLY BEHIND ME. AND AT THAT
18 TIME WHEN HE HIT ME, THE FOURTH TIME, THAT'S THE TIME
19 WHEN I LOST CONTROL AND I WENT OFF THE ROAD.

20 Q WHAT DO YOU REMEMBER WHEN YOU WENT OFF THE ROAD?

21 A WHEN I WENT OFF THE ROAD I REMEMBER I WAS HITTING TREES
22 AND I REMEMBER I WAS ROLLING OVER, BUT AT SOME POINT I
23 THINK I BLACKED OUT.

24 Q THEN WHAT DO YOU REMEMBER HAPPENING?

25 A I REMEMBER WHEN I WAS COMING TO AND I REMEMBER BEING

1 SCARED BECAUSE I DIDN'T KNOW WHERE WAS AT AND I WAS
2 SCARED HE WAS GOING TO COME TO FINISH ME OFF. SO WHEN I
3 STARTED COMING TO I REMEMBER SEEING TWO GUYS STANDING
4 ON THE OUTSIDE TELLING ME THAT THEY NEEDED TO GET ME
5 OUT BECAUSE THEY SAID MY BLAZER WAS SMOKING.

6 Q WHO WERE THESE TWO MEN?

7 A THEY WERE TWO WHITE GUYS.

8 Q AND WHEN YOU HEARD THEM, DID YOU HEAR VOICES?

9 A YES.

10 Q WHAT DID YOU THINK WHEN YOU FIRST HEARD VOICES?

11 A WHEN I FIRST HEARD VOICES I THOUGHT IT WAS MY HUSBAND
12 RONALD AT FIRST.

13 Q AND WHAT WERE YOU THINKING?

14 A I WAS SCARED BECAUSE I THOUGHT HE WAS COMING TO FINISH
15 ME OFF.

16 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER 79, A COMPACT
17 DISC OR C.D.; HAVE YOU LISTENED TO THE CONTENTS OF THIS
18 BEFORE?

19 A YES.

20 Q DO YOU RECOGNIZE WHAT HAPPENS ON THIS?

21 A YES.

22 Q AND DOES THIS ACCURATELY REFLECT YOUR CONVERSATIONS
23 WITH THE 911 OPERATOR WHILE THIS WAS GOING ON?

24 A YES.

25 MR. MODICA: YOUR HONOR, AT THIS

1 TIME I WOULD ASK TO PUBLISH STATE'S EXHIBIT NUMBER 79.

2 THE COURT: YOU MAY.

3 (AT THIS TIME THE EXHIBIT WAS PUBLISHED FOR THE JURY)

4 BY MR. MODICA:

5 Q WERE YOU ACTUALLY ON THE PHONE WITH THE 911 OPERATOR
6 WHEN THE VEHICLE LOST CONTROL?

7 A YES.

8 Q AFTER THIS INCIDENT OCCURRED YOU WENT TO THE HOSPITAL
9 EMERGENCY ROOM?

10 A YES.

11 Q HOW LONG WERE YOU AT THE EMERGENCY ROOM?

12 A MAYBE THREE OR FOUR HOURS.

13 Q DID THEY DO A LOT OF TESTING ON YOU; CATSCANS, X-RAYS,
14 THINGS OF THAT NATURE?

15 A YES.

16 Q AND CAN YOU TELL OUR JURY ABOUT YOUR INJURIES YOU
17 SUSTAINED AS A RESULT OF WHAT YOUR HUSBAND DID TO YOU?

18 A I HAD A LOT OF CUT ON MY FACES, MY ARM, HAND, ON MY BACK
19 SHOULDER. MY LEFT SIDE WAS OUT OF ALIGNMENT, I WAS
20 GOING TO A CHIROPRACTOR SINCE MARCH, AND I'M STILL SEEING
21 A CHIROPRACTOR.

22 Q WERE YOU LAID UP?

23 A FOR ABOUT A WEEK.

24 Q I TAKE IT THAT THE NEXT THING, SOME TIME AFTER YOU LEFT
25 THE HOSPITAL YOU WENT TO THE POLICE TO GIVE SOME

1 STATEMENTS AND THINGS OF THAT NATURE?

2 A YES.

3 Q ABSENT THAT DID YOU REMAIN AT HOME IN BED?

4 A YES, I DO.

5 Q WERE YOU ON PAINKILLERS?

6 A YES.

7 Q ARE YOU STILL IN PAIN AS A RESULT OF WHAT YOUR HUSBAND
8 DID TO YOU?

9 A YES.

10 Q I WANT TO SHOW YOU SOME PHOTOGRAPHS. I WANT YOU TO
11 LOOK THROUGH THEM AND WHEN YOU'RE DONE LOOKING
12 THROUGH THEM, LET US KNOW.

13 A YES.

14 Q DO YOU RECOGNIZE WHAT'S IN THESE PHOTOGRAPHS?

15 A YES.

16 Q LET'S START WITH STATE'S EXHIBIT NO. ONE. WHAT'S THAT?

17 A THAT'S MY VEHICLE.

18 Q AFTER THE ACCIDENT?

19 A YES.

20 Q AND THAT'S WHERE IT CAME TO REST?

21 MR. MODICA: YOUR HONOR, AT THIS
22 TIME WE WOULD MOVE STATE'S EXHIBIT NUMBER ONE INTO
23 EVIDENCE.

24 MR. BARR: NO OBJECTION.

25 THE COURT: NUMBER ONE IN EVIDENCE

1 WITH NO OBJECTION.

2 (STATE'S EXHIBIT NO, 1 ADMITTED INTO EVIDENCE.)

3 BY MR. MODICA:

4 Q STATE'S EXHIBIT NUMBER TWO?

5 A THAT'S MY BLAZER.

6 Q AND THAT'S AT THE ACCIDENT SCENE?

7 A YES.

8 MR. MODICA: YOUR HONOR, AT THIS
9 TIME WE WOULD MOVE STATE'S EXHIBIT NUMBER TWO INTO
10 EVIDENCE.

11 THE COURT: IS THERE OBJECTION?

12 MR. BARR: NO, SIR.

13 (STATE'S EXHIBIT NO. 2 ADMITTED INTO EVIDENCE.)

14 BY MR. MODICA:

15 Q STATE'S NUMBER THREE; WHAT'S THAT?

16 A THAT'S MY BLAZER.

17 Q AT THE ACCIDENT SCENE?

18 A YES.

19 MR. MODICA: YOUR HONOR, AT THIS
20 TIME WE WOULD MOVE STATE'S EXHIBIT NUMBER THREE INTO
21 EVIDENCE.

22 MR. BARR: NO OBJECTION.

23 (STATE'S EXHIBIT NO. 3 MARKED INTO EVIDENCE.)

24 BY MR. MODICA:

25 Q STATE'S EXHIBIT NUMBER 30; DO YOU RECOGNIZE WHAT'S

1 SHOWN IN THAT PHOTOGRAPH?

2 A THAT'S MY HUSBAND'S CAR.

3 MR. MODICA: YOUR HONOR, AT THIS

4 TIME WE'D MOVE STATE'S EXHIBIT NUMBER 30 INTO EVIDENCE.

5 MR. BARR: OBJECTION.

6 THE COURT: ON WHAT BASIS?

7 MR. BARR: NO FOUNDATION, JUDGE.

8 THE COURT: COUNSEL, DO YOU HAVE

9 ADDITIONAL FOUNDATIONAL QUESTIONS?

10 BY MR. MODICA:

11 Q HAVE YOU SEEN THIS CAR BEFORE?

12 A YES, I HAVE.

13 Q HAS YOUR HUSBAND OWNED THIS CAR FOR A GOOD PERIOD OF

14 TIME?

15 A YES, HE HAVE.

16 Q IS THERE ANY QUESTION IN YOUR MIND THAT THAT'S HIS

17 VEHICLE?

18 A THAT'S HIS VEHICLE.

19 THE COURT: WAS THAT THE CAR IN

20 THE ACCIDENT, MA'AM?

21 THE WITNESS: YES, SIR.

22 THE COURT: ALL RIGHT, OBJECTION

23 OVERRULED.

24 (STATE'S EXHIBIT NO. 30 ADMITTED INTO EVIDENCE.)

25 BY MR. MODICA:

1 Q DO YOU RECOGNIZE THIS PHOTOGRAPH?

2 A THAT'S MY HUSBAND'S VEHICLE.

3 MR. MODICA: MOVE STATE'S EXHIBIT
4 NUMBER 31 INTO EVIDENCE.

5 MR. BARR: SECOND OBJECTION.

6 THE COURT: I'M GOING TO OVERRULE
7 YOUR OBJECTION. LET'S MARK 31 AS IN EVIDENCE OVER YOUR
8 OBJECTION.

9 (STATE'S EXHIBIT NO. 31 ADMITTED INTO EVIDENCE.)

10 BY MR. MODICA:

11 Q NUMBER 48?

12 A THAT'S HIS CELL PHONE.

13 Q AND CHARGER?

14 A YES.

15 MR. MODICA: I'D MOVE STATE'S
16 EXHIBIT NUMBER 48 INTO EVIDENCE.

17 THE COURT: IS THERE AN OBJECTION?

18 MR. BARR: SAME PREVIOUS OBJECTION.

19 THE COURT: AND YOUR RESPONSE TO
20 THAT WAS THAT IS YOUR CELL PHONE, MA'AM, DID YOU SAY
21 THAT?

22 THE WITNESS: NO, THAT'S MY
23 HUSBAND'S CELL PHONE.

24 THE COURT: ALL RIGHT, COUNSEL, I'M
25 GOING TO ASK YOU TO LAY A FOUNDATION AS TO HOW SHE'S

1 AWARE THAT WAS HIS.

2 BY MR. MODICA:

3 Q YOU'RE AWARE THAT YOUR HUSBAND HAD A CELL PHONE?

4 A YES.

5 Q HAD SEEN IT DURING THE COURSE OF YOUR MARRIAGE?

6 THE COURT: DON'T LEAD, COUNSEL.

7 BY MR. MODICA:

8 Q WHEN HAD YOU SEEN THIS PHONE?

9 A WHEN I WAS LIVING WITH HIM.

10 THE COURT: PULL UP A LITTLE

11 FURTHER, MA'AM, SO WE CAN HEAR YOU ON THE MICROPHONE.

12 THANK YOU.

13 BY MR. MODICA:

14 Q AND IS THAT THE BASIS UPON WHICH YOU ARE ABLE TO

15 IDENTIFY THIS AS BEING HIS CELL PHONE?

16 A YES.

17 THE COURT: ALL RIGHT, THE COURT

18 WILL ALLOW THAT OVER OBJECTION.

19 (STATE'S EXHIBIT NO. 48 ADMITTED INTO EVIDENCE.)

20 MY MR. MODICA:

21 Q 50?

22 A THAT'S MY VEHICLE.

23 MR. MODICA: OFFER STATE'S EXHIBIT

24 50 INTO EVIDENCE.

25 THE COURT: ANY OBJECTION,

1 COUNSEL?

2 MR. BARR: NONE.

3 (STATE'S EXHIBIT NO. 50 ADMITTED INTO EVIDENCE.)

4 BY MR. MODICA:

5 Q STATE'S EXHIBIT NO. 77?

6 A THAT'S MY HANDBAG AND MY CELL PHONE ON MY VEHICLE.

7 Q 2002 BLAZER?

8 A YES.

9 MR. MODICA: STATE'S EXHIBIT NUMBER

10 77 INTO EVIDENCE.

11 MR. BARR: NO OBJECTION, JUDGE.

12 (STATE'S EXHIBIT NO. 77 ADMITTED INTO EVIDENCE.)

13 BY MR. MODICA:

14 Q STATE'S EXHIBIT NUMBER 78?

15 A THAT'S MY CELL PHONE.

16 Q WHAT APPEARS TO BE ON THIS HERE?

17 A BLOOD.

18 Q AND WHOSE BLOOD WAS THAT?

19 A MINE.

20 Q FROM THE ACCIDENT?

21 A YES.

22 MR. MODICA: STATE WOULD OFFER

23 EXHIBIT NUMBER 78 INTO EVIDENCE.

24 THE COURT: WHAT SAYS DEFENSE?

25 MR. BARR: NO OBJECTION.

1 (STATE'S EXHIBIT NO. 78 ADMITTED INTO EVIDENCE.)

2 BY MR. MODICA:

3 Q SHOWING YOU STATE'S EXHIBIT NUMBER 80, I'D ASK IF YOU
4 RECOGNIZE THIS?

5 A YES.

6 Q WHAT DO YOU RECOGNIZE THAT AS BEING?

7 A A RULE TO SHOW CAUSE.

8 Q IS THIS THE RULE TO SHOW CAUSE THAT YOU GOT IN RELATION
9 TO WHAT WE WERE TALKING ABOUT DURING THE COURSE OF
10 YOUR TESTIMONY?

11 A YES.

12 MR. MODICA: YOUR HONOR, MOVE
13 STATE'S EXHIBIT NUMBER 80 INTO EVIDENCE.

14 THE COURT: OBJECTION TO 80,
15 COUNSEL?

16 MR. BARR: THE PREVIOUS OBJECTION,
17 JUDGE.

18 THE COURT: ALL RIGHT, AS
19 PREVIOUSLY NOTED OVER OBJECTION OF COUNSEL.

20 (STATE'S EXHIBIT NO. 80 ADMITTED INTO EVIDENCE.)

21 BY MR. MODICA:

22 Q LET THE RECORD REFLECT THAT I AM HOLDING AS STATE'S
23 EXHIBIT NUMBER 81, A PAPER BAG, AND I AM REMOVING THE
24 CONTENTS OF THE PAPER BAG. I'M SHOWING YOU THE
25 CONTENTS OF THE BAG FOR IDENTIFICATION AND I ASK YOU IF

1 YOU RECOGNIZE THAT.

2 A YES, THAT'S MY CELL PHONE.

3 Q THIS IS THE CELL PHONE THAT WAS IN ONE OF THE
4 PHOTOGRAPHS THAT WAS INTRODUCED INTO EVIDENCE?

5 A YES.

6 Q AND WHOSE CELL PHONE IS THIS?

7 A IT'S MINE.

8 Q AND IS THIS THE CELL PHONE THAT YOU WERE USING THAT
9 DAY?

10 A YES.

11 Q AND THIS AREA HERE, THE TOP PORTION, WHAT APPEARS TO BE
12 ON THAT?

13 A BLOOD.

14 Q AND WHOSE BLOOD IS THAT?

15 A IT'S MINE.

16 MR. MODICA: YOUR HONOR, AT THIS
17 TIME I WOULD MOVE STATE'S EXHIBIT NUMBER 81 INTO
18 EVIDENCE.

19 THE COURT: IS THERE OBJECTION?

20 MR. BARR: NO.

21 (STATE'S EXHIBIT NO. 81 ADMITTED INTO EVIDENCE.)

22 MR. MODICA: THANK YOU VERY MUCH
23 FOR YOUR PATIENCE, JUDGE. PLEASE ANSWER ANY QUESTIONS
24 COUNSEL MIGHT HAVE FOR YOU.

25 THE COURT: COUNSEL, LET'S COME TO

1 THE SIDE AND DISCUSS SCHEDULING BEFORE YOU BEGIN YOUR
2 CROSS EXAMINATION.

3 (OFF-THE-RECORD BENCH CONFERENCE)

4 THE COURT: ALL RIGHT, LADIES AND
5 GENTLEMEN, DUE TO THE POTENTIAL LENGTH OF CROSS
6 EXAMINATION, WE WILL NOT GO FURTHER TODAY. WE'VE
7 REACHED THE END OF THE BUSINESS DAY. I KNOW THAT YOU
8 HAVE LIVES AND OTHER PRESSING CONCERNS, SO RATHER
9 THAN STAY ANY LONGER AT THIS PROCEEDING TODAY, WE WILL
10 END THE PROCEEDING.

11 NOW, MRS. COHENS, YOU ARE A WITNESS THAT
12 REMAINS UNDER OATH. I'M GOING TO ASK YOU, PLEASE, OVER
13 YOUR NIGHT BREAK PLEASE DO NOT TALK TO THE ATTORNEYS
14 FOR THE STATE, OR IN CASE YOU WOULD HAVE ANY OCCASION
15 TO SPEAK TO MR. BARR, THAT WOULD NOT BE APPROPRIATE.
16 SO DON'T SPEAK TO EITHER ATTORNEY, JUST COME BACK
17 TOMORROW MORNING AND WE WILL HAVE YOUR CROSS
18 EXAMINATION.

19 COURT WILL BEGIN AT NINE-THIRTY TOMORROW
20 MORNING. NOW WHAT I NEED TO ASK YOU TO DO IS; WHEN YOU
21 GO HOME TONIGHT YOUR LOVES ONES ARE GOING TO SAY,
22 "WELL, WHAT HAPPENED IN COURT TODAY?" AND THEY'RE
23 GOING TO WANT TO KNOW ALL ABOUT IT. I'M GOING TO ASK
24 YOU, PLEASE, AND DIRECT YOU, PLEASE, DO NOT DISCUSS THE
25 FACTS OF THIS CASE AS YOU HAVE HEARD THEM THUS FAR, THE

1 EVIDENCE IN THE CASE, UNTIL THE CASE IS OVER. ONCE IT'S
2 OVER YOU CAN FULLY DISCUSS IT. BUT IT WOULD BE
3 INAPPROPRIATE FOR SOME THIRD PERSON WHO MAY BE A
4 PERSON INFLUENCING YOUR LIFE TO SAY SOMETHING OUTSIDE OF
5 THIS RECORD THAT MIGHT SOMEHOW INFLUENCE YOU. SO
6 PLEASE TELL YOUR LOVED ONES THAT THE COURT'S DIRECTED
7 YOU NOT TO DISCUSS THE CASE WITH ANYONE UNTIL SUCH TIME
8 AS THE CASE IS OVER WITH. I WILL TELL YOU NOW WHEN YOU
9 COME BACK IN THE MORNING, I WILL ASK YOU WHETHER THERE'S
10 BEEN ANY DISCUSSIONS OR ANYONE ATTEMPTING TO DISCUSS
11 THIS MATTER WITH YOU, SO PLEASE, COMPLY WITH THE
12 COURT'S ORDER. AND DON'T UNDERTAKE ANY INVESTIGATION
13 OF YOUR OWN, HAVE A GOOD NIGHT'S REST, HAVE AN OPEN
14 MIND, CROSS EXAMINATION WILL BEGIN TOMORROW MORNING AT
15 NINE-THIRTY. EVERYBODY JUST PLEASE REMAIN WHERE THEY
16 ARE WHILE OUR JURY DEPARTS.

17 NOW BEFORE WE LEAVE FOR THE DAY THERE WAS
18 AN OBJECTION ON STATE'S EXHIBIT 30, AND IF YOU WISH TO
19 PLACE THAT ON THE RECORD AT THIS TIME, MR. BARR, YOU
20 MAY.

21 MR. BARR: YES, JUDGE, THERE WAS AN
22 OBJECTION ON THAT PARTICULAR EXHIBIT AND THERE ON
23 SEVERAL OTHER EXHIBITS THAT, THERE WERE AT LEAST ONE OF
24 - BECAUSE BOTH EXHIBITS WERE PHOTOGRAPHS OR PICTURES OF
25 MR. COHEN'S VEHICLE. OUR CONCERN IS AND THE ISSUE HERE,

1 OF COURSE, THE PHOTOGRAPHS ACTUALLY DEPICTS THE
2 VEHICLES IN A VERY DAMAGED STATE. AND, OF COURSE, THE
3 OBJECTION THAT I WOULD NOTE IN TERMS OF LAYING A
4 FOUNDATION, THERE WERE SEVERAL QUESTIONS ASKED OF THE
5 WITNESS CONCERNING THE OWNERSHIP OF THAT VEHICLE. SHE
6 SIMPLY SAID THAT THIS VEHICLE WAS HER HUSBAND'S VEHICLE,
7 AND, OF COURSE, THAT MAY VERY WELL BE TRUE. BUT WHAT'S
8 PICTURED IN THE PHOTOGRAPH IS A TORN-UP VEHICLE. NOW I
9 DON'T THINK THAT SHE WAS COMPETENT, CERTAINLY, TO
10 TESTIFY CONCERNING HOW THIS VEHICLE GOT IN THAT
11 CONDITION. IF YOU LOOK AT THE PHOTOGRAPH CLEARLY IT IS A
12 TORN-UP VEHICLE. NOW WE DON'T KNOW WHO TOOK THE
13 PHOTOGRAPH, SHE DIDN'T TAKE THE PHOTOGRAPH, SHE
14 DOESN'T KNOW ANYTHING ABOUT WHETHER OR NOT THE
15 CONDITION OF THE VEHICLE IS A DIRECT RESULT SOLELY OF THE
16 ACCIDENT THAT SHE HAD. SHE DIDN'T SAY ANYTHING ABOUT
17 THAT.

18 THE COURT: ALL RIGHT, COUNSEL.
19 AND OF COURSE, SHE HAS STATED THAT IT WAS HER
20 HUSBAND'S VEHICLE. I FELT THAT CLEARLY THERE IS
21 INFERENTIAL EVIDENCE BEFORE THIS JURY THAT THAT DAMAGE
22 WAS DONE IN THE COLLISION, AND THE PICTURE IS TAKEN IN
23 THE IMPOUND LOT. I'LL GIVE YOU AMPLE CROSS EXAMINATION
24 ON THAT POINT WITH HER. PERHAPS THERE ARE OTHER
25 INDIVIDUALS WHO MAY BE ABLE TO SAY THAT THAT DAMAGE

1 CAME FROM SOME OTHER SOURCE OTHER THAN THIS WRECK.
2 BUT I FELT THERE WAS SUFFICIENT FOUNDATION LAID ONCE SHE
3 IDENTIFIED THE VEHICLE AS HER HUSBAND'S TO PLACE IT INTO
4 EVIDENCE. FOR THAT REASON, I OVERRULED YOUR OBJECTION.
5 I FELT THAT IF THERE WAS ANY PREJUDICE, IT WAS
6 OUTWEIGHED BY THE PROBATIVE VALUE AND THE RELEVANCE.
7 SO FOR THESE REASONS, THE COURT RULED AS I DID. ALL
8 RIGHT, WE WILL CONCLUDE THESE PROCEEDINGS UNTIL NINE-
9 THIRTY TOMORROW MORNING.

10 ----- THE PROCEEDINGS FOR THIS DAY WERE ADJOURNED-----

11 THE COURT: ANYTHING FOR THE RECORD
12 BEFORE WE BEGIN TODAY?

13 MR. MODICA: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT, LADIES AND
15 GENTLEMEN, WELCOME BACK TO THE COURTROOM. I TRUST
16 YOU HAD A NICE EVENING, AND LET ME ASK BEFORE WE BEGIN
17 THESE PROCEEDINGS; IS THERE ANY MEMBER OF THE JURY PANEL
18 WHO'S HAD ANY DISCUSSION WITH ANYONE CONCERNING THE
19 FACTS OF THIS CASE, OR BEEN CONTACTED BY ANYONE
20 CONCERNING THIS CASE? IF THAT APPLIES TO YOU, PLEASE
21 RAISE YOUR HAND. LET'S LET THE RECORD REFLECT THAT NO
22 ONE HAS RAISED THEIR HANDS. AND, THEREFORE, AGAIN, I
23 APPRECIATE YOUR COMPLYING WITH THE COURT'S REQUEST IN
24 THAT REGARD.

25 NOW WE ENDED THE DAY WITH CLOSING DIRECT

1 EXAMINATION OF THE WITNESS, MRS. COHENS. AND IS MRS.
2 COHENS PRESENT? SHE IS. AND IS THERE CROSS EXAMINATION
3 OF MRS. COHENS? MR. BARR IS NOT PRESENT AND THEREFORE
4 IT APPEARS AT THIS TIME THERE IS NOT. PLEASE CALL YOUR
5 NEXT WITNESS, MR. MODICA.

6 MR. MODICA: THANK YOU, YOUR
7 HONOR. THE STATE WOULD CALL RONNIE LEWIS.

8 THE COURT: ALL RIGHT, LADIES AND
9 GENTLEMEN, WE HAVE SEQUESTERED THE WITNESSES, MEANING
10 THAT THEY ARE NOT IN THE COURTROOM UNTIL THE TIME THAT
11 THEY TESTIFY, AND THEN AFTERWARDS THEY MAY REMAIN IN
12 THE COURTROOM. SO WHEN WE CALL A WITNESS YOU CAN
13 EXPECT THE WITNESS TO BE BROUGHT IN.

14 THE COURT: MR. BARR, GOOD
15 MORNING. SIR, WHERE HAVE YOU BEEN? WE BEGAN COURT AT
16 NINE-THIRTY THIS MORNING, EVERYONE WAS HERE. WHERE
17 HAVE YOU BEEN?

18 MR. BARR: JUDGE, I HAD TO STOP IN
19 KINGSTREE THIS MORNING ON MY WAY OVER HERE. I APOLOGIZE
20 TO THE COURT FOR BEING LATE.

21 THE COURT: WELL, PLEASE
22 UNDERSTAND AS A COURTESY TO THE JURY WHO IS HERE GIVING
23 THEIR TIME WHEN WE SAY WE'RE GOING TO START AT A
24 PARTICULAR TIME, WE BEGIN AT THAT TIME. WE'VE CALLED
25 ANOTHER WITNESS. PLEASE COME FORWARD AND TAKE THE

1 OATH OF A WITNESS, SIR.

2 Thereupon, RONNIE LEWIS, being first
3 duly sworn, testified as follows:

4 MR. BARR: JUDGE, MAY I APPROACH
5 THE BENCH?

6 THE COURT: WELL, COUNSEL, WE ARE
7 IN THE PRESENTATION OF A WITNESS, SO NOT AT THIS TIME.
8 WE'LL TAKE JUST MOMENT. COUNSEL, COME TO THE SIDE IF
9 YOU WOULD, PLEASE.

10 (OFF-THE-RECORD COUNSEL AT THE BENCH)

11 DIRECT EXAMINATION BY MR. MODICA:

12 Q STATE YOUR NAME FOR THE RECORD, PLEASE.

13 A RONNIE DALE LEWIS.

14 Q MR. LEWIS, DO YOU MIND TELLING US HOW OLD YOU ARE, SIR?

15 A I AM 34 YEARS OLD.

16 Q AND ARE YOU PRESENTLY WORKING?

17 A YES, SIR.

18 Q WHERE DO YOU WORK?

19 A I WORK IN DEBORDIEU.*

20 Q DOING WHAT?

21 A I'M A CARPENTER WORKING FOR SINGLETON CONSTRUCTION.

22 Q AND HOW LONG HAVE YOU BEEN WORKING FOR SINGLETON?

23 A FIVE YEARS.

24 Q ARE YOU MARRIED, SIR?

25 A NO, SIR.

1 Q DO YOU HAVE ANY CHILDREN?

2 A NO, SIR.

3 Q NOW I WANT TO ASK YOU; BACK IN MARCH OF THIS YEAR, 2006,
4 WERE YOU WORKING AT DEBORDIEU?

5 A YES, SIR.

6 Q NOW WHAT COMMUNITY DO YOU LIVE IN?

7 A I LIVE IN JOHNSONVILLE IN FLORENCE COUNTY.

8 Q IN ORDER TO GET TO DEBORDIEU DO YOU TAKE 51 TO 701 TO
9 BLACK RIVER AND IS THAT YOUR ROUTE OF TRAVEL?

10 A YES, SIR.

11 Q SPECIFICALLY ON MARCH 23RD OF 2006 DID YOU HAVE ANYBODY
12 THAT YOU WERE DRIVING TO WORK WITH TO DEBORDIEU TO DO
13 YOUR CONSTRUCTION/CARPENTER JOB?

14 A KEVIN JOYE, HE WORKS WITH ME.

15 Q AND I WANT TO DIRECT YOUR ATTENTION TO JUST AFTER
16 SEVEN A.M., AND I'M GOING TO PLACE YOU IN A PARTICULAR
17 AREA; ON 17 NORTH PAST THE TWO HILLS GOING OUT OF
18 GEORGETOWN TOWARDS MYRTLE BEACH. ARE YOU WITH ME SO
19 FAR?

20 A YES, SIR.

21 Q AT THAT POINT IN TIME DID YOU NOTICE SOMETHING ABOUT
22 WHAT WAS GOING ON IN TRAFFIC BEHIND YOU?

23 A YES, SIR.

24 Q OKAY. WHAT I WANT YOU TO DO IS TAKE YOUR TIME AND TELL
25 OUR JURY ABOUT THAT AND TELL THEM HOW YOU OBSERVED IT,

1 WHETHER IT WAS IN THE REARVIEW, OR WHETHER YOU LOOKED
2 TO THE SIDE, WHATEVER IT MIGHT BE.

3 A YES, SIR. I HAPPENED TO NOTICE A BLUEISH/GRAY HONDA
4 ACCORD BEHIND ME WEAVING BACK AND FORTH BEHIND A
5 WHITE CHEVY BLAZER.

6 Q CAN YOU DESCRIBE A LITTLE BIT MORE BY WHAT YOU MEAN
7 WEAVING BACK AND FORTH?

8 A HE WAS GOING BACK AND FORTH BETWEEN THE LANES BEHIND
9 THAT VEHICLE.

10 Q BEHIND THAT VEHICLE?

11 A YEAH, THAT WHITE BLAZER.

12 Q COULD YOU TELL US, SIR, WHAT LANE THE WHITE BLAZER WAS
13 IN?

14 A WE WERE IN THE FAST LANE, THE LEFT SIDE.

15 Q AND SO WAS THE BLAZER?

16 A YEAH.

17 Q AND THE OTHER CAR, THE BLUE/GRAY HONDA WAS GOING FROM
18 ONE LANE TO THE OTHER?

19 A IT STAYED BEHIND HER, BUT WEAVING BACK AND FORTH IN THE
20 FAST LANE.

21 Q CONTINUE TO TELL OUR JURY WHAT HAPPENED.

22 A WELL, WE'RE NOT FAR FROM ME TURNING OFF TO GO TO WORK
23 AT DEBORDIEU, SO I PROCEEDED TO GET IN THE SLOW LANE
24 BEHIND A SCHOOL BUS. AND NOT LONG AFTER WE GOT THERE
25 BOTH VEHICLES PASSED ME WITH THE WHITE HONDA ACCORD---

- 1 Q THE WHAT?
- 2 A I MEAN THE BLUE/GRAYISH HONDA ACCORD BUMPING THE WHITE
- 3 CHEVY BLAZER IN THE BUMPER GOING PAST ME.
- 4 Q HOW WOULD YOU DESCRIBE THAT?
- 5 A WELL, LIKE NASCAR RACING. I MEAN, HE WAS RIGHT ON HER
- 6 BUMPER BUMPING HER THE WHOLE TIME GOING PAST ME.
- 7 Q NOW WHEN YOU WERE IN THAT RIGHT LANE, CAN YOU TELL OUR
- 8 JURY ABOUT HOW FAST YOU WERE GOING, SIR?
- 9 A SIXTY, THE SPEED LIMIT.
- 10 Q AND HOW ABOUT THE SPEED OF THE VEHICLES, THE WHITE
- 11 BLAZER AND THE BLUE/GRAY HONDA?
- 12 A THEY WERE GOING OVER SEVENTY. THEY PASSED ME.
- 13 Q WHAT HAPPENED WHEN THEY WERE PASSING YOU?
- 14 A WELL, AFTER THEY PASSED ME IT WAS GETTING RIGHT BESIDE
- 15 THE SCHOOL BUS AND HE'S STILL RIGHT ON HER TAIL, YOU
- 16 KNOW, BUMPING HER. AND I COULD SEE TRAFFIC SLOWING UP
- 17 AHEAD AND HE JUST PUSHED HER RIGHT -- HE HIT HER AND
- 18 PUSHED HER RIGHT IN FRONT OF THAT SCHOOL BUS, AND SHE
- 19 GOES INTO THE DITCH AND FLIPS.
- 20 Q WHAT WAY DID SHE GO OFF THE ROADWAY?
- 21 A SHE WAS IN THE FAST LANE. SHE WENT TO THE RIGHT IN
- 22 FRONT OF THAT SCHOOL BUS. AND THEN SHE HIT DITCHES AND
- 23 SHE FLIPS.
- 24 Q HOW MANY TIMES DO YOU BELIEVE THAT VEHICLE FLIPPED?
- 25 A NO MORE THAN TWO.

1 Q NOW YOU SAY "SHE." AT THE TIME THAT THIS IS GOING ON DID
2 YOU KNOW IT WAS A SHE?

3 A NO, SIR, I DIDN'T KNOW WHO WAS IN THE VEHICLE.

4 Q AND YOU KNOW IT WAS A SHE BECAUSE OF WHAT YOU SAW
5 LATER?

6 A YES, SIR.

7 Q NOW, LET ME JUST BACK UP A LITTLE BIT. FROM YOUR
8 PERSPECTIVE, DID THE DRIVER OF THE WHITE BLAZER GO TO THE
9 RIGHT LANE, OR WAS FORCED TO THE RIGHT LANE BY WHAT
10 YOU OBSERVED?

11 A SHE WAS FORCED.

12 Q BY WHAT?

13 A THAT CAR, THE HONDA ACCORD, PUSHED HER RIGHT IN FRONT
14 OF THE SCHOOL BUS.

15 Q NOW WHAT DID YOU DO AFTER SEEING THE CAR FLIP OVER AND
16 COME TO A REST?

17 A I PULLED OVER THE SIDE TO SEE IF THE PERSON WAS ALRIGHT.

18 Q WHAT DID YOU THINK?

19 A I DIDN'T THINK THEY MADE IT BECAUSE THE CAB WAS CRUSHED.

20 Q WHAT DID YOU DO?

21 A I CHECKED THE DRIVER'S SIDE FIRST, COULDN'T SEE. SO I WENT
22 TO THE PASSENGER SIDE AND I COULD SEE HER SCREAMING
23 CRAWLING OUT THE BACK OF THE HATCH.

24 Q COULD YOU TELL THE NATIONALITY OF THIS PERSON AT THAT
25 TIME?

- 1 A YES, SIR.
- 2 Q WHAT WAS IT?
- 3 A AFRICAN AMERICAN.
- 4 Q AND DESCRIBE HOW THIS PERSON WAS ACTING.
- 5 A SHE WAS HYSTERICAL, SCREAMING, "HE'S TRYING TO KILL ME."
- 6 Q AND WAS SHE BLEEDING?
- 7 A YES, SIR, HER FACE WAS COVERED IN BLOOD.
- 8 Q AND HOW DID SHE GET OUT OF THE VEHICLE?
- 9 A SHE CRAWLED OUT THE BACK DOOR AND PULLED HERSELF UP.
- 10 Q WERE YOU THERE TO HELP HER?
- 11 A YES, SIR.
- 12 Q AND WAS KEVIN THERE TO HELP HER?
- 13 A YES, SIR.
- 14 Q AND DID YOU MAKE INQUIRY OF WHO SHE WAS REFERRING TO?
- 15 A YES, SIR, WE ASKED WHO WAS THE MAN TRYING TO KILL YOU,
- 16 OR THE PERSON, BECAUSE AT THE TIME WE DIDN'T KNOW. AND
- 17 SHE SAID HER HUSBAND.
- 18 Q NOW SUBSEQUENT TO THAT DID SHE GET ASSISTANCE FROM
- 19 OTHER PEOPLE?
- 20 A YES, SIR, PEOPLE WERE STOPPING BY.
- 21 Q NOW FROM YOUR WORK, DID YOU SEE SOMEBODY YOU KNEW
- 22 THERE?
- 23 A FREDDIE THAT WORKS FOR PAWLEY'S ISLAND AND HE DELIVERS
- 24 LUMBER AND STUFF TO US. HE WAS RIGHT BEHIND ME.
- 25 Q WHAT NATIONALITY IS HE?

1 A HE'S AFRICAN AMERICAN.

2 Q WITHOUT SAYING WHAT, DID FREDDIE RELAY SOMETHING TO
3 YOU? DID HE TALK TO YOU ABOUT COMMUNICATING SOMETHING
4 FROM HIM TO LAW ENFORCEMENT - WITHOUT SAYING WHAT,
5 BECAUSE THAT WOULD BE HEARSAY, IF YOU REMEMBER.

6 A I DON'T REMEMBER.

7 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER 12 AND 13 FOR
8 IDENTIFICATION. I'M GOING TO ASK YOU TO TAKE A LOOK AT
9 THOSE TWO PHOTOGRAPHS AND WHEN YOU'RE DONE, LET US
10 KNOW.

11 A OKAY.

12 Q STARTING WITH NUMBER 12 FOR A MOMENT, DO YOU RECOGNIZE
13 THAT AREA WHERE THAT PHOTOGRAPH WAS TAKEN?

14 A IT'S NOT FAR FROM WHERE I WORK AT DEBORDIEU, THAT'S THE
15 SIGN RIGHT THERE.

16 Q AND DO YOU SEE A VEHICLE THAT YOU RECOGNIZE THERE?

17 A YES, SIR, MY TRUCK.

18 Q AND DOES THAT, NUMBER 12, FAIRLY SHOW THE WAY THINGS
19 WERE, FROM THE VIEW OF THAT PHOTOGRAPH, AS IT EXISTED
20 ON MARCH 23RD OF 2006?

21 A IT SHOWS THERE WHERE THE VEHICLES SHOULD BE AT. MY
22 TRUCKS BLOCKING THE VIEW RIGHT THERE.

23 Q FROM THE POINT OF VIEW OF THAT PHOTOGRAPH, THAT WAS
24 THERE?

25 A YES, SIR.

- 1 Q LOOK AT NUMBER 13 FOR ME, PLEASE. DO YOU RECOGNIZE THE
2 VEHICLE IN THAT PHOTOGRAPH?
- 3 A YES, SIR, MY TRUCK.
- 4 Q AND, AGAIN, THAT'S THE AREA AND THAT FAIRLY, ACCURATELY
5 DEPICTS THE AREA?
- 6 A YES, SIR.
- 7 Q AND IN BOTH THOSE PHOTOGRAPHS YOUR TRUCK IS BLOCKING
8 THE VIEW, TO SOME DEGREE OF THE ACCIDENT?
- 9 A YES, SIR.
- 10 Q I SHOULD SAY WHERE THE WRECK WAS, WHERE THE VEHICLE
11 CAME TO REST.
- 12 A YES, SIR,
- 13 Q FOR A MOMENT I WANT YOU TO TAKE A LOOK AT NUMBER ONE,
14 NUMBER TWO, AND NUMBER THREE AND WHEN YOU'RE DONE,
15 LET ME KNOW.
- 16 A OKAY.
- 17 Q DO YOU RECOGNIZE WHAT'S SHOWN IN THOSE THREE
18 PHOTOGRAPHS?
- 19 A YES, SIR, THAT'S THE WHITE BLAZER.
- 20 Q THAT YOU TALKED ABOUT BEING HIT AND FLIPPING OVER?
- 21 A YES, SIR.
- 22 Q NOW, IF I MIGHT, IN REGARD TO STATE'S EXHIBIT NUMBER THREE,
23 THERE'S A SIGN FOR DEBORDIEU THERE?
- 24 A YES, SIR.
- 25 Q WAS THIS SIGN FOR DEBORDIEU KIND OF IN THE PATH THAT THE

1 VEHICLE WAS TRAVELING?

2 A YOU TALKING ABOUT WHERE SHE WAS GETTING TO WRECK, I
3 MEAN FLIP?

4 Q RIGHT.

5 A YES, SIR.

6 Q CAN YOU EXPLAIN---

7 MR. BARR: JUDGE, I'M GOING TO
8 OBJECT AT THIS POINT TO THIS WITNESS'S STATEMENT.

9 THE COURT: I'M GOING TO OVERRULE.
10 GO AHEAD.

11 BY MR. MODICA:

12 Q CAN YOU EXPLAIN TO OUR JURY HOW THIS VEHICLE HAPPENED
13 TO MISS THAT SIGN FROM WHAT YOU OBSERVED?

14 A FROM WHAT I OBSERVED WHEN SHE VEERED OFF THE SIDE OF
15 THE ROAD SHE HIT THE DITCHES, AND HIT A TREE, AND IT MADE
16 HER TURN LIKE THIS AND SHE STARTED TO FLIP AND SHE
17 FLIPPED RIGHT OVER THAT SIGN.

18 Q RIGHT OVER THE DEBORDIEU SIGN?

19 A YES, SIR. I DON'T KNOW HOW SHE MISSED IT, BUT SHE FLIPPED
20 RIGHT OVER IT.

21 MR. MODICA: YOUR HONOR, AT THIS
22 TIME I WOULD MOVE 12 AND 13 INTO EVIDENCE.

23 THE COURT: WHAT SAY THE DEFENSE?

24 MR. BARR: NO OBJECTION.

25 (STATE'S EXHIBITS. NOS. 12 & 13 ADMITTED INTO EVIDENCE.)

1 MR. MODICA: THANK YOU VERY MUCH,
2 MR. LEWIS. ANSWER ANY QUESTIONS THAT THE DEFENSE
3 ATTORNEY MIGHT HAVE FOR YOU.

4 CROSS EXAMINATION BY MR. BARR:

5 Q MR. LEWIS, HOW ARE YOU DOING?

6 A I'M DOING PRETTY GOOD, SIR.

7 MR. BARR: JUDGE, MAY I APPROACH
8 THE BENCH?

9 (OFF-THE-RECORD COUNSEL AT THE BENCH)

10 THE COURT: GO AHEAD, COUNSEL.

11 BY MR. BARR:

12 Q MR. LEWIS, MY NAME'S CHARLES D. BARR AND I PRACTICE LAW
13 IN KINGSTREE. I'M MR. COHENS ATTORNEY. I DON'T BELIEVE
14 WE'VE EVER MET.

15 A NO, SIR.

16 Q NOW, TO MY UNDERSTANDING - OF COURSE, YOU DON'T HAVE
17 ANY RECOLLECTION ABOUT THAT, HAVEN'T MET BEFORE?

18 A NO. SIR.

19 Q NOW, TO MY UNDERSTANDING, ON THE DATE THIS INCIDENT
20 SUPPOSEDLY TOOK PLACE WHICH IS ON THE 3RD OF MARCH. OR
21 23RD OF MARCH, YOU WERE ON YOUR WAY TO WORK?

22 A YES, SIR.

23 Q YOU ARE EMPLOYED WHERE, NOW?

24 A I WORK FOR SINGLETON CONSTRUCTION.

25 Q WHERE IS THAT?

1 A WE WORK IN DEBORDIEU, BUT THEY'RE IN SOCASTEE, THE OFFICE
2 IS.

3 Q AND ON HIGHWAY 17 ON THE MORNING OF THE 23RD YOU WERE
4 TRAVELING ALONE?

5 A NO, SIR, I HAD A BOY THAT RIDES WITH ME, KEVIN JOYE. HE
6 RIDES WITH ME TO WORK.

7 Q NOW I BELIEVE THAT YOU INDICATED THAT YOU ACTUALLY SAW
8 AT SOME POINT CONTACT MADE BETWEEN THE VEHICLE MR.
9 COHENS WAS DRIVING AND THE ONE THAT HIS WIFE WAS
10 DRIVING?

11 A YES, SIR.

12 Q AND TELL US, IF YOU WOULD, PLEASE, SIR, IN TERMS OF
13 PHYSICAL CONTACT, EXACTLY HOW MANY TIMES DID YOU SEE
14 CONTACT BETWEEN THE TWO VEHICLES?

15 A HOW MANY TIMES?

16 Q YES, SIR.

17 A THREE FOUR. HE WAS BUMPING HER BUMPER. WHEN THEY
18 PASSED ME HE WAS DOING JUST LIKE THIS.

19 Q AND YOU SAID THEY WERE TRAVELING AS FAST AS 70 MILES AN
20 HOUR?

21 A I MEAN HE WAS RIGHT ON HER BUMPER THE WHOLE TIME.

22 Q WELL, I'M NOT TALKING ABOUT BEING CLOSE TO HER VEHICLE,
23 I'M TALKING ABOUT ACTUALLY MAKING CONTACT.

24 A YES, SIR.

25 Q NOW AT THIS TIME THAT YOU SAW THIS CONTACT, THIS

1 BUMPING, YOU WERE IN FRONT, ON THE SIDE, OR BEHIND THE
2 VEHICLE THAT WAS BEING OPERATED BY MR. COHENS AND HIS
3 WIFE?

4 A WHEN I SEE HIM PASS ME?

5 Q WELL AT THE TIME THAT YOU SAY YOU SAW THE BUMPING
6 CONTACT.

7 A THAT'S WHEN THEY WERE PASSING ME.

8 Q THEY WERE PASSING YOU?

9 A YES, SIR, THEY WERE RIGHT BESIDE ME.

10 Q THEY WERE BOTH IN THE LEFT LANE THEN?

11 A AT THAT TIME.

12 Q NOW, OTHER THAN MR. JOYE THAT RIDES WITH YOU, DID ANY
13 OTHER PERSON, AS FAR AS YOU KNOW, STOP THAT WERE
14 WITNESSES TO THIS ACCIDENT?

15 A FREDDIE FROM PAWLEY'S ISLAND LUMBER.

16 Q AND WAS HE PRESENT?

17 A HE WAS BEHIND ME.

18 Q HE STOPPED?

19 A YES, SIR, HE PULLED UP RIGHT BEHIND ME.

20 Q AND WAS HE INTERVIEWED BY A POLICE OFFICER?

21 A SIR?

22 Q WAS HE INTERVIEWED BY ANY POLICE OFFICERS?

23 MR. MODICA: OBJECTION.

24 MR. BARR: I'LL REPHRASE THE

25 QUESTION.

1 BY MR. BARR:

2 Q DID YOU SEE ANY POLICE OFFICERS TALKING TO HIM?

3 A I THINK HE'D ALREADY LEFT BY THE TIME - HE JUST TOLD ME TO
4 GIVE THE LAW---

5 Q I DON'T WANT YOU TO TELL ME WHAT ANYBODY TOLD YOU---

6 MR. MODICA: OBJECTION, HE'S
7 ANSWERING THE QUESTION.

8 THE COURT: OVERRULED, COUNSEL.

9 GO AHEAD, MR. BARR.

10 BY MR. BARR:

11 Q DID YOU SEE HIM AT ANY TIME TALKING TO ANY POLICE
12 OFFICERS?

13 A NO, I THINK HE WENT STRAIGHT BACK TO WORK.

14 Q BUT AS FAR AS YOU KNOW HE DID STOP AT THE ACCIDENT?

15 A YES, SIR, HE STOPPED.

16 Q WHEN YOU SAY THAT YOU SAW THEM BUMPING, THE TWO
17 VEHICLES, THEY WERE IN THE FAST LANE, IN THE LEFT LANE?

18 A YES, SIR.

19 Q AND YOU WERE IN THE RIGHT LANE?

20 A YES, SIR.

21 Q NOW THERE IS A SIGN IN THE ROAD THAT SAYS "DEBORDIEU
22 COLONY?"

23 A YES, SIR.

24 Q DO YOU KNOW WHERE THAT SIGN IS?

25 A YES, SIR.

1 Q IS THAT SIGN DEPICTED IN ANY ONE OF THE PHOTOGRAPHS
2 THAT YOU LOOKED AT THAT THE SOLICITOR SHOWED YOU A
3 FEW MINUTES AGO?

4 A THE GREEN SIGN THAT SAYS DEBORDIEU?

5 Q YES, SIR.

6 A YES, SIR.

7 Q THERE'S ALSO A LANDMARK SIGN. IS A LANDMARK SIGN
8 DEPICTED IN ANY ONE OF THOSE PHOTOGRAPHS?

9 A LANDMARK SIGN?

10 Q THE BIG SIGN AT THE HEAD OF THE ROAD THAT SAYS
11 "DEBORDIEU COLONY."

12 A YES, SIR, THAT'S FURTHER ON UP.

13 Q THAT'S FURTHER UP?

14 A YES, SIR.

15 Q NOW, WHEN YOU INITIALLY SAW THE VEHICLES WERE THEY IN
16 FRONT OF YOU OR BEHIND YOU, THE FIRST TIME YOUR
17 ATTENTION CAME ON THEM?

18 A THEY WERE BEHIND ME.

19 Q SO YOU SAW THEM IN THE REARVIEW?

20 A I SAW THE BLUE/GRAY HONDA ACCORD SWERVING BACK AND
21 FORTH BETWEEN THE FAST LANE AND THE SLOW LANE BEHIND
22 THE WHITE BLAZER.

23 Q NOW WAS THERE ANY BUMPING CONTACT THAT YOU COULD SEE
24 AS THEY WERE SWERVING BACK AND FORTH?

25 A AT THAT TIME I DIDN'T SEE NO CONTACT AT THAT TIME BEHIND

1 ME. ONLY WHEN THEY BOTH PASSED ME DID I SEE CONTACT.

2 Q SO NOW YOU SAW NO CONTACT WHEN THEY WERE BEHIND
3 YOU?

4 A YES, SIR.

5 Q AND WHEN THEY GOT PARALLEL WITH YOU, WHEN THEY WERE
6 PASSING YOU, HOW MANY TIMES DID YOU SEE CONTACT?

7 A LIKE I SAID, THREE, FOUR. HE WAS JUST CONSTANTLY BUMPING
8 HER.

9 Q THREE OR FOUR TIMES?

10 A YES, SIR.

11 Q AND THERE WAS A BUS IN FRONT OF YOU?

12 A YES, SIR, THERE WAS A BUS.

13 Q AND I BELIEVE THAT YOU INDICATED THAT AT SOME POINT YOU
14 SAW THE VEHICLE THAT MRS. COHEN WAS DRIVING COME BACK
15 IN THE RIGHT LANE?

16 A I NEVER SAW IT, NO, SIR. EXCEPT FOR THE FACT WHEN HE HITS
17 HER AND MAKES HER VEER IN FRONT OF THE BUS.

18 Q SO THEN AS FAR - IF I'M UNDERSTANDING WHAT YOU'RE SAYING,
19 MRS. COHENS VEHICLE WAS IN THE LEFT LANE OF TRAFFIC AT
20 THE TIME THAT HE HIT HER AND CAUSED HER TO LOSE
21 CONTROL?

22 A WHEN HE HIT THEY'RE BOTH IN THE LEFT LANE, THE FAST LANE.
23 I'M IN THE RIGHT LANE. YES, SIR.

24 Q AND HE HIT HER FROM BEHIND?

25 A YES, SIR, HE HIT HER FROM BEHIND.

1 Q I AM GOING TO SHOW YOU NOW WHAT HAS BEEN MARKED AS
2 STATE'S EXHIBIT 13. I BELIEVE IT'S BEEN MOVED INTO
3 EVIDENCE. I THINK YOU INDICATED THAT YOU'RE SOMEWHAT
4 FAMILIAR WITH WHAT'S DEPICTED IN THAT PHOTOGRAPH?

5 A YES, SIR.

6 Q NOW I NOTICE THAT THERE ARE SOME SKID MARKS ON THE
7 HIGHWAY AND THERE ARE ALSO WHAT APPEARS TO BE TIRE
8 TREAD MARKS WHERE IT LOOKS LIKE A VEHICLE MAY HAVE RUN
9 OFF THE ROAD. TAKE A LOOK AT THAT AND TELL ME WHAT
10 YOU SEE ANYWHERE OVER THERE WHERE YOU HAD NOTICED
11 THAT THERE WERE ANY MARKINGS MADE BY ANY ONE OF THESE
12 TWO VEHICLES. IN THE GRASS OR---

13 A I SEE A MARKING WHERE HER VEHICLE CUT ACROSS THE GRASS.

14 Q SO THEN IS IT YOUR TESTIMONY THAT THE MARKS IN THE GRASS
15 THAT YOU'RE LOOKING AT ON STATE'S EXHIBIT 13 ARE THE
16 MARKS THAT WERE MADE BY MRS. COHEN'S VEHICLE WHEN SHE
17 WENT OFF THE ROAD?

18 A YES, SIR.

19 Q NOW WHEN THE VEHICLE WENT OFF THE ROAD, DID IT GO
20 SIDWAYS OR STRAIGHT OFF THE ROAD, OR HOW DID IT GO?

21 A IT WENT STRAIGHT OFF THE ROAD, HIT THE DITCH, THEN
22 SIDESWIPE A TREE AND THEN MADE A TURN LIKE THIS, AND
23 THEN SHE FLIPPED.

24 Q SO SHE WENT STRAIGHT OFF THE ROAD?

25 A HE PUSHES HER OFF THE ROAD, SHE HITS THE DITCH, HITS THE

1 TREES, AND FLIPS.

2 Q WELL DID HIS VEHICLE EVER MOVE FROM THE LEFT LANE OF
3 TRAFFIC THAT HE WAS IN?

4 A WHEN THEY WERE BEHIND ME. LIKE I SAID I SEEN HIM VEER BACK
5 AND FORTH.

6 Q I'M TALKING ABOUT THE LAST TIME THAT YOU SAY THAT THE
7 VEHICLE MADE CONTACT WHEN SHE LOST CONTROL.

8 A THERE WAS A BUS---

9 Q PARDON ME?

10 A THERE WAS A BUS. THE BUS IS HERE, I'M BACK HERE, THEY'RE
11 HERE. THERE'S NO WAY HE COULD HAVE COME OVER.

12 Q WELL, I'M TALKING ABOUT WHAT YOU SAW.

13 A I NEVER SEEN HIM GO OVER TO THE RIGHT LANE AFTER THE BUS.

14 Q SO THEN THE BUS, REALLY AT THAT POINT, WHERE THE
15 CONTACT WAS MADE WAS OBSTRUCTING YOUR VISION?

16 A WE WERE ALREADY SLOWING DOWN, I COULD SEE TRAFFIC UP
17 AHEAD. I COULD SEE HIM HIT HER.

18 Q WELL, I MEAN IN TERMS OF BEING ABLE TO SEE THE CONTACT
19 THAT WAS MADE BY THE VEHICLE THAT YOU SAY CAUSED HER
20 TO LOSE CONTROL, THE BUS WAS OBSTRUCTING YOUR VISION?

21 A NOT WHERE I COULD SEE FROM, NO.

22 Q THE BUS DID NOT OBSTRUCT YOUR VISION?

23 A NO, SIR.

24 Q DID YOU SEE WHEN THE CONTACT WAS MADE, DID MR. COHENS
25 VEHICLE EVER LEAVE OUT OF THE LEFT LANE?

1 A I NEVER SEEN HIM LEAVE THE LEFT LANE.

2 Q PARDON ME?

3 A I NEVER SEEN HIM LEAVE THE LEFT LANE.

4 Q NOW IF HE WOULD HAVE LEFT THE LEFT LANE, YOU WERE
5 LOOKING RIGHT AT IT, YOU PROBABLY WOULD HAVE SAW IT,
6 RIGHT?

7 A I COULD STILL SEE HIM, YEAH. BUT IF HE'D HAVE MOVED INTO
8 THE LEFT LANE HE'D HIT THE BUS.

9 Q WELL NOW, LET ME MAKE SURE I UNDERSTAND THIS. MR.
10 COHENS VEHICLE WAS IN THE FAST LANE ALONG WITH HIS WIFE.

11 A YES, SIR.

12 Q AND WHAT LANE WAS THE BUS IN?

13 A RIGHT LANE.

14 Q THE BUS WAS IN THE RIGHT LANE?

15 A YES, SIR.

16 Q DID YOU EVER SEE MR. COHENS VEHICLE - WERE YOU IN FRONT
17 OR BEHIND THE BUS?

18 A I WAS BEHIND THE BUS.

19 Q WERE YOU DIRECTLY BEHIND THE BUS OR WERE YOU SOME
20 DISTANCE BEHIND THE BUS?

21 A I WAS SOME DISTANCE BEHIND THE BUS.

22 Q NOW OF COURSE YOU COULDN'T SEE WHAT WAS GOING ON
23 DIRECTLY IN FRONT OF THE BUS, COULD YOU?

24 A NOT DIRECTLY IN FRONT, NO.

25 Q BUT YOU COULD SEE WHAT WAS GOING ON ON THE SIDE OF THE

1 BUS?

2 A YES, SIR.

3 Q NOW, IS IT YOUR TESTIMONY THAT WHILE THE TWO VEHICLES
4 WAS ON THE SIDE OF THE BUS THAT MR. COHEN'S VEHICLE
5 MADE SOME CONTACT WITH MRS. COHENS VEHICLE THAT
6 CAUSED HER TO LOSE CONTROL?

7 A YES, SIR.

8 Q AND THIS HAPPENED WHILE THEY WERE ON THE SIDE OF THE
9 BUS?

10 A YES, SIR.

11 Q ON THE LEFT SIDE?

12 A YES, SIR. WHEN THEY WERE PASSING ME THEY WERE MAKING
13 CONTACT. AND WHEN HE GOT PAST THE BUS THEY WERE STILL
14 MAKING CONTACT.

15 Q WELL, WAS THE CONTACT MADE AFTER THEY PASSED THE BUS?
16 I THOUGHT YOU SAID IT WAS ON THE SIDE?

17 A WHEN THEY PASSED ME HE WAS HITTING HER ON THE BACK
18 WHILE THEY WERE PASSING THE BUS AND ME. HE WAS MAKING
19 CONTACT WITH HER.

20 Q AND HOW MANY TIMES DID YOU SAY HE MADE CONTACT?

21 A THREE OR FOUR TIMES.

22 Q THREE OR FOUR TIMES.

23 A YES, SIR.

24 Q NOW AT THE FINAL TIME, IS THAT THE TIME THAT SHE LOST
25 CONTROL?

- 1 A THE LAST TIME HE PUSHES HER RIGHT OFF THE ROAD.
- 2 Q YOU SAY HE PUSHED HER. NOW IF I UNDERSTAND IT CORRECTLY
- 3 YOU'RE SAYING MR. COHENS HERE, WHO IS ON THE LEFT SIDE
- 4 OF THE ROAD.
- 5 A YES, SIR.
- 6 Q BUT NOW THERE'S NO QUESTION THAT MRS. COHENS VEHICLE
- 7 LEFT THE LEFT LANE, WENT ACROSS THE RIGHT LANE OF
- 8 TRAFFIC OVER ONTO THE SHOULDER AND OVER-FLIPPED?
- 9 A HE PUSHES HER ON TO THE RIGHT SIDE. HE CONTINUES GOING
- 10 ON.
- 11 Q ARE YOU LISTENING TO ME?
- 12 A YEAH, I'M LISTENING TO YOU.
- 13 Q NOW, AS I UNDERSTAND IT, MRS. COHENS VEHICLES LEFT THE
- 14 LEFT SIDE OF THE HIGHWAY, WHICH WOULD BE THE FAST LANE,
- 15 AND WENT ACROSS THE RIGHT LANE IN FRONT OF A BUS.
- 16 A YES, SIR, IN FRONT OF A BUS.
- 17 Q NOW, YOU HAVE REFERRED TO BUMPING AND PUSHING.
- 18 A YES, SIR.
- 19 Q AND FROM MY UNDERSTANDING I WANT TO MAKE SURE THAT
- 20 THERE'S SOME DIFFERENCE BETWEEN THOSE TWO
- 21 TERMINOLOGIES THAT YOU'VE USED. NOW WHEN I THINK ABOUT
- 22 PUSHING, I THINK ABOUT SOME KIND OF CONTINUOUS PRESSURE
- 23 BEING APPLIED TO SOMETHING. BUT WHEN I THINK ABOUT
- 24 BUMPING, I THINK ABOUT BUMPING AND NO MORE CONTINUOUS
- 25 PRESSURE. AND WHAT I WANT TO KNOW - AND YOU'RE SAYING

1 THAT MR. COHENS PUSHED HER. NOW I WANT TO KNOW
2 WHETHER OR NOT, AS IT RELATES TO THOSE TWO DEFINITIONS,
3 DO YOU AGREE THAT ORDINARILY IN THE COMMON USE THAT
4 BUMPING----

5 MR. MODICA: OBJECTION, YOUR
6 HONOR, TO THE FORM OF THE QUESTION.

7 THE COURT: COUNSEL, THE QUESTION
8 IS LENGTHY.

9 MR. BARR: I'LL REPHRASE THE
10 QUESTION.

11 BY MR. BARR:

12 Q NOW, SEE MY TWO HANDS?

13 A YES, SIR.

14 Q NOW IF YOU WERE TO DESCRIBE WHAT YOU SAID A BUMP OR A
15 PUSH, WOULD YOU DESCRIBE THAT (DEMONSTRATING) AS A
16 BUMP OR A PUSH?

17 A THAT WAS A BUMP.

18 Q (DEMONSTRATING) HOW ABOUT THAT?

19 A THAT'S WHAT I SAW AT THE END.

20 Q WHAT WOULD YOU DESCRIBE THAT AS?

21 A THAT'S A PUSH.

22 Q NOW WHAT I'M ASKING IS DID YOU SEE MR. COHENS VEHICLE,
23 BASED ON WHAT YOU JUST DESCRIBED TO ME, PUSH OR BUMP?

24 A AT THE END I SAW HIM PUSH.

25 Q YOU SAW HIM PUSH BUT YOU NEVER SAW HIS VEHICLE LEAVE

- 1 THE FAST LANE?
- 2 A HE NEVER LEFT THE FAST LANE. HE NEVER HIT HIS BRAKE
3 LIGHTS, HE KEPT GOING.
- 4 Q NOW WHILE HE WAS PUSHING HER DID YOU GET SOME IDEA OF
5 HOW LONG THE VEHICLES RETAINED THE CONSTANT CONTACT
6 THAT REQUIRED THE PUSHING ACTION?
- 7 A WHAT ARE YOU TALKING ABOUT, AT THE END OF IT WHEN SHE
8 LOSES CONTROL?
- 9 Q WELL, I'M TALKING ABOUT FROM THE TIME HE'D MADE THE
10 CONTACT WHERE YOU CLAIM THAT YOU OBSERVED THE PUSHING
11 ACTION UNTIL THE TIME THAT THE TWO VEHICLES WERE
12 DISENGAGED.
- 13 A MAYBE 10 OR 15 SECONDS.
- 14 Q INCIDENTALLY, HAVE YOU HAD AN OCCASION TO TALK WITH
15 YOUR PASSENGER MR. JOYE AND DISCUSS WITH HIM THE FACTS
16 AND CIRCUMSTANCES SURROUNDING THIS ACCIDENT?
- 17 A NOT REALLY.
- 18 Q SO YOU'VE NEVER HAD AN OCCASION TO DISCUSS WITH HIM
19 WHAT YA'LL SAW THAT MORNING, WHAT HE SAW AND WHAT
20 YOU SAW?
- 21 A WE TALKED A COUPLE OF TIMES, NOTHING MAJOR, JUST MOSTLY
22 WHEN WE TALKED TO THE SOLICITOR.
- 23 Q I SEE SO YOU HAVE MET THE SOLICITOR AND DISCUSSED IT WITH
24 HIM?
- 25 A WE MET TWICE.

1 Q AND EACH TIME WAS MR. JOYE THERE?

2 A YES, SIR.

3 Q WAS THERE EVER TIME WHEN YA'LL HAD DISCUSSIONS WHEN
4 ALL THREE OF YOU WERE TOGETHER; I'M TALKING ABOUT YOU,
5 MR. JOYE AND THE SOLICITOR?

6 A JUST THE TIMES WE MET, TODAY AND TWO WEEKS AGO.

7 Q BUT DURING THE TIMES YOU MET TO DISCUSS THE CASE MR.
8 JOYE WAS PRESENT JUST AS YOU WERE?

9 A YES, SIR.

10 Q NOW, JUST ABOUT TWO MORE LAST QUESTIONS; NOW MR. JOYE
11 IS YOUNGER THAN YOU ARE, CORRECT?

12 A YES, SIR.

13 Q NOW DO YOU RECALL, MR. LEWIS, HAVING GIVEN A STATEMENT
14 TO SERGEANT GLOVER AT THE SCENE OF THIS ACCIDENT?

15 A YES, SIR, I REMEMBER GIVING A STATEMENT.

16 Q AND DID YOU TELL SGT. GLOVER THAT WHEN YOU SAW THE
17 BLUE BLAZER SWERVE BEHIND---

18 A BLUE BLAZER?

19 Q YOU GOT IN THE SLOW LANE BEHIND THE SCHOOL BUS WHEN
20 THE WHITE CHEVROLET BLAZER AND THAT SAME BLUE/GRAY
21 CAR CAME SPEEDING PAST YOU, THEN SOON AFTER THAT
22 PASSED YOU---

23 MR. MODICA: OBJECTION.

24 THE COURT: SUSTAINED, COUNSEL. I

25 SUSTAIN THAT OBJECTION.

1 MR. BARR: I'LL REPHRASE THE
2 QUESTION.

3 THE COURT: WELL, ACTUALLY YOU
4 WOULD NEED TO REFRESH HIS MEMORY IF YOU WISH TO
5 CONTINUE.

6 BY MR. BARR:

7 Q DO YOU REMEMBER THE STATEMENT YOU GAVE?

8 A YES.

9 Q IS THAT THE STATEMENT YOU GAVE?

10 A YES, SIR, THAT'S MY STATEMENT.

11 Q NOW, DIDN'T YOU TELL SGT. GLOVER THAT THE VEHICLE HAD
12 MADE CONTACT AFTER THE VEHICLES HAD PASSED THE SCHOOL
13 BUS?

14 A YEAH, I TOLD HIM THE LAST HIT, YES.

15 Q AND ISN'T IT TRUE THAT YOU DIDN'T TELL HIM ANYTHING
16 ABOUT ANY OTHER CONTACT THAT YOU OBSERVED DURING
17 THAT PERIOD?

18 A WE WERE TOLD TO DO A QUICK STATEMENT SO WE COULD GO
19 ON TO WORK.

20 Q MY QUESTION WAS; IS IT NOT TRUE THAT YOU DIDN'T SAY A
21 WORD TO HIM ABOUT ANY OTHER CONTACT THAT YOU SAW IN
22 THAT STATEMENT, DID YOU?

23 A THAT'S MY STATEMENT. LIKE I SAID, WE WERE TOLD TO DO A
24 QUICK STATEMENT SO WE COULD GO ON TO WORK.

25 Q IS IT NOT TRUE THAT YOU DID NOT SAY A WORD TO SGT.

1 GLOVER ABOUT ANY OTHER CONTACT; IS THAT TRUE OR FALSE?

2 A I'M TRYING TO REMEMBER.

3 MR. BARR: THANK YOU, SIR.

4 THE COURT: ANYTHING FURTHER,
5 COUNSEL?

6 MR. MODICA: NO REDIRECT, THANK
7 YOU, YOUR HONOR.

8 THE COURT: ANY OBJECTION TO
9 RELEASING THE WITNESS?

10 MR. BARR: NO, SIR

11 THE COURT: YOU'RE FREE TO GO IF
12 YOU WISH, SIR. PLEASE CALL YOUR NEXT WITNESS.

13 MR. MODICA: THE STATE WOULD CALL
14 FREDDIE KINLOCH. MAY I APPROACH, YOUR HONOR?

15 THE COURT: YOU MAY.

16 (OFF-THE-RECORD COUNSEL AT THE BENCH.)

17 THE COURT: ALL RIGHT. LADIES AND
18 GENTLEMEN OF THE JURY, WE'RE GOING TO LET YOU HAVE YOUR
19 MORNING BREAK AT THIS TIME. THE COURT HAS ONE OR TWO
20 MATTERS THAT I NEED TO TAKE UP AS WELL AS YOU'VE BEEN
21 HERE FOR MORE THAN AN HOUR IN THE COURTHOUSE, SO I'M
22 GOING TO LET YOU RETURN TO THE JURY ROOM. IF YOU WISH
23 TO GO OUTSIDE, WE'LL GIVE YOU THAT OPPORTUNITY, TOO.
24 PLEASE DON'T DISCUSS THE CASE. HAVE A NICE BREAK, LADIES
25 AND GENTLEMEN.

1 THE COURT: ALL RIGHT, NOW OUTSIDE
2 OF THE PRESENCE OF THE JURY, MR. BARR, YOU KNOW THAT AT
3 THE SIDE BAR YOU HAD A MATTER THAT YOU WISHED TO
4 DISCUSS WITH THE COURT. I'LL BE GLAD TO HEAR FROM YOU,
5 SIR.

6 MR. BARR: WELL, JUDGE, I WILL
7 CONCEDE THAT I CAME TO COURT 15 MINUTES LATE THIS
8 MORNING. I REALIZED LAST NIGHT AS WE WERE GETTING
9 PREPARED FOR THIS WITNESS THAT IT MIGHT BE BENEFICIAL -
10 I'VE GOT A COPY OF A TRANSCRIPT - THAT IT MIGHT HAVE BEEN
11 BENEFICIAL FOR THE COURT AS WELL AS MYSELF, AS WELL AS
12 COUNSEL TO HAVE A COPY OF IT, AND I SIMPLY JUST DID NOT
13 ANTICIPATE HAVING TO DO THAT EARLIER. AND I DID RUN
14 BEHIND AND THAT'S WHERE THE 15 MINUTES - OF COURSE, I
15 DON'T LIVE IN KINGSTREE, I HAD TO GO BY MY OFFICE TO GET
16 THAT TRANSCRIPT. AND THAT'S WHY I WAS 15 MINUTES LATE.

17 NOW, AS RELATES TO THE ISSUE OF THE WITNESS.
18 OF COURSE, JUDGE, I WOULD JUST ASK THE COURT TO ALLOW
19 US TO CROSS EXAMINE THE ALLEGED VICTIM WITHOUT HAVING
20 TO CALL HER AS MY OWN WITNESS. OF COURSE, I DO BELIEVE
21 THAT WE WOULD BE PUT IN A POSITION WHEREBY I WOULD BE
22 FORCED TO PRESENT EVIDENCE - WHICH WE MAY OR MAY NOT
23 DECIDE TO DO - WHICH, JUDGE, IS IN OUR ESTIMATION AS FAR
24 AS THE DEFENSE'S PERSPECTIVE, WOULD BE A GRAVE MATTER,
25 AND UNDER THE CIRCUMSTANCES I WOULDN'T WANT TO SEE MY

1 CLIENT PUNISHED FOR SOMETHING THAT I DID, BAD JUDGMENT
2 ON MY PART. SO I WOULD CERTAINLY ASK THE COURT TO
3 PERMIT ME THE 15 MINUTES THAT I HELD THINGS UP THIS
4 MORNING AND ALLOW ME TO CROSS EXAMINE THE VICTIM,
5 RATHER THAN HAVING TO CALL HER AS MY OWN WITNESS AND
6 CROSS EXAMINE HER.

7 THE COURT: MR. MODICA, DOES THAT
8 STATE HAVE A POSITION THAT YOU WISH TO PLACE ON THE
9 RECORD?

10 MR. MODICA: I WOULD LEAVE IT IN THE
11 SOUND DISCRETION OF THE COURT.

12 THE COURT: MR. BARR, MY RESPONSE
13 TO YOU IS SIMPLY THIS; I DROVE AN HOUR THIS MORNING TO GET
14 HERE MYSELF. I GOT HERE AT NINE O'CLOCK. I DID THAT
15 BECAUSE I TOLD COUNSEL THAT I WOULD COME IN THIS
16 MORNING TO RESOLVE THE ISSUE OF WHETHER OR NOT
17 EVIDENCE COULD BE ADMITTED BY CONSENT OR NOT, AND I DID
18 THAT SO WE COULD SPEED THE TRIAL. ONE OF THE THINGS
19 THAT I TRY TO DO IN RUNNING THE COURT IS TO BE COURTEOUS
20 TO THE JURY WHO GIVES US OF THEIR TIME, COMES IN HERE,
21 AND HAS TO SIT AND WAIT FOR MULTIPLE REASONS. AND
22 THAT'S WHY THE COURT STARTED THIS MORNING. WHEN I TELL
23 THE JURY I'M GOING TO START AT NINE THIRTY, UNLESS THERE'S
24 SOME ABSOLUTELY EMERGENT CIRCUMSTANCE THAT PREVENTS
25 IT, I START AT NINE THIRTY.

1 AND WHAT I'M GOING TO DO - BECAUSE ONE THING
2 YOU SAID IS APPROPRIATE; I DON'T WANT TO PUNISH YOUR
3 CLIENT WHO IS HERE ON TRIAL FOR SOME VERY SIGNIFICANT
4 CHARGES FOR SOMETHING THAT YOU DID. SO I ACCEPT YOUR
5 APOLOGY. I'M GOING TO TELL YOU, THOUGH, THAT WHEN THE
6 JURY COMES IN, I'M GOING TO REQUIRE THAT YOU EXPRESS AN
7 APOLOGY TO THE JURY FOR BEING LATE THIS MORNING, AND AT
8 THAT TIME WE'LL CALL THE WITNESS BACK, MRS. COHENS, AND
9 WE'LL GIVE YOU CROSS EXAMINATION OF HER.

10 MR. BARR: JUDGE, I DON'T MIND - OF
11 COURSE I WOULD BE DELIGHTED TO GET AN OPPORTUNITY TO
12 MAKE MY APOLOGETIC REMARKS TO THE JURY, BUT I WOULD
13 PREFER THAT I BE ABLE TO DO IT AT CLOSING AS OPPOSED TO
14 DURING THE COURSE OF THE TRIAL.

15 THE COURT: WELL, I WOULD REQUIRE
16 YOU WHEN THEY COME BACK IN AND WHEN YOU BEGIN TO
17 QUESTION THIS WITNESS, YOU JUST TURN TO THE JURY AND
18 JUST TELL THEM YOU'RE SORRY, YOU APOLOGIZE FOR BEING
19 LATE THIS MORNING. AND I WOULD REQUIRE THAT TO BE
20 CONTEMPORANEOUS SO THAT IT WILL HAVE SOME EFFECT.
21 ALL RIGHT, NOW WE WILL TAKE A BREAK NOW BEFORE WE GO
22 INTO CROSS EXAMINATION OF MRS. COHENS AGAIN. IT WILL
23 NOT BE CALLING OF A WITNESS BY THE DEFENSE, BUT IT WILL
24 BE CROSS EXAMINATION. I'LL GIVE YOU REDIRECT AFTER THAT
25 OCCURS.

1 MR. MODICA: YOUR HONOR, MAY I
2 BRING UP ANOTHER MATTER, HOPEFULLY BRIEFLY. I APOLOGIZE,
3 IT WAS AN OVERSIGHT ON MY PART, FOR NOT INCLUDING SGT.
4 AMY GLOVER ON MY WITNESS LIST. THE STATE INTENDS TO
5 CALL HER. OBVIOUSLY YOU COULD TELL BY THE CROSS
6 EXAMINATION BY COUNSEL THAT HE WAS AWARE THAT SGT.
7 AMY GLOVER WAS INVOLVED IN THIS CASE. I WOULD
8 RESPECTFULLY REQUEST THAT I BE ABLE TO CALL HER AS A
9 WITNESS EVEN THOUGH I NEGLECTED TO PUT HER ON MY
10 WITNESS LIST.

11 THE COURT: WHAT SAYS THE
12 DEFENSE?

13 MR. BARR: I HAVE NO OBJECTION.

14 (AT THIS TIME THERE WAS A BRIEF RECESS.)

15 THE COURT: ALL RIGHT, LADIES AND
16 GENTLEMEN, I TRUST YOU HAD A NICE BREAK. I WILL TELL YOU
17 THAT MR. BARR HAS REQUESTED THE RIGHT TO CROSS EXAMINE
18 THE WITNESS FROM YESTERDAY AFTERNOON SO THAT THE JURY
19 WOULD NOT BE DEPRIVED FROM ANY FACTS OR TESTIMONY
20 THAT MAY COME OUT AS A RESULT OF THAT CROSS
21 EXAMINATION. THE COURT HAS GRANTED THE REQUEST. MR.
22 BARR, YOU MAY PROCEED TO CROSS EXAMINATION.

23 MR. BARR: THANK YOU, JUDGE.

24 LADIES AND GENTLEMEN, LET ME ALSO TO TAKE THIS TIME TO
25 APOLOGIZE TO EACH AND EVERY ONE OF YOU INDIVIDUALLY AS

1 WELL AS COLLECTIVELY FOR MY TARDINESS THIS MORNING. I
2 DON'T BELIEVE IN GIVING EXCUSES. EXCUSES ARE EXACTLY
3 WHAT THEY ARE. I WAS LATE THIS MORNING AND I'M SORRY.
4 AND I'M NOT OFFERING ANY EXCUSES FOR IT, I JUST DON'T
5 BELIEVE I MAKING EXCUSES FOR THINGS. SO I APOLOGIZE AND I
6 CERTAINLY HOPE YOU WILL ACCEPT MY APOLOGY.

7 CROSS EXAMINATION BY MR. BARR:

8 Q MRS. COHENS, HOW ARE YOU THIS MORNING?

9 A FINE.

10 Q NOW I'M GOING TO ASK YOU SOME QUESTIONS CONCERNING
11 WHAT YOU TESTIFIED ABOUT YESTERDAY. AND IF YOU WOULD,
12 PLEASE, MA'AM, I WANT TO START WITH YOUR MARRIAGE TO
13 MR. COHENS. NOW WHERE AND WHEN DID YOU AND MR.
14 COHENS MARRY?

15 A AUGUST OF 1985.

16 Q AND DID THE MARRIAGE OCCUR HERE IN GEORGETOWN COUNTY?

17 A YES, IT DID.

18 Q AND WERE YOU LIVING IN GEORGETOWN COUNTY WHEN YOU
19 GOT MARRIED?

20 A YES.

21 Q YOU WERE BOTH LIVING HERE?

22 A YES, WE WERE.

23 Q AND YOU WERE BOTH RESIDENT OF GEORGETOWN COUNTY?

24 A YES,

25 Q NOW I BELIEVE YOU INDICATED IN RESPONSE TO A QUESTION MR.

1 MODICA ASKED YOU YESTERDAY, YOU ALL ACTUALLY DATED
2 HERE IN GEORGETOWN COUNTY BEFORE YOU GOT MARRIED?

3 A YES.

4 Q HOW LONG DID YOU DATE BEFORE YOU GOT MARRIED?

5 A THREE YEARS.

6 Q DID YOU ACTUALLY KNOW EACH OTHER THREE YEARS, OR DID
7 YOU DATE HIM THREE YEARS, OR YOU KNEW EACH OTHER FOR A
8 LONGER PERIOD OF TIME THAN YOU DATED?

9 A YES.

10 Q NOW I WOULD ASSUME THAT WHEN YOU DECIDED TO GET
11 MARRIED, YOU DECIDED THAT YOU WOULD MARRY EACH OTHER
12 BECAUSE YOU LOVED ONE ANOTHER?

13 A YES.

14 Q AND YOU AND WANTED TO BE TOGETHER FOR THE REST OF
15 YOUR LIVES AND HAVE A FAMILY. YOU'VE GOT THREE
16 CHILDREN, RIGHT?

17 A TWO CHILDREN.

18 Q AND WHAT ARE THEIR AGES?

19 A ELEVEN AND EIGHT.

20 Q NOW DID YA'LL MAKE A COLLECTIVE DECISION THAT BECAUSE
21 OF THE AFFECTIONS THAT YOU FELT FOR ONE ANOTHER, DID
22 YA'LL MADE A COLLECTIVE DECISION TO TAKE AN OATH TO BE
23 FOREVER MARRIED TO ONE ANOTHER; YOU DID THAT?

24 A YES.

25 Q AND WAS IT BECAUSE OF LOVE?

1 A YES.

2 Q NOW, WITH RESPECT TO WHAT WE KNOW IS NOW AT LEAST
3 SOME PERIOD OF SEPARATION BETWEEN YOU AND YOUR
4 HUSBAND, AND I'M NOT TRYING TO GET INTO YOUR PRIVATE
5 BUSINESS, BUT YOUR HUSBAND IS ON TRIAL; NOW WOULD IT BE
6 FAIR TO SAY THAT IN TERMS OF HOW YOU FEEL TODAY, A LOT
7 OF THAT LOVE IS NOW GONE?

8 A YES.

9 Q NOW WHEN YOU AND MR. COHEN WERE MARRIED, DID YOU HAVE
10 A JOB?

11 A EXCUSE ME, I DIDN'T HEAR YOU.

12 Q WHILE YA'LL WERE MARRIED, DID YOU HAVE EMPLOYMENT?

13 A YES, I DID.

14 Q AND DID HE WORK?

15 A YES, HE DID.

16 Q YA'LL PUT YOUR MONEY TOGETHER?

17 A SOMETIMES WE DID. WE HAD SEPARATE ACCOUNTS.

18 Q BUT SOMETIMES YA'LL PUT YOUR MONEY TOGETHER?

19 A SOMETIMES WE DID.

20 Q YOU LIVED IN THE SAME HOUSEHOLD TOGETHER?

21 A YES, WE DID.

22 Q NOW DURING THOSE FOUR PERIODS - YOU INDICATED
23 YESTERDAY THAT YOU HAD SEPARATED FOUR TIMES. YOU
24 ACTUALLY SAID YOU LEFT HIM.

25 A YES, I DID.

1 Q BUT YOU WERE SEPARATED AT LEAST FOUR TIMES?

2 A I LEFT HIM FOUR TIMES.

3 Q LEFT HIM FOUR TIMES. AND AT SOME POINT YOU DECIDED TO
4 COME BACK?

5 A YES, I DID.

6 Q AFTER HAVING LEFT FOUR TIMES?

7 A YES.

8 Q NOW WHEN YOU SAY YOU LEFT, WHERE DID YOU AND MR.
9 COHENS AND YOUR CHILDREN RESIDE?

10 A WHEN I LEFT HIM?

11 Q NO, DURING THE TIME THAT YOU WERE TOGETHER WHEN YOU
12 WERE HUSBAND AND WIFE LIVING TOGETHER.

13 A LIVING ON CEMETERY COURT.

14 Q NOW IF I'M NOT MISTAKEN, I THINK THAT YOU TOOK HIGHWAY
15 17 DOWN TO FRANCIS MARION, TOOK A LEFT ON HIGHWAY 51,
16 GO DOWN AND TOOK A RIGHT, YOU CAN GO DOWN ABOUT
17 ROUGHLY ANOTHER FOUR TENTHS OF A MILE AND MAKE
18 ANOTHER RIGHT AND YOU'RE ON CEMETERY COURT; IS THAT
19 RIGHT?

20 A IF I'M LEAVING OUT OF OAKLAND OR GOING TO CEMETERY
21 COURT?

22 Q IF YOU'RE GOING TO CEMETERY COURT. START AT OAKLAND.

23 A IF I GO DOWN---

24 THE COURT: EXCUSE ME, MA'AM. ALL
25 RIGHT, MR. BARR. LET ME JUST TELL OUR JURY, OBVIOUSLY THE

1 KEEPING OF THE RECORD IS AN IMPORTANT PART OF THE
2 PROCEEDINGS, FOR WHATEVER REVIEW THERE MAY BE, BUT
3 ALSO DURING THE TRIAL. AND IF YOU HAVE NEED TO HAVE
4 TESTIMONY REPLAYED, WELL, IT COMES FROM THIS EQUIPMENT
5 RIGHT HERE. SO WE'VE HAD A LITTLE BIT OF TECHNICAL
6 TROUBLE THIS WEEK, AND IT'S IMPORTANT TO MAKE SURE IT'S
7 CORRECT TO GO FORWARD. ALL RIGHT, GO AHEAD, MR. BARR.

8 BY MR. BARR:

9 Q NOW, MRS. COHENS, THIS ROAD, WELL, LET ME PUT
10 IT THIS WAY; WOULD YOU NOT AGREE WITH ME THAT THE
11 HOUSE THAT YOU AND MR. COHENS WERE LIVING IN AT THE TIME
12 THAT YOU SEPARATED IS IN THE OAKLAND COMMUNITY?

13 A YES, IT IS.

14 Q AND OF COURSE IN THE OAKLAND COMMUNITY DO YOU BOTH
15 HAVE FAMILY MEMBERS THERE?

16 A YES, WE DO.

17 Q AND WOULD IT BE FAIR TO SAY THAT HOUSE THAT YOU AND HE
18 LIVED IN ON CEMETERY, THERE'S NO MORE THAN ABOUT A
19 HALF A MILE FROM MR. COHEN'S MOTHER'S HOUSE?

20 A NO, IT'S ABOUT A HALF A MILE FROM MY MOTHER'S HOUSE.

21 Q FROM WHO?

22 A MY MOTHER'S.

23 Q WELL, YOU'RE SAYING IT'S MORE THAN HALF A MILE FROM HIS
24 MOTHER'S HOUSE?

25 A YES.

1 Q NOW OAKLAND IS OFF OF HIGHWAY 51.

2 A YES, IT IS.

3 Q APPROXIMATELY SEVEN TO EIGHT MILES FROM FRANCIS MARION
4 TRAVELING WEST; IS THAT RIGHT?

5 A YES.

6 Q AND YOU TURN RIGHT ON OAKLAND TO GO TO YOUR HOUSE.
7 WHAT DISTANCE APPROXIMATELY WOULD YOU TRAVEL TO GET
8 TO YOUR HOUSE FROM THE INTERSECTION OF OAKLAND AND
9 HIGHWAY 51?

10 A ABOUT TWO AND HALF MILES, THREE. I'M NOT GOOD WITH
11 DIRECTIONS, I MEAN WITH MILES AND STUFF.

12 Q TWO AND A HALF MILES?

13 A ABOUT TWO, THREE.

14 Q NOW ON THE MORNING OF MARCH 23RD YOU SAID YOU LEFT
15 HOME APPROXIMATELY SEVEN O'CLOCK?

16 A YES, I DID.

17 Q AND YOU TRAVELED TWO AND A HALF MILES TO GET TO -
18 WHAT'S THE NAME OF THAT CHURCH?

19 A ST. PAUL A.M.E. CHURCH.

20 Q YES, ST. PAUL; IS THAT CORRECT?

21 A YES.

22 Q AND ABOUT HOW LONG DID IT TAKE YOU TO TRAVEL THOSE
23 TWO AND A HALF MILES?

24 A DOESN'T TAKE THAT LONG.

25 Q DO YOU HAVE AN IDEA OR AN ESTIMATE?

- 1 A MAYBE ABOUT TWO, THREE MINUTES.
- 2 Q TWO OR THREE MINUTES. NOW ACCORDING TO YOU WHEN YOU
- 3 GOT TO THAT INTERSECTION YOU GOT A CALL THAT YOU
- 4 THOUGHT WAS FROM YOUR HUSBAND; IS THAT CORRECT?
- 5 A YES.
- 6 Q BUT YOU TURNED YOUR PHONE OFF SO YOU COULDN'T HEAR
- 7 WHAT HE HAD TO SAY?
- 8 A YES, I TURNED IF OFF.
- 9 Q AND YOU THOUGHT IT WAS HIM?
- 10 A I KNEW IT WAS HIM.
- 11 Q YOU KNEW IT WAS HIM? HOW'D YOU KNOW?
- 12 A BECAUSE I SAW WHEN HE PICKED UP HIS PHONE AND STARTED
- 13 DIALING AND MY PHONE RANG AT THE SAME TIME.
- 14 Q NOW LET ME ASK YOU SOMETHING; THOSE FOUR TIMES THAT
- 15 YA'LL HAD SEPARATED EARLIER, HOW IS IT THAT YA'LL GOT
- 16 BACK TOGETHER?
- 17 A BECAUSE I WENT BACK BECAUSE HE KEEP TELLING ME THAT HE
- 18 WOULD CHANGE AND THINGS WOULD GET BETTER.
- 19 Q HOW DID HE TELL YOU THAT?
- 20 A HE CAME TO MY MOTHER'S HOUSE.
- 21 Q NOW, ISN'T IT TRUE, MRS. COHENS, THAT MR. COHENS WAS
- 22 TRYING TO GET BACK TOGETHER WITH YOU THIS TIME WHEN
- 23 YA'LL SEPARATED, WASN'T HE?
- 24 A HE DID.
- 25 Q HE DID. HE WAS STILL CONFESSING HIS LOVE TO YOU, STILL

1 TRYING TO CALL YOU ON THE TELEPHONE, AND STILL TRYING TO
2 COME TO YOUR MOTHER'S HOUSE. AND ON THE MORNING OF
3 THE 23RD, HAD HE---

4 MR. MODICA: OBJECTION, JUDGE.

5 MR. BARR: I'LL REPHRASE THE
6 QUESTION.

7 BY MR. BARR:

8 Q ON THE MORNING OF THE 23RD, AS FAR AS YOU KNOW, WAS HE
9 STILL TRYING TO GET BACK TOGETHER WITH YOU?

10 A NO.

11 Q WELL WHAT DO YOU THINK HE WAS CALLING YOU FOR? YOU
12 SAID THAT YOU WERE SURE IT WAS HIM CALLING YOU---

13 MR. MODICA: OBJECTION. HE'S ASKING
14 FROM THE OPERATION OF SOMEBODY ELSE'S MIND.

15 THE COURT: OVERRULED. I'LL LET HER
16 ANSWER.

17 BY MR. BARR:

18 Q PARDON ME?

19 A I DON'T KNOW WHY HE WAS CALLING ME.

20 Q YOU DON'T KNOW WHY HE WAS CALLING YOU?

21 A WELL, EVENTS LEADING UP TO THAT, THERE WAS A LOT OF
22 PHONE HARASSMENT, THAT WAS ONE OF THE REASONS WHY I
23 WAS TAKING HIM BACK TO COURT.

24 Q A LOT OF PHONE HARASSMENT. IN FACT, THIS ORDER OF
25 PROTECTION THAT YOU'RE TALKING ABOUT THAT YOU CLAIM

1 THAT YOU HAD WHEN YOU DID THE 911 CALL, YOU GOT THAT
2 ORDER OF PROTECTION BECAUSE YOU WANTED TO STOP HIM
3 FROM CALLING YOU ON THE PHONE, DIDN'T YOU?
4 A YES, HE WAS BREAKING HIS ORDER OF PROTECTION.
5 Q YOU WANTED TO STOP HIM FROM CALLING YOU ON THE PHONE?
6 A YES.
7 Q NOW WHEN YOU AND HE SEPARATED THIS LAST TIME THAT YOU
8 SAID THAT THIS TIME WOULD BE DIFFERENT BECAUSE YOU
9 WASN'T GOING BACK.
10 A YES.
11 Q NOW WHEN YOU SEPARATED, DID YOU MOVE FROM THE HOUSE,
12 THE SAME HOUSE THAT YA'LL WERE LIVING IN THE WHOLE TIME
13 YOU WERE MARRIED?
14 A WHEN I SEPARATED FROM HIM THIS LAST TIME?
15 Q YES, MA'AM.
16 A YES, I DID.
17 Q WHERE DID YOU MOVE TO?
18 A MY MOTHER'S HOUSE.
19 Q AND WHERE'S YOUR MOTHER'S HOUSE?
20 A ON NUMBER TRAIL.
21 Q WHERE NOW?
22 A TRAIL.
23 Q JOSH RAIL?
24 A TRAIL.
25 Q TRAIL, ; ISN'T IT TRUE THAT THAT'S IN

1 OAKLAND COMMUNITY, SAME COMMUNITY?

2 A YES.

3 Q NOW YOU WOULD AGREE THAT DESPITE UP TO THAT POINT THE
4 DESPERATE EFFORTS OF MR. COHENS TO TALK TO YOU, YOU DID
5 NOT WANT HIM, AND YOU GOT AN ORDER OF PROTECTION TO
6 KEEP HIM FROM CALLING YOU; IS THAT RIGHT?

7 A YES, I DID.

8 Q NOW ON THE MORNING OF THE 23RD, ACCORDING TO YOU, HE
9 WAS AT ST. PAUL CHURCH PARKED WHEN YOU CAME OUT TO
10 HIGHWAY 51.

11 A YES.

12 Q YOU'RE SURE ABOUT THAT?

13 A YES, I'M VERY SURE.

14 Q NOW WOULD YOU NOT AGREE THAT FROM ST. PAUL CHURCH TO
15 THE INTERSECTION OF HIGHWAY 701, BY WAY OF HIGHWAY 51,
16 IT'S AT LEAST SEVEN OR EIGHT MILES?

17 A IT'S ABOUT, YES. . . I'M NOT SURE.

18 Q I MEASURED IT OUT. IT'S ABOUT SEVEN OR EIGHT MILES, ISN'T
19 IT?

20 A YES.

21 Q NOW, YOU TESTIFIED YESTERDAY THAT MR. COHEN DID NOT
22 STAY AT ST. PAUL CHURCH, THAT HE GOT ONTO HIGHWAY 51;
23 IS THAT CORRECT?

24 A NO, I SAID WHEN I TURNED OFF ON HIGHWAY 51 HE WAS RIGHT
25 BEHIND ME THEN.

1 Q SO HE TURNED ON TO HIGHWAY 51, TOO?

2 A AT SOME POINTE HE DID.

3 Q WELL YOU SAY HE WAS RIGHT BEHIND YOU, SO---

4 A NO, HE WAS BEHIND ME WHEN I PASSED THE JAILHOUSE.

5 THAT'S WHEN I LOOKED IN MY REARVIEW MIRROR AND SAW HIM
6 BEHIND ME PASSING THREE CARS THAT WAS BETWEEN US.

7 Q SO, NOW, LET ME MAKE SURE I UNDERSTAND THIS. WOULD YOU
8 NOT AGREE THAT FROM OAKLAND* ROAD TO THE GEORGETOWN
9 COUNTY DETENTION CENTER ON HIGHWAY 51 IS AT LEAST FIVE
10 MILES, WOULD YOU NOT AGREE?

11 A IT'S ABOUT FIVE, I'M NOT SURE.

12 Q IT'S AT LEAST FIVE MILES.

13 A I'M NOT SURE.

14 Q NOW, DURING THOSE FIVE MILES THAT YOU HAVE FROM
15 OAKLAND TO THE GEORGETOWN COUNTY DETENTION CENTER,
16 THAT'S WHEN YOU LOOKED IN YOUR REARVIEW MIRROR AT
17 LEAST, AT LEAST TWO OR THREE TIMES. DID YOU DO THAT?

18 A I DON'T REMEMBER.

19 Q YOU DON'T' REMEMBER, ALL RIGHT. WELL, AT SOME POINT,
20 WHETHER YOU LOOKED TWO OR THREE TIMES OR NOT, YOU DID
21 SEE - ACCORDING TO YOU, YOU DID SEE MR. COHENS RIGHT
22 ABOUT THE TIME THAT YOU HAPPENED TO BE PASSING THE
23 GEORGETOWN COUNTY DETENTION CENTER?

24 A YES, I DID.

25 Q AND THAT'S WHERE THE SHERIFF'S OFFICE WAS?

1 A YEAH, THAT'S WHERE THE JAILHOUSE IS.

2 Q NOW OF COURSE YOU'RE NOT TELLING THE LADIES AND
3 GENTLEMEN OF THIS JURY THAT AS YOU WERE PASSING THE
4 SHERIFF'S OFFICE WITH MR. COHENS PASSING THREE OR FOUR
5 VEHICLES GETTING IN BEHIND YOU OR GETTING IN FRONT OF
6 YOU, YOU WASN'T FEARING HIM THEN?

7 A NOT AT THAT TIME.

8 Q YOU DIDN'T THINK HE'D TRY TO KILL YOU OR ANYTHING, DID
9 YOU?

10 A NOT AT THAT TIME.

11 Q BUT NOW YOU DID SEE HIM?

12 A YES, I DID.

13 Q AND DID IT OCCUR TO YOU THAT HE HAD SOMETHING ON HIS
14 MIND?

15 A NO, NOT AT THAT MOMENT.

16 Q SO YOU THINK HE PASSED ALL THE THREE CARS AND JUST GO IN
17 BEHIND YOU OR GOT IN FRONT OF YOU - DID HE GET IN FRONT
18 OF YOU, OR BEHIND?

19 A WHEN HE PASSED THE THREE CARS HE WAS IN FRONT OF ME.

20 Q SO WHEN HE PASSED THE THREE CARS, DO YOU KNOW HOW
21 FAST YOU WERE DRIVING?

22 A I WAS GOING ABOUT 55.

23 Q DRIVING THE SPEED LIMIT?

24 A YES.

25 Q NOW THE THREE CARS THAT WERE BEHIND YOU, WOULD YOU

1 NOT AGREE THAT THEY WERE PROBABLY DRIVING ABOUT THE
2 SAME SPEED YOU WERE DRIVING?
3 A I'M NOT SURE.
4 Q BUT YOU DIDN'T LEAVE THEM BEHIND, DID YOU?
5 A THEY WERE BEHIND ME.
6 Q I MEAN YOU DIDN'T RUN OFF FROM THEM?
7 A NO, I DIDN'T.
8 Q THEY MAINTAINED ABOUT THE SAME DISTANCE BEHIND YOU?
9 A YES.
10 Q SO YOU WERE LOOKING BEHIND YOU?
11 A YES, AT THAT MOMENT WHEN I LOOKED BEHIND ME THAT'S
12 WHEN I SAW HIM, WHEN I WAS PASSING THE JAILHOUSE.
13 I MEAN I HAD TO SEE THREE CARS AND HIS CAR.
14 Q WELL, TELL ME HOW LONG HAD THOSE THREE CARS BEEN
15 BEHIND YOU?
16 A HOW LONG?
17 Q YES, MA'AM.
18 A THEY WERE BEHIND ME FROM THE TIME I GOT ON, NOT ON 51,
19 BUT AT SOME POINT ON 51.
20 Q WELL, AT WHAT POINT?
21 A I DON'T REMEMBER.
22 Q BUT ACCORDING TO YOU, MR. COHENS PASSED THREE CARS
23 THAT WERE NOT PASSING YOU WHEN YOU WERE DRIVING 55
24 AND DID THAT SUGGEST TO YOU THAT AT LEAST HE WAS
25 DRIVING MORE THAN 55 MILES PER HOUR?

1 A YES.

2 Q TO GET IN FRONT OF YOU.

3 A YES.

4 Q NOW OF COURSE THE THOUGHT NEVER OCCURRED TO YOU THAT
5 MR. COHENS IS TRYING TO CALL ME ON MY CELL PHONE AND HE
6 DONE SPEED UP AND GOT IN FRONT OF ME, HE, HE, HE
7 OBVIOUSLY WANTS TO TALK TO ME OR HAVE SOME DISCUSSION
8 WITH ME, OR HAVE SOME CONTACT; THAT DIDN'T OCCUR TO
9 YOU, DID IT?

10 A NO, IT DIDN'T.

11 Q WHEN YOU GOT TO THE INTERSECTION OF 701 AND 51, OF
12 COURSE YOU LIVED IN THAT COMMUNITY, ARE YOU FAMILIAR
13 WITH HIGHWAY 701 TO CONWAY?

14 A YES.

15 Q AND FROM CONWAY TO MYRTLE BEACH?

16 A FROM CONWAY TO MYRTLE BEACH?

17 Q YES, MA'AM. NOT 701, BUT 501 FROM CONWAY TO MYRTLE
18 BEACH.

19 A NO, BECAUSE I DON'T LIVE IN CONWAY.

20 Q YOU'VE NEVER DRIVEN FROM CONWAY TO MYRTLE BEACH ON
21 501?

22 A FROM 501?

23 Q ON HIGHWAY 501.

24 A NO.

25 Q SO THEN - HOW OLD DID YOU SAY YOU WERE NOW?

- 1 A I'M 38.
- 2 Q SO IN YOUR 38 YEARS ON THIS PLANET, YOU HAVE NEVER
- 3 DRIVEN AND TAKEN THE ROUTE ON HIGHWAY 701 TO CONWAY
- 4 AND THEN GONE TO MYRTLE BEACH?
- 5 A NO, MY BROTHER LIVES IN CONWAY BUT I NORMALLY GO
- 6 THROUGH---
- 7 Q WELL, LET ME ASK YOU THIS; CAN YOU NOT GO TO MYRTLE
- 8 BEACH BY WAY OF TURNING LEFT ON 701?
- 9 A YES, YOU COULD TURN LEFT ON 701 TO GO---
- 10 Q TO GO TO MYRTLE BEACH?
- 11 A NO, TO GO TO CONWAY.
- 12 Q WELL NOW YOU CAN PRETTY EASILY GO FROM CONWAY TO
- 13 MYRTLE BEACH, CAN'T YOU? OF COURSE, YOU'VE NEVER GONE
- 14 THAT WAY ACCORDING TO YOU, BUT YOU KNOW ABOUT IT,
- 15 DON'T' YOU?
- 16 A YOU CAN GO THROUGH CONWAY, YES, TO GO TO MYRTLE BEACH
- 17 IF YOU WANT.
- 18 Q BUT YOU'VE JUST NEVER DONE THAT?
- 19 A NO, I GO THROUGH (INAUDIBLE) WAY* TO GO TO MY BROTHER'S
- 20 HOUSE THAT LIVES IN CONWAY.
- 21 Q NOW YOU WORK IN MYRTLE BEACH?
- 22 A YES, I DO.
- 23 Q AND YOU'VE NEVER GONE TO WORK - WELL YOU COULDN'T
- 24 HAVE GONE TO WORK THAT WAY BECAUSE ACCORDING TO YOU
- 25 YOU'VE NEVER GONE THAT WAY. SO YOU ALWAYS GO 701 TO

1 17 AND 17 ON TO MYRTLE BEACH?

2 A YES.

3 Q SO YOU'RE THOROUGHLY WITH THAT ROUTE, AREN'T YOU?

4 A YES, THAT'S THE ROUTE I ALWAYS TAKE TO GO TO WORK.

5 Q NOW IS IT NOT TRUE THAT ACCORDING TO YOU MR. COHENS

6 ACTUALLY TURNED ON TO HIGHWAY 701 TO COME INTO

7 CONWAY, WHICH IS WELL AT LEAST COMING ON 17 TRAVELING

8 SOUTH ON 17---

9 MR. MODICA: OBJECTION AS TO FORM.

10 MR. BARR: JUDGE, I CAN REPHRASE

11 THE QUESTION.

12 BY MR. BARR:

13 Q YOU'RE FAMILIAR WITH HIGHWAY 701 AND HIGHWAY 17?

14 A YES.

15 Q ACCORDING TO YOU YOU TRAVEL THAT ALMOST EVERY DAY?

16 A YES.

17 Q AND THAT'S BLACK RIVER ROAD TO HIGHWAY 17?

18 A YES.

19 Q NOW, AS I UNDERSTAND YOUR TESTIMONY, UP TO THE POINT

20 THAT YOU TURNED ON TO 701 AND EVEN AFTER YOU TURNED

21 ON TO 701, MR. COHENS VEHICLE WAS IN FRONT OF YOU.

22 A YES, IT WAS.

23 Q NOW, OF COURSE WHEN YOU TURNED ON TO 701, WOULD YOU

24 NOT AGREE THAT WITH RESPECT TO DISTANCE IT'S NO MORE

25 THAN ABOUT A MILE AND A HALF TO BLACK RIVER ROAD, THAT

1 IS WHERE YOU TURN OFF OF 701 ON TO BLACK RIVER ROAD AND
2 GO BY GEORGETOWN MEMORIAL HOSPITAL; NO MORE THAN
3 ABOUT A MILE AND HALF, IS IT?

4 A I'M NOT SURE ABOUT THE DISTANCE.

5 Q BUT YOU KNEW YOU WERE GOING TO TURN LEFT THERE ON
6 BLACK RIVER ROAD AND GO TO 17?

7 A YES.

8 Q AND YOU WERE IN THE LEFT LANE, THE FAST LANE OF TRAVEL?

9 A YES.

10 Q MR. COHENS WAS IN THE RIGHT LANE?

11 A HE WAS IN THE RIGHT LANE.

12 Q AND I BELIEVE YOU DID INDICATE THAT TRAFFIC WAS HEAVY
13 THAT MORNING?

14 A NO, SIR, I WAS WAITING ON TRAFFIC TO GET CLEAR.

15 Q BUT TRAFFIC WASN'T HEAVY?

16 A IT WAS STEADY.

17 Q IT WAS NOT HEAVY ON HIGHWAY 17?

18 A ON HIGHWAY 17 IT WAS A STEADY FLOW. IT WASN'T BUMPER
19 TO BUMPER, BUT THERE WAS A LOT OF PEOPLE GOING TO WORK.

20 MR. BARR: YOUR HONOR, MAY I

21 APPROACH THE WITNESS?

22 THE COURT: YOU MAY.

23 BY MR. BARR:

24 Q NOW DO YOU RECALL TESTIFYING EARLIER, I THINK ON THE 6TH
25 OF APRIL IN FAMILY COURT BEFORE JUDGE KINON,*? DO YOU

1 HAVE A RECOLLECTION OF THAT?

2 A EXCUSE ME?

3 Q DO YOU HAVE A RECOLLECTION OF THAT PROCEEDING?

4 A YES.

5 Q NOW, DID NOT YOU TELL---

6 MR. MODICA: OBJECTION. I THOUGHT
7 WE HAD AGREED TO LINE AND PAGE BEFORE WE ASKED
8 QUESTIONS.

9 MR. BARR: YOUR HONOR, SHE HASN'T
10 DENIED THE---

11 MR. MODICA: I'LL WITHDRAW IT..

12 BY MR. BARR:

13 Q TAKE A LOOK AT PAGE 27, LINE 18. AND ALSO ON PAGE 27,
14 LINE 7. HAVE YOU LOOKED AT IT?

15 A YES.

16 Q IS YOUR MEMORY REFRESHED? NOW DIDN'T YOU TELL ME THAT
17 MORNING THE TRAFFIC WAS BUSY ON HIGHWAY 17 AND WAS
18 ALSO HEAVY, WASN'T IT? I MEAN HEAVY WAS YOUR WORDS,
19 WASN'T IT?

20 A YES.

21 Q NOW HIGHWAY 17 IS WHERE WHEN YOU AND MR. COHENS
22 TRAVELED TO HIGHWAY 17 ON BLACK RIVER ROAD, THE EXXON
23 STATION IS SITTING ON THE RIGHT, AM I CORRECT?

24 A YES, IT IS.

25 Q AND THERE'S A SIGNAL LIGHT THERE?

1 A YES.

2 Q NOW ISN'T IT TRUE THAT MR. COHENS IS IN FRONT OF YOU AT
3 THAT POINT, ACCORDING TO YOU?

4 A YES, HE WAS.

5 Q NOW WOULD IT ALSO BE FAIR TO SAY THAT AT THAT POINT
6 YOU DIDN'T SUSPECT HIM OF BEING OUT THERE TO TRY TO KILL
7 YOU, DID YOU?

8 A NOT AT THAT MOMENT.

9 Q IN EITHER CASE, YOU COULD HAVE EASILY TURNED AND GONE
10 ANY WAY YOU WANTED, WOULD THAT BE RIGHT?

11 A YES, BUT I DIDN'T.

12 Q YOU DIDN'T SUSPECT THAT?

13 A AT THE MOMENT I DIDN'T.

14 Q NOW AFTER YOU TURNED ON TO HIGHWAY 17 WHERE TRAFFIC
15 WAS BUSY AND HEAVY, IF YOU WOULD, PLEASE, MA'AM, TAKE A
16 LOOK AT THE TRANSCRIPT THAT I JUST HANDED YOU; PAGE 26,
17 LINE 22. AND ALSO TAKE A LOOK AT PAGE 27, LINE ONE. NOW
18 ISN'T IT TRUE THAT AT THAT POINT YOU INDICATED TO ME
19 THAT WHEN YOUR HUSBAND TURNED ON HIGHWAY 17 YOU
20 THOUGHT YOU KNEW WHERE HE WAS GOING, DIDN'T YOU?

21 MR. MODICA: I'M GOING TO OBJECT.
22 HE NEVER ASKED HER ABOUT THAT.

23 MR. BARR: YOUR HONOR, I ASKED HER,
24 I ALLOWED HER TO REFRESH HER MEMORY BY HAVING HER READ
25 IT---

1 THE COURT: I'M GOING TO OVERRULE
2 YOUR OBJECTION, COUNSEL. AGAIN, THE JURY IS AWARE AND IS
3 LISTENING TO THE TESTIMONY. GO AHEAD.

4 BY MR. BARR:

5 Q DIDN'T YOU TELL ME THAT?

6 A YES, I DID.

7 Q YOU DID? NOW YOU WOULDN'T HAVE TOLD ME A LIE UNDER
8 OATH, WOULD YOU?

9 A NO, I WOULDN'T.

10 Q SO YOU THOUGHT YOU KNEW WHERE HE WAS GOING?

11 A NO, HE WAS GOING IN A DIRECTION.

12 Q BUT NOW YOU TOLD ME, DID YOU NOT, IN FACT, YOU SAID;
13 WELL, AT THAT TIME I'M PRETTY SURE, YES, I KNEW WHERE HE
14 WAS GOING.

15 A YES, I DID.

16 Q SO THEN YOU WERE OBVIOUSLY FEELING PRETTY COMFORTABLE
17 WITH MR. COHENS IF YOU THOUGHT YOU KNEW WHERE HE WAS
18 HEADED TO, AND YOU CERTAINLY AT THAT POINT DIDN'T THINK-

19 MR. MODICA: OBJECTION AS TO THE
20 FORM OF THE QUESTION. IT'S A COMPOUND QUESTION.

21 THE COURT: SUSTAINED. PLEASE
22 REPHRASE, COUNSEL.

23 BY MR. BARR:

24 Q YOU WEREN'T CONCERNED IN ANY WAY ABOUT WHERE YOU
25 THOUGHT HE WAS GOING, WERE YOU?

1 A AT THAT MOMENT, I WASN'T.

2 Q NOW FROM THERE YOU CONTINUED TOWARDS THE TWO
3 BRIDGES, TOWARDS THE WACCAMAW BRIDGE, AM I CORRECT?

4 A YES.

5 Q NOW, WOULD IT BE FAIR TO SAY THAT ACCORDING TO YOU, AS
6 YOU SAW, OR AS YOU APPROACHED THE SECOND BRIDGE - NOW,
7 YOU'VE GOT ONE SHORT AND ONE LONG ONE - AS YOU
8 APPROACHED THE SECOND BRIDGE YOU LOOKED IN YOUR
9 REARVIEW MIRROR AND YOU SAW MR. COHEN APPROACHING
10 YOU; IS THAT CORRECT?

11 A NO, I SAW HIM WHEN I APPROACHED THE FIRST BRIDGE, WHEN I
12 WAS ON THE HUMP. THEN I SAW HIM IN M Y REARVIEW MIRROR.

13 Q YOU SAW HIM APPROACH THE FIRST BRIDGE?

14 A NO, I SAW HIM COMING TOWARD THE FIRST BRIDGE. HE WAS
15 BEHIND ME IN THE RIGHT LANE, NOT DIRECTLY BEHIND ME, BUT
16 HE WAS COMING AROUND THE CURVE BY THAT STATION, AND I
17 DON'T REMEMBER THE NAME OF THE STATION.

18 Q AS YOU APPROACHED THE FIRST BRIDGE?

19 A NO, I WAS ALREADY ON THE FIRST BRIDGE.

20 Q AND HE WAS STILL BACK AT THE GAS STATION?

21 A NO, HE WAS COMING AROUND.

22 Q AROUND THE GAS STATION BY THE CURVE?

23 A YES.

24 Q THAT WOULD BE BEFORE YOU GET TO ACE HARDWARE?

25 A BEFORE YOU GET TO AWARE TO ACE HARDWARE.

1 Q AND YOU WERE ON THE SECOND BRIDGE, I MEAN THE FIRST
2 BRIDGE?

3 A I WAS APPROACHING THE FIRST BRIDGE.

4 Q HE WAS QUITE A DISTANCE BEHIND YOU, WASN'T HE?

5 A AT THAT MOMENT HE WAS.

6 Q AT LEAST A HUNDRED YARDS OR MORE.

7 A BUT HE HAD A SPEED.

8 Q ACCORDING TO YOU THE TRAFFIC WAS BUSY AND HEAVY. NOW
9 YOUR DESCRIPTION OF THE TRAFFIC BEING BUSY AND HEAVY,
10 WOULD THAT NOT MEAN BOTH LANES OF TRAFFIC? IT WAS,
11 WASN'T IT?

12 A IT WAS STEADY.

13 Q IN BOTH LANES IT WAS BUSY AND HEAVY, WASN'T IT?

14 A YES.

15 Q NOW, HERE YOU ARE APPROACHING OR ABOUT TO GET ON THE
16 FIRST BRIDGE, AND YOU SAY YOU SAW THE VEHICLE BEING
17 OPERATED BY MR. COHEN BACK AT A GAS STATION---

18 A YES, I DID.

19 Q AND HE WAS COMING FAST?

20 A HE WAS PASSING ALL THE CARS.

21 Q WELL WHEN ALL THE CARS WERE DISTRIBUTED IN THE RIGHT
22 LANE AND THE LEFT LANE, OR THE LEFT LANE AND THE RIGHT
23 LANE, HE WAS ZIG-ZAGGING IN AND OUT OF TRAFFIC?

24 A NOT ZIG-ZAGGING, BUT MANEUVERING IN AND OUT.

25 Q PARDON ME?

1 A MANEUVERING IN AND OUT, NOT ZIG-ZAGGING.

2 Q NOW IS IT YOUR TESTIMONY, MRS. COHENS, THAT SOMEHOW IN
3 ALL OF THIS DRIVING IN HEAVY TRAFFIC, BY THE TIME YOU GOT
4 TO THE SECOND BRIDGE - IN FACT, DO YOU KNOW WHAT THE
5 DISTANCE IS?

6 A NO, I DON'T.

7 Q WELL, NO MORE THAN ABOUT 20 YARDS APART, WOULD YOU
8 NOT AGREE?

9 MR. MODICA: OBJECTION. SHE SAID
10 SHE DIDN'T KNOW.

11 THE COURT: SUSTAINED, COUNSEL.

12 BY MR. BARR:

13 Q YOU DON'T KNOW WHAT THE DISTANCE IS?

14 A NO, I DON'T.

15 Q BUT YOU WOULD AGREE THEY'RE NOT VERY FAR APART, ARE
16 THEY?

17 A NO, THEY'RE NOT.

18 Q AND WOULD YOU ALSO NOT AGREE THAT AS SOON AS YOU GET
19 OFF OF ONE, YOU'RE ON THE OTHER?

20 A THERE'S A LITTLE DISTANCE BETWEEN THOSE TWO BRIDGES.

21 Q NOW, MRS. COHENS, SOME TIME SOME HOW BETWEEN THE TIME
22 THAT YOU SAW MR. COHENS BACK AT THE GAS STATION,
23 ACCORDING TO YOU 100 YARDS OR SO BEHIND YOU, SOMEHOW
24 HE WAS ABLE TO GET THROUGH TRAFFIC SO THAT BY THE TIME
25 YOU GOT TO THE SECOND BRIDGE HE WAS BEHIND YOU; IS THAT

1 YOUR TESTIMONY?

2 A YES, HE WAS ALREADY IN THE LEFT LANE.

3 Q BEHIND YOU?

4 A YES, HE WAS BEHIND ME.

5 Q WELL AT THAT POINT DID YOU STILL THINK YOU KNEW WHERE
6 HE WAS GOING?

7 A I KNEW HE WAS FOLLOWING ME. AT THAT POINT I KNEW HE
8 WAS FOLLOWING ME AND AT THAT POINT I WAS SCARED AND
9 GETTING NERVOUS.

10 Q YOU KNEW HE WAS FOLLOWING YOU?

11 A YES.

12 Q NOW YOU WOULD AGREE WITH RESPECT TO ALL THE TURNS UP
13 TO THAT POINT SO FAR, YOU WERE FOLLOWING HIM, WEREN'T
14 YOU?

15 A NO, I WAS NOT.

16 Q YOU TURNED THE SAME PLACE HE TURNED?

17 A WE MADE A LEFT TURN AT THE LIGHT BY THE EXXON STATION.
18 HE GOT IN THE RIGHT LANE, I GOT IN THE LEFT LANE.

19 Q AND HE PROCEEDED---

20 A NO, I PASSED HIM.

21 Q TO HIGHWAY 17?

22 A YES, HE DID.

23 Q AND THE TRAFFIC WAS SO HEAVY - NOT WITHSTANDING THE
24 FACT THAT YOU PASSED HIM AND GOT IN FRONT OF HIM AT
25 LEAST 100 YARDS OR SO WHILE YOU WERE IN THE LEFT LANE?

1 A NO, SIR.

2 MR. MODICA: OBJECTION TO THE FORM
3 OF THE QUESTION.

4 MR. BARR: I'LL WITHDRAW THE
5 QUESTION.

6 BY MR. BARR:

7 Q NOW, THE 911 CALL - YOU SAID YOU CALLED YOUR MOTHER
8 FIRST?

9 A YES, I DID.

10 Q AND YOU TOLD THE 911 OPERATOR THAT YOUR HUSBAND WAS
11 THE ONE THAT WAS TRYING TO KILL YOU. YOU TOLD IM THAT,
12 DIDN'T YOU? YOU WERE UPSET AND YOU TOLD HIM THAT,
13 DIDN'T YOU?

14 A I WAS NERVOUS, BUT I WASN'T UPSET AT THE TIME. BUT I TOLD
15 HIM WHEN THAT HE WAS RAMMING - WHEN I CALLED 911 HE
16 HAD ALREADY HIT ME ONE TIME. HE WAS HITTING ME THE
17 SECOND TIME, AND I TOLD HIM HE WAS IN BEHIND ME HITTING
18 ME IN THE BUMPER AND RAMMING ME.

19 Q NOW ACCORDING TO YOU HE DIDN'T TOUCH YOU BEFORE YOU
20 GOT TO THE SECOND BRIDGE, RIGHT?

21 A HE DIDN'T TOUCH ME BEFORE I GOT TO THE SECOND BRIDGE?

22 Q YES, MA'AM.

23 A NO, BUT HE WAS BEHIND ME, DIRECTLY BEHIND ME.

24 Q SO DID YOU CALL 911 BEFORE HE HIT YOU?

25 A NO, I CALLED MY MOTHER FIRST. WHEN I WAS ON THE PHONE

1 WITH HER HE HIT ME THE FIRST TIME IN THE BACK. AND I
2 HANGED UP THE PHONE, I TOLD HER I WAS GETTING READY TO
3 CALL 911. AND THAT'S WHEN I GOT THE SECOND HIT IN THE
4 BACK. HE RAMMED ME IN THE BACK ON MY BUMPER.

5 Q AND YOU TOLD YOUR MOTHER HE STRUCK YOU?

6 A YES, I DID.

7 Q ALL RIGHT. AND HE STRUCK YOU FROM THE REAR AND HE WAS
8 DRIVING HIS CAR?

9 A YES, HE WAS DRIVING HIS CAR.

10 Q INCIDENTALLY, TALKING ABOUT HIS CAR, YOU IDENTIFIED A
11 PHOTOGRAPH YESTERDAY AND YOU SAID IT WAS YOUR
12 HUSBAND'S CAR. AND THIS CAR'S ALL BANGED UP IN THIS
13 PHOTOGRAPH, STATE'S EXHIBIT NUMBER 30. TAKE A LOOK AT
14 THAT. NOW DIDN'T YOU IDENTIFY IT YESTERDAY AS THE CAR
15 MR. COHENS WAS DRIVING?

16 A YES, I DID.

17 Q NOW AS FAR AS WHAT'S DEPICTED IN THAT PHOTOGRAPH, HIS
18 CAR LOOKS LIKE IT SUSTAINED SOME DAMAGE, DOESN'T IT?

19 A YES.

20 Q NOW YOU WERE FAMILIAR WITH MR. COHENS VEHICLE BEFORE
21 MARCH 23RD, WEREN'T YOU?

22 A YES.

23 NOW WOULD YOU NOT AGREE -- YOU SEE THAT SOMETHING
24 LOOK A BELT TIED AROUND THERE HOLDING UP THE BUMPER;
25 HOW LONG HE HAD THAT ON THERE?

- 1 A .MAYBE A YEAR OR TWO. HE HAS THAT ON THERE TO HOLD THE
2 HOOD DOWN.
- 3 Q A YEAR OR TWO? YOU MEAN HE'S HAD THAT TIED UP THERE
4 HOLDING THAT UP LIKE THAT FOR A YEAR OR TWO?
- 5 A NOT WHEN HE FIRST GOT IT.
- 6 Q BUT AFTER A WHILE IT STARTED FALLING DOWN SOME MORE
7 AND HE GOT TIRED OF IT?
- 8 A NO, HE HAD IT THERE TO HOLD DOWN THE HOOD OF THE CAR,
9 NOT THE BUMPER.
- 10 Q NOW I NOTICE THAT THERE APPEARS TO BE SOME DAMAGE TO
11 THE LEFT FRONT BUMPER OF THE VEHICLE, DO YOU SEE THAT
12 ON THE PHOTOGRAPH?
- 13 A YES, I DO.
- 14 Q DO YOU KNOW HOW THAT GOT THERE?
- 15 A NO, I DON'T.
- 16 Q NOW, OF COURSE, IF IT HAD GOTTEN THERE WHILE YOU WERE IN
17 THIS WRECK, YOU WOULD HAVE SEEN IT BECAUSE YOU WERE
18 INVOLVED IN THE COLLISION. BUT AS FAR AS YOU KNOW, YOU
19 DON'T KNOW HOW IT GOT THERE?
- 20 A ON THE LEFT HAND SIDE?
- 21 Q YES.
- 22 A NO, I DON'T RECALL.
- 23 Q NOW WHEN THE GENTLEMEN THAT JUST TESTIFIED BEFORE YOU,
24 DO YOU RECALL HAVING SEEN HIM AT THE TIME OF THIS
25 ACCIDENT?

- 1 A YES.
- 2 Q DO YOU REMEMBER SEEING HIM?
- 3 A YES, HE'S ONE OF THE MEN THAT HELPED ME.
- 4 Q HELPED YOU HOW?
- 5 A GOT OUT OF THE BLAZER.
- 6 Q NOW, IF I'M NOT MISTAKEN, YOUR TESTIMONY YESTERDAY WAS
- 7 AT THE TIME THAT MR. COHEN MADE CONTACT WITH YOUR
- 8 VEHICLE WITH HIS VEHICLE, WHICH CAUSED YOU TO LOSE
- 9 CONTROL OF YOUR VEHICLE, YOU WERE TRAVELING IN THE LEFT
- 10 LANE?
- 11 A YES, I WAS.
- 12 Q AND WHAT LANE OF TRAFFIC WAS HE IN?
- 13 A HE WAS IN THE LEFT LANE RIGHT BEHIND ME.
- 14 Q RIGHT BEHIND YOU. NOW, DO YOU HAVE A RECOLLECTION
- 15 WHETHER OR NOT HE EVER PUT THE BRAKES ON TO CAUSE SKID
- 16 MARKS?
- 17 A NO.
- 18 Q WELL LET ME SHOW YOU ANOTHER PHOTOGRAPH, IT'S THE
- 19 SAME ONE I SHOWED MR. JOYE,* IT'S ALREADY BEEN ENTERED
- 20 INTO EVIDENCE; STATE'S EXHIBIT NUMBER 13. AND ACCORDING
- 21 TO HIM - WELL, YOU TAKE A LOOK AT IT. DO YOU SEE THOSE
- 22 INDENTATIONS IN THE GRASS WHERE IT LOOKS LIKE WHERE A
- 23 CAR WENT OFF THE SIDE OF THE ROAD? DID YOUR VEHICLE PUT
- 24 THOSE IN THERE?
- 25 A WHEN I WENT OFF THE SIDE OF THE ROAD?

1 Q YES, MA'AM.

2 A YES.

3 Q NOW THERE'S SKID MARKS ON THE PAVED PORTION OF THE
4 HIGHWAY; DO YOU KNOW WHERE THOSE CAME FROM?

5 A NO, I DON'T, BUT I KNOW THAT'S MY MARK ON THE SIDE OF THE
6 ROAD.

7 Q NOW ISN'T IT TRUE THAT THE DAMAGE THAT WAS DONE TO
8 YOUR VEHICLE AT THE TIME IT MADE CONTACT WITH MR.
9 COHEN'S VEHICLE, WASN'T THAT DAMAGE TO THE LEFT
10 QUARTER PANEL OF YOUR BLAZER?

11 A EXCUSE ME, CAN YOU---

12 Q IS NOT IT TRUE THAT THE DAMAGE TO YOUR VEHICLE AS A
13 RESULT OF THE CONTACT MADE BETWEEN YOUR VEHICLE AND
14 MR. COHEN'S VEHICLE, WAS NOT THAT DAMAGE CONFINED TO
15 THE LEFT QUARTER PANEL OF YOUR BLAZER ON THE DRIVER'S
16 SIDE?

17 A ON THE DRIVER'S SIDE THE DAMAGE DID COME FROM HIS
18 VEHICLE BECAUSE THAT'S WHEN HE RAMMED ME ON THE SIDE
19 ON THE DRIVER'S SIDE, YES.

20 Q NOW DURING THE TIME THAT YOU WERE ON THE SECOND
21 BRIDGE, AND WHEN YOU CROSSED OVER THE SECOND BRIDGE, IF
22 MR. COHENS WAS ON THE SIDE OF YOU THAT YOU SAY AND
23 MADE CONTACT WITH THE SIDE OF YOUR VEHICLE, WERE YOU
24 EVER IN A POSITION WHERE YOU COULD SEE HIS FACE?

25 A YES, WHEN HE WAS RAMMING ME ON THE SIDE, THE DRIVER'S

1 SIDE, I SAW HIS FACE.

2 Q MRS. COHENS, ISN'T IT TRUE THAT YOU AND MR. COHENS WERE
3 MAKING HAND SIGNALS AT EACH OTHER, WEREN'T YOU?

4 A NO, WE WAS NOT.

5 Q DO YOU DENY THAT YOU WEREN'T MAKING HAND SIGNALS AT
6 HIM, DO YOU DENY GIVING HIM THE FINGER?

7 A I DENY THAT. I DID NOT GIVE HIM THE FINGER.

8 Q DO YOU DENY MAKING ANY HAND SIGNALS AT HIM?

9 A NO, I DID NOT.

10 Q NOW, AND I'VE JUST GOT ABOUT TWO MORE QUESTIONS AND
11 I'M GOING TO BE THROUGH FOR RIGHT NOW; WHEN MR. COHENS
12 VEHICLE SUPPOSEDLY MADE CONTACT WITH YOURS, WHICH
13 CAUSED YOU TO LOSE YOUR VEHICLE, WHAT IS YOUR
14 CONTENTION AS TO WHERE HIS VEHICLE MADE CONTACT WITH
15 YOURS, OR YOUR VEHICLE MADE CONTACT WITH HIS?

16 A HE WAS RAMMING ME IN THE BACK ON MY BUMPER.

17 Q HAVE YOU EVER TOLD ANYBODY, ANYBODY, SUCH AS A LAW
18 ENFORCEMENT OFFICER, THAT MR. COHENS EVER MADE
19 CONTACT WITH YOUR VEHICLE MORE THAN FOUR TIMES?

20 A I DIDN'T SAY MORE THAN FOUR TIMES, I SAID FOUR TIMES.

21 Q SO ISN'T IT TRUE THAT YOU'VE NEVER TOLD A SOUL ANYWHERE
22 THAT MR. COHENS VEHICLE EVER MADE CONTACT WITH YOUR
23 VEHICLE MORE THAN FOUR TIMES, DID YOU?

24 A AS I RECALL, I REMEMBER FOUR TIMES.

25 Q OH, AS YOU RECALL?

1 A THINGS WERE HAPPENING FAST. I MEAN I WAS DRIVING FAST
2 AND RUNNING FOR MY LIFE.

3 Q RUNNING FOR YOUR LIFE.

4 A YES, I WAS. TRYING TO GET OUT OF HIS WAY.

5 Q RUNNING FOR YOUR LIFE. INCIDENTALLY, HAVE YOU HAD ANY
6 DISCUSSIONS WITH ANYBODY ABOUT A BODILY INJURY CLAIM
7 CONNECTED WITH THIS INCIDENT?

8 A A BODILY INJURY CLAIM?

9 Q YES, MA'AM.

10 A I'M GOING TO THE CHIROPRACTOR.

11 Q NO, THAT'S NOT WHAT I'M TALKING ABOUT. I HEAR YOU SAY
12 THAT. BUT NOW, WHAT YOU HAD ANY DISCUSSIONS WITH
13 ANYBODY ABOUT FILING A BODILY INJURY CLAIM?

14 MR. MODICA: OBJECTION, RELEVANCY.

15 THE COURT: OVERRULED.

16 BY MR. BARR:

17 Q HAVE YOU?

18 A NO, I HAVEN'T.

19 Q YOU'VE NOT DISCUSSED WITH ANYBODY A BODILY CLAIM
20 AGAINST MR. COHENS INSURANCE COMPANY?

21 MR. MODICA: OBJECTION. ASKED AND
22 ANSWERED, SAME QUESTION.

23 THE COURT: OVERRULED, COUNSEL.

24 THE WITNESS: REPEAT THE QUESTION.

25 BY MR. BARR:

1 Q DO YOU DENY HAVING DISCUSSED WITH ANYBODY FILING A
2 BODILY INJURY CLAIM AGAINST MR. COHENS INSURANCE?

3 A MY INSURANCE COMPANY HAS FILED EVERYTHING UNDER MY
4 INSURANCE. THEY'RE THE ONLY ONE I'VE TALKED OR TOLD
5 ANYTHING ABOUT THE ACCIDENT. I MEAN I DON'T REALLY
6 UNDERSTAND YOUR QUESTION. DO YOU MEAN, LIKE ANY OTHER
7 PEOPLE OTHER THAN INSURANCE PEOPLE?

8 Q I MEAN LIKE MR. COHENS INSURANCE PEOPLE.

9 A I HAVEN'T TALKED TO HIS INSURANCE PEOPLE BECAUSE I DON'T
10 EVEN KNOW WHO HE HAS INSURANCE WITH.

11 Q BUT YOU'RE STILL SEEING THE DOCTOR?

12 A YES, I'M GOING TO THE CHIROPRACTOR.

13 Q I THINK YOU SAID YESTERDAY THAT AFTER THE INCIDENT THAT
14 THERE WAS BLOOD?

15 A YES, THERE WAS. I HAD LOT OF SCRATCHES ON MY FACE. A
16 LOT OF CUTS.

17 Q A LOT OF CUTS AND SCRATCHES ON YOUR FACE?

18 A YES.

19 Q ARE THEY ALL HEALED UP NOW?

20 A YES, I STILL HAVE A FEW MARKS ON MY HAND AND MY- ARM--

21 Q SHOW ME, MA'AM, HAVE YOU GOT ANY ON YOUR FACE?

22 A THERE'S ONE RIGHT THERE.

23 Q WHERE?

24 A RIGHT HERE. I DON'T HAVE A MIRROR, BUT IT'S RIGHT THERE.

25 Q AND IN ADDITION TO THE MARKS ON YOUR FACE YOU SAID

- 1 THERE WAS A MARK ON YOUR HAND?
- 2 A YES, IT'S RIGHT HERE.
- 3 Q NOW YOU GOT THE MARKS ON YOUR FACE, THAT APPARENTLY
- 4 HAVE HEALED PRETTY GOOD IF, YOU KNOW, I DON'T KNOW HOW
- 5 SEVERE - HOW LONG DID YOU STAY IN THE HOSPITAL?
- 6 A THREE OR FOUR HOURS.
- 7 Q SO YOU WENT TO THE EMERGENCY ROOM?
- 8 A YES.
- 9 Q BY AMBULANCE?
- 10 A YES.
- 11 Q AND THEY TREATED YOU IN THE EMERGENCY ROOM?
- 12 A YES, THEY RAN A LOT OF TESTS.
- 13 Q RAN A LOT OF TESTS. TOOK X-RAYS?
- 14 A YES, THEY DID.
- 15 Q AND THEY RAN A LOT OF TESTS. AND WITH RESPECT TO THE
- 16 TESTS THAT THEY RAN, WOULD IT BE FAIR TO SAY THAT THE
- 17 TEST WERE RAN TO DETERMINE THE NATURE AND EXTENT OF
- 18 ANY INJURIES THAT YOU MAY HAVE SUFFERED, AS FAR AS YOU
- 19 KNOW?
- 20 A YES.
- 21 Q AND, OF COURSE, THEY DIDN'T KEEP YOU?
- 22 A NO, THEY DIDN'T.
- 23 Q THEY SENT YOU HOME?
- 24 A YES, BUT I WAS IN A LOT OF PAIN. AND I'M STILL IN PAIN.
- 25 Q STILL IN PAIN?

1 A YES, I AM.

2 Q AND THE PAIN THAT YOU'RE STILL HAVING, WHERE IS IT?

3 A IT'S ON MY LEFT SIDE BECAUSE THAT'S THE SIDE I LANDED ON.

4 Q AND THE PAIN ON YOUR LEFT SIDE, IS THAT THE PAIN THAT
5 YOU'RE STILL SEEING THE DOCTOR FOR?

6 A YES, HE'S TREATING ME FOR MY LEFT SIDE BECAUSE IT DROP
7 OUT OF ALIGNMENT.

8 Q AND WHAT DOCTOR IS THAT?

9 A DR. OWENS.

10 Q IS HE IN GEORGETOWN?

11 A YES, HE IS.

12 Q DIDN'T HAVE TO HAVE ANY SURGERY?

13 A NO, I DIDN'T.

14 Q AND YOU NEVER HAVE SEEN AN ORTHOPEDIST, NO BROKEN
15 BONES OR ANYTHING LIKE THAT?

16 A NO.

17 Q NOW YOU'VE NEVER BEEN IN ANY KIND OF WRECK BEFORE, HAVE
18 YOU?

19 A NO, I HAVEN'T.

20 Q NEVER HAD AN AUTOMOBILE ACCIDENT?

21 A NO.

22 Q THIS IS THE FIRST TIME?

23 A YES.

24 Q MRS. COHENS, YOU MAY KNOW THE ANSWER TO THIS, YOU MAY
25 NOT; WHEN WAS THE LAST TIME YOU SAW YOUR HUSBAND'S

1 VEHICLE BEFORE THIS INCIDENT?

2 A THE LAST TIME I SAW HIS VEHICLE?

3 Q BEFORE THE INCIDENT.

4 A THAT MORNING WHEN HE PASSED BY MY MOTHER'S HOUSE
5 SEVEN O'CLOCK THAT MORNING. AND THAT NIGHT BEFORE.

6 Q NOW LET ME ASK YOU SOMETHING. WHEN YOU SAW HIM THAT
7 NIGHT BEFORE PASS BY YOUR MOTHER'S HOUSE WAS THE LEFT
8 FRONT FENDER HANGING DOWN LIKE HOW IT IS IN THAT
9 PHOTOGRAPH?

10 A NO, IT WASN'T.

11 Q WASN'T LIKE THAT?

12 A NO, IT WAS NOT.

13 Q NOW WHEN YOU SAW HIM AT THE CHURCH AT ST. PAUL'S
14 CHURCH, WAS THE LEFT FRONT FENDER HANGING DOWN LIKE
15 THAT?

16 A I DON'T RECALL. I WASN'T LOOK AT THE FRONT OF THE CAR.

17 Q YOU GOT A GOOD LOOK AT HIM WHEN HE PASSED YOU ON THE
18 ROAD, THOUGH, ON HIGHWAY 51?

19 A I WASN'T LOOKING AT THE FRONT OF THE CAR WHEN HE WAS
20 PASSING ME.

21 Q BUT YOU MUST HAVE GOT A GOOD LOOK AT IT WHEN HE WAS
22 RACING UP BEHIND YOU TRYING TO CATCH YOU ON HIGHWAY
23 17?

24 A NO, I WAS TRYING TO GET OUT HIS WAY. I WASN'T TAKING TIME
25 TO LOOK AND SEE HOW HIS CAR LOOKED.

1 Q YOU NEVER SAW IT?

2 A NO, I NEVER SAW THE FRONT OF THE VEHICLE. I WAS TRYING
3 TO GET OUT HIS WAY, I WAS TRYING TO JUST GO FAST BECAUSE
4 HE WAS RAMMING INTO ME.

5 Q NOW EVEN THOUGH HE WAS RAMMING INTO YOU, THE THOUGHT
6 NEVER OCCURRED TO YOU TO JUST TAKE A GLANCE DOWN AND
7 LOOK AT THE FRONT BUMPER----

8 MR. MODICA; OBJECTION.

9 THE COURT: SUSTAINED. IT'S BEEN
10 ANSWERED.

11 BY MR. BARR:

12 Q DID YOU EVER AT ANY POINT---

13 A DID I HAVE ANY COINS?

14 MR. MODICA: I CAN'T HEAR THE
15 QUESTION.

16 THE COURT: PLEASE RESTATE THE
17 QUESTION.

18 BY MR. BARR:

19 Q DID YOU EVER AT ANY POINT RUN YOUR VEHICLE INTO MR.
20 COHENS?

21 A NO, I DID NOT.

22 Q AT THE TIME THAT YOU HAD THE COLLISION WITH HIS VEHICLE
23 WHERE YOUR CAR RAN OFF THE ROAD, DROVE STRAIGHT OFF
24 THE ROAD, ISN'T IT TRUE THAT YOU PULLED IN FRONT OF HIM?

25 A NO, I DID NOT PULL IN FRONT OF HIM. HE WAS BEHIND ME. HE

1 RAN IN THE BACK OF ME AND THAT'S HOW I LOST CONTROL
2 AND WENT OFF THE ROAD.

3 Q AND ISN'T IT TRUE THAT HE HIT HIS BRAKES, AND THAT'S HOW
4 YOU WENT IN FRONT OF HIM AND WENT OFF THE ROAD, AND
5 THOSE BRAKE MARKS---

6 MR. MODICA: OBJECTION.

7 Q --IN THAT PHOTOGRAPH ARE HIS CAR BRAKE MARKS?

8 MR. MODICA: OBJECTION.

9 Q THAT'S NOT TRUE?

10 THE COURT: I'M GOING TO OVERRULE
11 YOUR OBJECTION.

12 MR. MODICA: YOUR HONOR, I'M
13 OBJECTING BECAUSE IT'S A COMPOUND QUESTION.

14 BY MR. BARR:

15 Q THAT'S NOT TRUE?

16 A NO, IT'S NOT.

17 Q BEFORE YOU WENT OFF THE ROAD ARE YOU AWARE OF ANY
18 OTHER VEHICLE DAMAGE TO YOUR VEHICLE OTHER THAN THAT
19 DAMAGE?

20 A I COULDN'T SEE BEHIND ME TO SEE THE DAMAGE THAT WAS
21 DONE TO MY VEHICLE BY HIM.

22 MR. BARR: THANK YOU.

23 THE COURT: AND IS THERE REDIRECT?

24 REDIRECT EXAMINATION BY MR. MODICA:

25 Q SHOWING YOU STATE'S EXHIBITS 55 AND 56, PLEASE LOOK AT

1 BOTH OF THEM AND LET ME KNOW WHEN YOU'RE DONE. HAVE
2 YOU LOOKED AT THOSE?

3 A YES.

4 Q WHOSE VEHICLE IS SHOWN IN THOSE PHOTOGRAPHS?

5 A IT'S MY VEHICLE.

6 Q AND WOULD IT BE FAIR TO SAY THAT IT SHOWS PORTIONS OF
7 YOUR DRIVER'S SIDE---

8 MR. BARR: OBJECTION, YOUR HONOR,
9 LEADING. HE CAN PUBLISH---

10 MR. MODICA: I'LL WITHDRAW IT.

11 BY MR. MODICA:

12 Q DO THOSE PHOTOGRAPHS FAIRLY AND ACCURATELY DEPICT A
13 PORTION OF YOUR VEHICLE?

14 A YES.

15 Q OKAY. WHAT PORTION OF YOUR VEHICLE?

16 A THE DRIVER'S SIDE.

17 MR. BARR: OBJECTION, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO OFFER
19 THOSE INTO EVIDENCE?

20 MR. MODICA: I'M DOING IT RIGHT NOW.

21 AT THIS TIME I WOULD MOVE STATE'S EXHIBITS NUMBERS 55
22 AND 56 INTO EVIDENCE.

23 THE COURT: COUNSEL, IS THERE
24 OBJECTION?

25 MR. BARR: YOUR HONOR, I OBJECT FOR

1 IT TO COME IN THROUGH THIS WITNESS. HE CAN BRING IT IN
2 THROUGH THE APPROPRIATE WITNESS AND I THEN I CAN CROSS
3 EXAMINE THEM.

4 THE COURT: THE WITNESS HAS
5 IDENTIFIED THE PHOTOGRAPH AND THE COURT WILL ALLOW IT
6 INTO EVIDENCE. SO OVER OBJECTION, 55 AND 56 INTO
7 EVIDENCE.

8 (STATE'S EXHIBITS NOS. 55 & 56 ADMITTED INTO EVIDENCE.)

9 BY MR. MODICA:

10 Q ACCORDING TO 55, I'M POINTING TO ALONG THE VEHICLE HERE,
11 CAN YOU TELL OUR JURY WHETHER OR NOT THAT DAMAGE WAS
12 THERE PRIOR TO THIS INCIDENT WHERE THE DEFENDANT WAS
13 RAMMING YOU?

14 A NO, IT WASN'T.

15 Q AND USING STATE'S EXHIBIT NUMBER 56, POINTING AGAIN TO
16 THE BOTTOM PORTION ON THE DRIVER'S SIDE THAT GOES FROM
17 THE DRIVER'S DOOR TO THE PASSENGER DOOR, WAS THAT
18 DAMAGE THERE PRIOR TO THIS INCIDENT IN WHICH YOUR
19 HUSBAND WAS RAMMING YOU?

20 A NO, IT WASN'T.

21 MR. MODICA: I HAVE NO OTHER
22 QUESTIONS.

23 THE COURT: MA'AM, YOU MAY STEP
24 DOWN.

25 MR. BARR: JUDGE, I'VE GOT A COUPLE

1 MORE QUESTIONS.

2 THE COURT: ON THOSE PHOTOS?

3 MR. BARR: YES, SIR.

4 THE COURT: THEN I'LL ALLOW IT ON
5 THE PHOTOS, GO AHEAD.

6 RECROSS EXAMINATION BY MR. BARR:

7 Q STATE'S EXHIBITS NUMBERS 55 & 56, DO YOU KNOW WHO TOOK
8 THESE PHOTOGRAPHS?

9 A NO, I DON'T.

10 Q DO YOU KNOW WHERE THE PHOTOGRAPHS WERE TAKEN?

11 A NO, I DON'T.

12 Q DO YOU KNOW WHEN THE PHOTOGRAPHS WERE TAKEN?

13 A NO, I DON'T.

14 Q DO YOU KNOW - LISTEN TO ME VERY CAREFULLY - DO YOU
15 KNOW. . .

16 MR. MODICA: EXCUSE ME, MAY WE
17 APPROACH?

18 THE COURT: YOU MAY.

19 (OFF THE RECORD CONFERENCE AT THE BENCH)

20 THE COURT: ALL RIGHT, WE'LL LET
21 YOU COMPLETE YOUR QUESTIONING NOW. THE TAPE IS
22 WORKING. MR. BARR?

23 BY MR. BARR:

24 Q DO YOU KNOW WITHOUT A SHADOW OF A DOUBT THAT THE
25 VEHICLE DEPICTED IN STATE'S EXHIBIT 55 & 56 IS IN FACT YOUR

1 VEHICLE?

2 A THE WHITE CHEVROLET BLAZER, 2002, IT IS MY VEHICLE.

3 Q HOW DO YOU KNOW?

4 A IT IS MINE.

5 Q HOW DO YOU KNOW?

6 A BECAUSE THOSE DAMAGES WAS DONE TO IT AT THE ACCIDENT.

7 IT'S MY VEHICLE.

8 Q HOW DO YOU KNOW THAT THAT'S NOT ANOTHER VEHICLE?

9 MR. MODICA: OBJECTION.

10 THE COURT: OVERRULED.

11 THE WITNESS: THAT'S MY VEHICLE. I

12 MEAN I REMEMBER LOOKING AT IT BEFORE I LEFT THE SCENE.

13 BY MR. BARR;

14 Q YOU DON'T DENY THAT YOU MAY HAVE HAD SOME DAMAGE TO

15 YOUR VEHICLE AND THAT VEHICLE MAY APPEAR TO BE YOUR

16 VEHICLE, YOU DON'T DENY THAT, DO YOU?

17 A IT'S MY VEHICLE.

18 THE COURT: ANYTHING FURTHER,

19 COUNSEL?

20 MR. BARR: THAT'S ALL I HAVE.

21 THE COURT: THEN YOU MAY STEP

22 DOWN, MA'AM. COUNSEL, PLEASE CALL YOUR NEXT

23 WITNESS.

24 Thereupon, FREDERICK KINLOCH,

25 being first duly sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. MODICA:

2 Q STATE YOUR FULL NAME.

3 A FREDERICK KINLOCH.

4 Q MR. KINLOCH, HOW OLD ARE YOU?

5 A 35.

6 Q ARE YOU MARRIED, SIR?

7 A YES, SIR.

8 Q DO YOU HAVE ANY CHILDREN?

9 A YES, SIR.

10 Q HOW MANY?

11 A FOUR.

12 Q AND ARE YOU WORKING, SIR?

13 A YES, SIR.

14 Q WHERE DO YOU WORK?

15 A PAWLEY'S ISLAND LUMBER COMPANY.

16 Q HOW LONG HAVE YOU BEEN WORKING THERE?

17 A 13 YEARS.

18 Q WHAT DO YOU DO FOR THEM?

19 A I'M A LABORER.

20 Q NOW I TAKE IT YOU WERE WORKING ON MARCH 23RD, 2006?

21 A YES, SIR.

22 Q I WANT TO DIRECT YOUR ATTENTION TO SOME TIME

23 APPROXIMATELY 7:15 A.M. ON MARCH 23RD, 2006 AND ASK YOU

24 IF YOU WERE DRIVING A VEHICLE NORTH ON HIGHWAY 17 IN

25 GEORGETOWN COUNTY?

1 A YES, SIR.

2 Q AND IF I REFER TO THE TWO BRIDGES, DO YOU KNOW WHAT I'M
3 REFERRING TO GOING NORTH?

4 A YES, SIR.

5 Q NOW DID THERE COME A TIME SHORTLY AFTER PASSING THE
6 TWO BRIDGES THAT YOU OBSERVED SOMETHING—

7 MR. BARR: YOUR HONOR, MAY WE
8 APPROACH THE BENCH?

9 THE COURT: RATHER THAN THAT,
10 COUNSEL, I'M GOING TO ASK YOU NOT TO LEAD YOUR WITNESS,
11 NOW.

12 MR. MODICA: THIS IS THE LAST
13 LEADING QUESTION.

14 BY MR. MODICA:

15 Q AFTER THAT, DID YOU OBSERVE SOMETHING?

16 MR. BARR: JUDGE, THERE'S STILL
17 ANOTHER MATTER WE NEED TO TAKE UP.

18 (OFF THE RECORD BENCH CONFERENCE)

19 THE COURT: ALL RIGHT, COUNSEL,
20 AGAIN, PLEASE DO NOT LEAD YOUR WITNESS. YOU MAY
21 PROCEED.

22 BY MR. MODICA:

23 Q SOME TIME AFTER YOU CROSSED THE TWO BRIDGES AND WHILE
24 YOU WERE DRIVING ON 17 NORTH DID YOU OBSERVE SOMETHING
25 IN TRAFFIC?

1 A YES, SIR.

2 Q COULD YOU TELL US ABOUT THAT, SIR, WHAT YOU SAW, AND
3 HOW YOU SAW IT, AND WHAT WAS GOING ON?

4 A AFTER I CROSSED THE BRIDGES I WAS COMING BY (INAUDIBLE)
5 AND BEFORE I CAME BY HAWCRAFT* THERE WAS A WHITE
6 BLAZER IN THE SLOW LANE, AND I WAS IN THE FAST LANE.
7 THEN A BLUE CAR CAME, A BLUE HONDA CAME AND RAMMED ON
8 THE SIDE OF HER, ON THE SIDE OF THE WHITE S.U.V. THEN I
9 SLOWED DOWN AND LET THEM PASS ME.

10 Q WHEN YOU SLOWED DOWN DID YOU GET INTO A PARTICULAR
11 LANE?

12 A I MOVED FROM THE FAST LANE INTO THE SLOW LANE.

13 Q THEN WHAT HAPPENED?

14 A THEN THEY PASSED ME, LIKE I WAS RUNNING 60, THEY WERE
15 DOING LIKE 65 - 70 MILES AN HOUR AND THEY WAS BUMPER TO
16 BUMPER.

17 Q WHO WAS IN FRONT?

18 A THE BLAZER WAS IN FRONT.

19 Q HOW DID THE BLAZER GET IN FRONT?

20 A SHE PULLED OUT AND I SLOWED DOWN. SHE PASSED FIRST AND
21 THE HONDA PASSED SECOND.

22 Q I THINK YOU SAID HE WAS THE SUV WAS IN THE RIGHT LANE,
23 HOW DID THE SUV GET INTO THE LEFT LANE?

24 A SHE PULLED OUT AND CAME IN THE RIGHT LANE.

25 Q I MIGHT BE CONFUSED.

1 A WELL, I WAS IN THE FAST LANE. I SLOWED DOWN AND LET
2 THEM - I WAS IN THE FAST LANE SO I PULLED OVER INTO THE
3 SLOW LANE. THEN THE SUV CAME AROUND ME IN THE FAST
4 LANE.
5 Q WENT FROM THE RIGHT LANE TO THE LEFT LANE?
6 A YES, SIR.
7 Q THEN WHAT HAPPENED? WHERE WAS THE OTHER VEHICLE?
8 A THE HONDA WAS RIGHT BEHIND HER.
9 Q HOW CLOSE?
10 A LIKE NO MORE THAN TWO FEET BEHIND HER.
11 Q WHAT HAPPENED THEN?
12 A THEY PASSED ME AND AS THEY WAS PASSING HE WAS BUMPING
13 HER.
14 Q AND WHAT PORTION OF HIS CAR WAS HITTING HERS?
15 A THE BACK. THE FRONT WAS HITTING THE BACK OF HER CAR.
16 Q THEN WHAT HAPPENED?
17 A THEN THE NEXT THING I KNOW THEY PASSED A COUPLE OF
18 MORE CARS AND I SAW THE SUV FLIP.
19 Q WHAT CAUSED THE SUV TO SLIP?
20 A I THINK---
21 MR. BARR: OBJECT.
22 BY MR. MODICA:
23 Q SIR, BASED UPON WHAT YOU SAW, WHAT CAUSED THE---
24 MR. BARR: OBJECTION.
25 THE COURT: ON WHAT BASIS,

1 COUNSEL?

2 MR. BARR: YOUR HONOR, THIS WITNESS
3 IS NOT COMPETENT TO TESTIFY ON THE ULTIMATE FACTS. YOU
4 WOULD NEED TO QUALIFY HIM.

5 THE COURT: COUNSEL, I'M GOING TO
6 OVERRULE THAT OBJECTION. AGAIN, IT'S NOT A QUESTION OF
7 - I DO NOT BELIEVE THE QUESTION IS TO ELICIT AN OPINION.
8 REPHRASE YOUR QUESTION, COUNSEL.

9 BY MR. MODICA:

10 Q WHAT DID YOU SEE IN RELATION TO THE WHITE SUV AND THE
11 BLUE HONDA?

12 A WELL, WHAT I SAW WAS THAT THE SUV WAS TRYING TO GET
13 AWAY FROM THE HONDA AND THE HONDA WAS BUMPING THE
14 SUV AS IT WAS GOING DOWN THE ROAD.

15 Q AND WHAT HAPPENED TO THE SUV?

16 A AS THE HONDA WAS BUMPING IT, I THINK THE SUV LOST
17 CONTROL AND FLIPPED OVER TWICE ON ITS SIDE.

18 Q WHERE WAS THE SUV WHEN IT LOST CONTROL INITIALLY?

19 A THE SUV WAS IN THE SLOW LANE. SHE WAS GETTING READY TO
20 TURN IN THE SLOW LANE.

21 Q WAS SHE IN THE SLOW LANE OR WAS SHE IN THE FAST LANE?

22 A AT THE TIME SHE WAS GOING TOWARDS, MOVING IN THE SLOW
23 LANE AND THEN THE HONDA CAME ON THE SIDE AND KNOCKED
24 HER OFF THE ROAD.

25 Q ALL RIGHT. SO AS A RESULT OF THE BLUE HONDA STRIKING THE

1 SUV, WHAT HAPPENED?

2 A SHE LOST CONTROL OF THE CAR.

3 Q AND WHERE DID THE SUV GO?

4 A ON THE SIDE, OFF THE ROAD.

5 Q INITIALLY WHAT SIDE OF THE ROAD DOES IT GO OFF?

6 A IT GOES OFF ON THE RIGHT SIDE.

7 Q WHAT HAPPENED TO THE SUV?

8 A FLIPPED OVER TWICE.

9 Q DID IT STRIKE ANYTHING?

10 A NO, SIR.

11 Q WERE THERE TREES THERE?

12 A YEAH, IT JUST STRUCK THE TREE WHEN IT CAME TO A STOP.

13 Q SO IT DID HIT SOME TREES?

14 A YES, SIR.

15 Q HOW MANY TIMES DID THAT VEHICLE FLIP OVER?

16 A TWICE.

17 Q WHAT DID THE BLUE HONDA DO?

18 A WELL, I DIDN'T SEE THE BLUE HONDA AFTER THE SUV GOT HIT

19 OFF THE ROAD.

20 Q WHAT DID YOU SEE THE BLUE HONDA DO, DID IT STOP?

21 A NO, HE KEPT GOING.

22 Q WHAT DID YOU DO AFTER YOU SAW WHAT HAD HAPPENED?

23 A I STOPPED TO SEE IF THERE WAS ANY SURVIVOR IN THE SUV.

24 Q WHY DO YOU SAY SURVIVORS?

25 A BECAUSE THE CAR LOOKED LIKE THERE WAS NO SURVIVORS IN

1 IT.

2 Q AND DID YOU RECOGNIZE ANYBODY ELSE WHO RAN TO THE SUV?

3 A TWO OF THE FELLOWS THAT WORK IN CONSTRUCTION, I
4 DELIVER LUMBER TO THE JOB, AND I RECOGNIZED THOSE TWO.

5 Q IF I TOLD YOU THEIR FIRST NAMES, WOULD YOU REMEMBER
6 THEM?

7 A YEAH.

8 Q RONNIE AND KEVIN, DOES THAT SOUND FAMILIAR?

9 A YES, SIR.

10 Q WHAT HAPPENED WHEN YA'LL RAN UP TO THE SUV?

11 A FIRST THING WE DID, WE ASKED IF SHE'S, IF THE PERSON WAS
12 ALL RIGHT IN THE SUV. AND WE WENT TO THE BACK AND SHE
13 WAS CRAWLING OUT THE BACK OF THE SUV.

14 Q CAN YOU DESCRIBE HER DEMEANOR AND WHAT HER INJURIES
15 APPEARED TO BE, IF ANY?

16 A SHE HAD BLOOD ALL OVER HER FACE, AND SHE CAME UP THERE
17 SO WE WOULD KNOW SHE WAS ALL RIGHT.

18 Q I'M SORRY?

19 A SHE HAD NO SHOES ON HER FEET.

20 Q HOW WAS SHE ACTING, HOW DID SHE APPEAR TO BE?

21 A SHE LOOKED LIKE SHE WAS SCARED.

22 Q WAS SHE SAYING THINGS?

23 A WELL WHEN SHE FIRST CAME OUT OF THE CAR I THINK ONE OF
24 THE FELLOWS ASKED HER WHAT HAPPENED.

25 MR. BARR: OBJECTION.

1 THE COURT: THAT WOULD BE
2 HEARSAY.

3 MR. MODICA: HOWEVER, YOUR HONOR,
4 THERE IS AN EXCEPTION AND I WOULD SUBMIT THAT HE'S
5 ESTABLISHED A SUFFICIENT BASIS FOR HIS TESTIMONY.

6 THE COURT: ALL RIGHT, THE QUESTION
7 WAS ABOUT WHAT ANOTHER INDIVIDUAL SAID, NOT MRS.
8 COHENS, BUT ANOTHER PERSON.

9 MR. MODICA: NO, MRS. COHENS IS WHO
10 I'M INTERESTED IN. IF I NEED TO I'LL REPHRASE MY QUESTION.

11 THE COURT: ALL RIGHT. COUNSEL
12 TAKES THE POSITION THAT'S RES JESTAE EXCEPTION, WHAT
13 SAY YOU, COUNSEL?

14 MR. BARR: JUDGE, INITIALLY WHAT
15 THE QUESTION WAS, THE QUESTION WAS NOT REFERRING TO
16 THE VICTIM, IT WAS REFERRING TO THE ACTUAL WITNESS. AND I
17 THINK THE STATE HAS NOW TURNED IT AROUND. BUT WE
18 WOULD TAKE THE SAME POSITION, EVEN IF IT APPLIES TO THE
19 VICTIM.

20 THE COURT: ALL RIGHT, AND YOU'RE
21 ASKING NOW ABOUT THE VICTIM OR A THIRD PERSON?

22 MR. MODICA: THE VICTIM.

23 THE COURT: YOU MAY PROCEED. THE
24 COURT WILL ALLOW IT WITH REGARD TO MRS. COHENS.

25 BY MR. MODICA:

- 1 Q FIRST OF ALL, THE PERSON WHO WAS CLIMBING OUT OF THE
2 SUV, WHAT NATIONALITY WAS THAT PERSON?
- 3 A SHE WAS A WOMAN, BLACK.
- 4 Q SHE'S THE PERSON THAT YOU DESCRIBED AS BEING SCARED?
- 5 A YES, SIR.
- 6 Q AND WHAT I'M INTERESTED IN IS SOMEBODY ASKED HER WHAT
7 HAPPENED?
- 8 A YES, SIR.
- 9 Q WHAT I'M INTERESTED IN IS WHAT SHE SAID. YOU CAN ANSWER
10 THAT QUESTION.
- 11 A SHE SAID HER HUSBAND TRIED TO KILL HER.
- 12 Q NOW LET ME SHOW YOU STATE'S EXHIBIT NUMBER 13. DO YOU
13 RECOGNIZE PORTIONS OF THAT AREA?
- 14 A YES, SIR.
- 15 Q AND SPECIFICALLY DO YOU RECOGNIZE A NON-POLICE VEHICLE
16 IN THAT PHOTOGRAPH?
- 17 A YES, SIR.
- 18 Q WHOSE VEHICLE IS THAT?
- 19 A I THINK THAT'S RONNIE.
- 20 Q WHERE WERE YOU IN RELATION TO RONNIE AS YOU WERE
21 TRAVELING DOWN THE ROAD AND VIEWING THE BLUE HONDA?
- 22 A I WAS BEHIND RONNIE.
- 23 Q AND DO YOU RECALL WHO WAS IN FRONT OF RONNIE?
- 24 A I THINK A SCHOOL BUS WAS IN FRONT OF RONNIE.
- 25 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER FOUR IN EVIDENCE.

1 I ASK YOU IF YOU RECOGNIZE THAT AREA FROM HAVING BEEN AT
2 THE ACCIDENT SCENE?
3 A YES, SIR.
4 Q AND THAT PHOTOGRAPH SHOWS PORTIONS OF THE ACCIDENT
5 SCENE AS IT EXISTED?
6 A YES, SIR.
7 Q I'M GOING TO REFER NOW SPECIFICALLY TO THE SKID MARKS ON
8 THE ROADWAY, DO YOU SEE WHAT I'M REFERRING TO, THAT
9 APPEAR TO BE IN FRONT OF THE POLICE VEHICLE?
10 A YES.
11 Q FROM HAVING BEEN THERE AND WITNESSES THIS ACCIDENT,
12 WAS THIS THE SKID MARKS CAUSED EITHER BY THE WHITE SUV
13 OR THE BLUE HONDA?
14 A I THINK IT WAS CAUSED BY THE BLUE HONDA.
15 Q OKAY. THIS IS IN THE RIGHT LANE. I THOUGHT YOU SAID THE
16 BLUE HONDA TOOK OFF?
17 MR. BARR: OBJECTION, YOUR HONOR.
18 THE COURT: PLEASE RESTATE YOUR
19 QUESTION, COUNSEL.
20 BY MR. MODICA:
21 Q WHAT LANE ARE THESE SKID MARKS IN?
22 A THAT'S IN THE RIGHT LANE.
23 Q COULD YOU TELL OUR JURY WHETHER OR NOT YOU EVER SAW
24 THE BLUE HONDA IN THE RIGHT LANE?
25 A NO, NEVER DID.

1 Q SO, I ASK YOU AGAIN WITH REGARD TO THE SKID MARKS, FROM
2 HAVING BEEN THERE AND WITNESSED THIS ACCIDENT, I'LL
3 START WITH THE WHITE SUV; COULD THE WHITE SUV CAUSE
4 THOSE SKID MARKS?

5 A NO, SIR.

6 Q DID THE BLUE HONDA CAUSE THOSE SKID MARKS?

7 A NO.

8 Q BASED ON HAVING BEEN THERE, WHAT DO YOU BELIEVE THOSE
9 SKID MARKS WERE CAUSED BY?

10 MR. BARR: OBJECTION,
11 THE COURT: AND THAT'S AN OPINION
12 QUESTION?

13 MR. BARR: YES, SIR.

14 THE COURT: YOU'LL HAVE TO LAY A
15 FOUNDATION. I'M GOING TO SUSTAIN THE OBJECTION, YOU'RE
16 REQUIRED TO LAY A BETTER FOUNDATION.

17 BY MR. MODICA:

18 Q WERE YOU BESIDE THE VEHICLES INVOLVED IN THIS ACCIDENT?

19 A YES, SIR.

20 Q AND THERE WAS A SCHOOL BUS, I THINK YOU INDICATED
21 RONNIE'S CAR AND THEN YOUR CAR?

22 A YES, SIR.

23 Q OKAY. CAN YOU TELL US WHAT THE VEHICLES DID; THE BUS,
24 YOUR VEHICLE, HIS VEHICLE DID WHEN YOU SAW THE ACCIDENT?

25 A ALL OF US STOPPED, MASHED OUR BRAKES TO STOP.

1 Q AND COULD ONE OF THOSE VEHICLES CAUSED THE SKID MARKS?

2 MR. BARR: YOUR HONOR, HE HAS TOLD
3 THE WITNESS WHAT TO SAY ON TWO OCCASIONS.

4 THE COURT: THAT IS LEADING. I'M
5 GOING TO SUSTAIN THAT OBJECTION AND I'M GOING TO DIRECT
6 YOU TO MOVE ON TO THE NEXT ISSUE BECAUSE YOU'RE
7 LEADING, YOU'RE SOLICITING OPINION, FOUNDATION QUESTION,
8 DID YOU SEE THE SKID MARKS BEING MADE BY THE VEHICLE.
9 AND IF IT DIDN'T HAPPEN, THEN IT WOULD BE BEST TO LET THE
10 JURY DETERMINE IT.

11 BY MR. MODICA:

12 Q NOW DID THERE COME A TIME THAT YOU LEFT FROM THAT
13 WRECK?

14 A YES, SIR.

15 Q AND UP TO THE POINT IN TIME THAT YOU HAD LEFT COULD YOU
16 TELL US WHETHER ANY LAW ENFORCEMENT HAD ARRIVED?

17 A NOT WHEN I LEFT.

18 Q AND WHY DID YOU LEAVE?

19 A I WAS ON MY WAY TO WORK.

20 Q AND WHAT IF ANYTHING DID YOU DO OR SAY TO ANY ONE TO
21 LET PEOPLE KNOW THAT YOU'D BEEN THERE?

22 A I TOLD THE TWO FELLOWS THAT I KNOW THAT WORK AT
23 SINGLETON CONSTRUCTION THAT IF ANYBODY NEEDED TO
24 KNOW WHO WAS AT THE SCENE OF THE ACCIDENT TO TELL
25 THEM MY NAME AND WHERE I WORK.

1 Q SO YOU LEFT YOUR INFORMATION WITH THE OTHER WITNESSES?

2 A YES, SIR.

3 Q GOING BACK JUST FOR A MOMENT; WHEN YOU HAD THE WHITE
4 SUV IN THE RIGHT LANE AND THE BLUE HONDA IN THE LEFT
5 LANE, COULD YOU TELL US HOW IT WAS THAT BLUE HONDA
6 STRUCK THE WHITE SUV?

7 A WHEN IT FIRST STRUCK THE SUV THEY WAS BEHIND ME. AND
8 SHE WAS IN THE - I WAS IN THE FAST LANE AND SHE WAS IN
9 THE SLOW LANE. HE CAME IN THE FAST LANE AND STRUCK HER
10 ONCE, THEN I SLOWED DOWN, THEY PASSED ME.

11 Q SLOW UP FOR A SECOND. DESCRIBE FOR ME IN AS MUCH DETAIL
12 AS YOU CAN WHERE WAS THE WHITE SUV WHEN THE HONDA
13 STRUCK THE VEHICLE, WHAT LANE WAS IT IN?

14 A THE WHITE SUV WAS IN THE RIGHT LANE.

15 Q HOW DID THE BLUE VEHICLE STRIKE THE SUV, WHERE DID IT GO,
16 HOW DID IT CONTACT IT?

17 A HE CAME IN THE LEFT LANE AND HIT HER ON THE DRIVER'S SIDE.

18 Q WHAT LANE DID HE GO INTO TO HIT HER?

19 A IN THE FAST LANE.

20 Q THAT'S WHERE HE MADE CONTACT WITH HIS VEHICLE?

21 A RIGHT.

22 Q WHERE IS SHE?

23 A SHE'S IN THE SLOW LANE.

24 Q OKAY. WHO COMES INTO WHAT LANE TO HIT WHAT VEHICLE,
25 THAT'S WHAT I'M INTERESTED IN; DO YOU UNDERSTAND MY

1 QUESTION?

2 A YEAH.

3 Q OKAY.

4 A HE CAME INTO THE FAST LANE TO HIT HER IN THE SLOW LANE.

5 Q WHO CROSSED OVER THE WHITE MARK?

6 A HE - I MEAN THE BLUE HONDA CROSSED OVER THE WHITE
7 MARKS TO HIT THE SUV.

8 Q SO HE CAME OVER INTO THE WHITE SUV?

9 A YES, SIR.

10 Q WHILE YOU WERE WATCHING THESE EVENTS, DID YOU EVER SEE
11 THE WHITE SUV STRIKE THE HONDA?

12 A NO.

13 Q IT WAS QUITE THE OPPOSITE?

14 A YES, SIR.

15 MR. MODICA: THANK YOU. ANSWER
16 ANY QUESTIONS COUNSEL MIGHT HAVE.

17 CROSS EXAMINATION BY MR. BARR:

18 Q MR. KINLOCH, YOU INDICATED THAT YOU LEFT THE ACCIDENT
19 SCENE BEFORE ANY LAW ENFORCEMENT GOT THERE. SO WOULD
20 IT BE FAIR TO SAY THAT PRIOR TO TODAY YOU HAVE NOT GIVEN
21 ANY STATEMENTS CONCERNING WHAT YOU SAW?

22 A THE ONLY STATEMENT I GAVE IS WHEN THEY CALLED ME.
23 BECAUSE THE TWO FELLOWS GAVE THE SOLICITOR MY NAME.

24 Q WHEN WHO CALLED YOU?

25 A JUDGE MODICA.

- 1 Q AND WHEN WAS THAT?
- 2 A ABOUT A WEEK AGO.
- 3 Q AND YOU GAVE A STATEMENT THEN?
- 4 A NO, HE ASKED ME WHAT I SAW.
- 5 Q AND YOU GAVE A STATEMENT?
- 6 A YES, SIR.
- 7 Q BUT NOW YOU NEVER GAVE A WRITTEN STATEMENT?
- 8 A NO, BECAUSE I LEFT TO GO TO WORK.
- 9 Q BUT YOU DID TELL HIM WHAT YOU SAW?
- 10 A YES, SIR.
- 11 Q LET ME MAKE SURE I UNDERSTAND EXACTLY WHAT YOU SAW;
- 12 I WANT YOU TO FIRST OF ALL TAKE A LOOK AT ANOTHER -
- 13 WHAT VEHICLE WERE YOU DRIVING?
- 14 A 2002 FORD EXPLORER.
- 15 Q THAT'S YOUR PERSONAL VEHICLE?
- 16 A YES, SIR.
- 17 Q AND WHEN YOU FIRST OBSERVED THE VEHICLE THAT YOU SAID,
- 18 THE BLAZER, AND THE HONDA, WHICH ONE DID YOU SEE FIRST?
- 19 A I SAW THE BLAZER FIRST.
- 20 Q AND WHEN YOU SAW THE BLAZER FIRST, WHERE WAS THE
- 21 BLAZER?
- 22 A THE BLAZER WAS IN THE SLOW LANE.
- 23 Q AT WHAT POINT ON HIGHWAY 17?
- 24 A RIGHT THERE BEFORE YOU GET TO DEBORDIEU SIGN.
- 25 Q RIGHT BEFORE YOU GET TO THE SIGN THAT SAYS "DEBORDIEU

- 1 COLONIES" ON HIGHWAY 17?
- 2 A YES. SIR.
- 3 Q NOW WHERE DID YOU SEE THE HONDA, WHERE WAS IT?
- 4 A THE HONDA WAS COMING UP BEHIND.
- 5 Q BEHIND THE BLAZER?
- 6 A BEHIND THE WHITE BLAZER.
- 7 Q AND WERE YOU IN FRONT OF BOTH VEHICLES, OR WERE YOU
- 8 BEHIND THEM, OR ON THE SIDE, WHERE WERE YOU?
- 9 A I WAS IN FRONT OF THEM.
- 10 Q SO WHEN YOU SAW THE VEHICLES DID YOU SEE THEM THROUGH
- 11 YOUR REARVIEW MIRROR, YOUR SIDE MIRROR, OR DID YOU TURN
- 12 AROUND AND LOOK? HOW DID YOU SEE THEM?
- 13 A IN THE REARVIEW MIRROR.
- 14 Q AND WHAT LANE OF TRAFFIC WERE YOU IN?
- 15 A I WAS IN THE FAST LANE AT THE TIME.
- 16 Q AND THESE TWO VEHICLES THAT YOU SAW, WERE THEY BOTH IN
- 17 THE SAME LANE?
- 18 A NO, SIR.
- 19 Q ALL RIGHT, WHICH LANES WERE THEY IN RESPECTIVELY?
- 20 A THE SUV WAS IN THE SLOW LANE. THEN THE HONDA CAME UP
- 21 IN THE FAST LANE AND HIT HER IN THE SIDE.
- 22 Q AND YOU SAW THE CONTACT MADE?
- 23 A YES, SIR.
- 24 Q NOW WHERE DID YOU SEE THE SCHOOL BUS?
- 25 A THE SCHOOL BUS WAS IN FRONT OF ME.

1 Q WERE THERE ANY VEHICLES BETWEEN YOU AND THE SCHOOL
2 BUS?

3 A THE BLACK TRUCK.

4 Q WHAT BLACK TRUCK?

5 A RONNIE'S TRUCK.

6 Q SO RONNIE WAS IN FRONT OF YOU?

7 A YES, SIR.

8 Q AND DO YOU KNOW HOW MUCH DISTANCE THERE WAS
9 BETWEEN YOUR VEHICLE AND RONNIE'S VEHICLE?

10 A THERE WASN'T --- I SLOWED DOWN SO THEY COULD PASS ME,
11 AND THERE WAS NO MORE THAN 50 YARDS BETWEEN ME AND
12 RONNIE'S VEHICLE.

13 Q 50 YARDS BETWEEN YOUR VEHICLE AND RONNIE, AND THE BUS
14 WAS IN FRONT OF RONNIE?

15 A YES, SIR.

16 Q NOW I THINK YOU INDICATED AT SOME POINT AFTER YOU SAY
17 THE HONDA STRUCK THE LADY, NEITHER ONE OF THEM GOT OUT
18 OF THE SLOW LANE?

19 A WHAT I SAID IS WHEN THE HONDA STRUCK THE BLAZER, I
20 SLOWED DOWN. THEN THE SUV GOT OUT OF THE SLOW LANE.
21 AND I'D ALREADY PULLED OVER IN THE SLOW LANE, AND THEY
22 PASSED ME.

23 Q SO THE SUV CAME BY YOU FIRST?

24 A YES, SIR.

25 Q AND THEN THE HONDA?

1 A YES, SIR.

2 Q AND I THINK YOU INDICATED THAT YOU SAW SOME CONTACT
3 BETWEEN THE TWO VEHICLES AT SOME POINT AFTER THEY
4 PASSED BY YOU?

5 A YES, SIR.

6 Q NOW, HOW MUCH DISTANCE WAS THERE, OR COULD YOU TELL,
7 BETWEEN THE BLACK VEHICLE IN FRONT OF YOU AND THE
8 SCHOOL BUS?

9 A I COULDN'T TELL HOW FAR.

10 Q WAS IT AS MUCH DISTANCE AS THERE WAS BETWEEN YOU AND
11 YOUR VEHICLE AND THE BLACK VEHICLE?

12 MR. MODICA: OBJECTION, HE
13 INDICATED HE DIDN'T KNOW.

14 THE COURT: OVERRULED.

15 BY MR. BARR:

16 Q WAS THERE AS MUCH DISTANCE BETWEEN YOUR VEHICLE AND
17 THE BLACK VEHICLE - YOU SAID YOUR VEHICLE WAS ABOUT 50
18 YARDS BEHIND THE BLACK VEHICLE, RIGHT?

19 A RONNIE'S TRUCK?

20 Q YES, SIR.

21 A YES, SIR.

22 Q NOW, WHAT I'M ASKING YOU IS; WAS THE DISTANCE BETWEEN
23 RONNIE'S TRUCK AND THE BUS GREATER OR LESS THAN THE
24 DISTANCE BETWEEN YOUR VEHICLE AND RONNIE'S TRUCK?

25 A I THINK IT WAS LESS THAN.

1 Q NOW AFTER THE BLAZER AND THE HONDA HAD ALREADY
2 PASSED RONNIE'S TRUCK - NOW THE SCHOOL BUS THAT YOU
3 WERE TALKING ABOUT, WAS THIS ONE OF THOSE BIG YELLOW
4 BUSES?

5 A NO, I THINK IT WAS A SMALL YELLOW BUS.

6 Q WAS THERE STUDENTS ON IT?

7 A I DIDN'T STAY LONG ENOUGH TO SEE. I JUST STOPPED AND
8 HELPED THE YOUNG LADY OUT OF THE VEHICLE.

9 Q YOU COULDN'T SEE WHETHER OR NOT THERE WAS STUDENTS
10 ON THE BUS?

11 A NO, SIR. BECAUSE THE BUS DRIVER HAD ALREADY PULLED UP
12 AND PARKED AND I DIDN'T PAY ATTENTION TO THE SCHOOL
13 BUS.

14 Q I'M TALKING ABOUT WHILE THE BUS WAS ON THE ROAD AND
15 YOU WERE ON THE HIGHWAY.

16 A THE BUS WAS IN FRONT OF ME.

17 Q SO YOU COULD NOT SEE WHETHER OR NOT THERE WERE
18 PASSENGERS ON THE SCHOOL BUS?

19 A NO, SIR.

20 Q NOW, WAS IT THAT YOU COULD NOT SEE OR YOU JUST DIDN'T
21 LOOK?

22 A I DIDN'T LOOK, I DIDN'T HAVE MY MIND ON THE SCHOOL BUS, I
23 WAS TRYING TO SEE IF SHE WAS ALRIGHT IN THE CAR.

24 Q I'M TALKING ABOUT BEFORE SHE LEFT THE HIGHWAY.

25 A BEFORE SHE LEFT THE HIGHWAY?

1 Q YES, SIR. DID YOU GET GOOD LOOK AT THE SCHOOL BUS?

2 A NO, SIR.

3 Q BUT IT WAS IN FRONT OF YOU?

4 A IT WAS IN FRONT OF ME.

5 Q NOW WHEN THE BLAZER LEFT THE ROAD, WOULD YOU TAKE A
6 LOOK AT THIS STATE'S EXHIBIT NUMBER FOUR; NOW AS BEST AS
7 YOU CAN RECALL WHEN YOU SAY YOU SAW THE ACCIDENT, THE
8 MARKS THERE ON THE SIDE OF THE ROAD, WERE THOSE MARKS
9 MADE TO THAT GRASS BY THE BLAZER?

10 A YES, SIR.

11 Q AND YOU SAW THAT?

12 A YES, SIR.

13 Q NOW THE BLACK SKID MARKS THAT YOU SEE, DO YOU KNOW
14 HOW THOSE SKID MARKS WERE MADE?

15 A NO, SIR.

16 Q NOW AS FAR AS YOU KNOW, THOSE SKID MARKS ARE TOTALLY
17 UNRELATED TO THIS?

18 A PROBABLY COULD BE.

19 Q PARDON ME?

20 A PROBABLY COULD BE.

21 Q WHERE WAS MR. COHENS VEHICLE, I'M TALKING ABOUT THE
22 HONDA, AT THE TIME THAT YOU SAW THE BLAZER LEAVE THE
23 ROAD?

24 A HIS VEHICLE WAS COMING BESIDE THE SUV.

25 Q WAS WHAT NOW?

1 A HIS VEHICLE WAS IN THE FAST LANE.

2 Q SO AT THE TIME THAT YOU SAW THE BLAZER LEAVE THE
3 ROADWAY, THE HONDA WAS IN THE FAST LANE?

4 A NO, THE HONDA WAS - WHEN THE BLAZER LEAVE THE
5 ROADWAY I DIDN'T SEE THE HONDA NO MORE.

6 Q NOW AS I UNDERSTAND IT, YOU'RE SAYING, OR YOU AT LEAST
7 SAID THAT THE HONDA CAUSED THE BLAZER TO LEAVE THE
8 HIGHWAY?

9 A YES, SIR.

10 Q SO THE HONDA MADE SOME CONTACT WITH THE BLAZER?

11 A IT MADE CONTACT, BUT AFTER THE BLAZER LEFT THE ROAD, I
12 DIDN'T SEE THE HONDA NO MORE, IT KEPT ON GOING.

13 Q WHERE WAS THE BLAZER AT, WHERE WAS THE HONDA AT WHEN
14 THEY MADE THAT CONTACT TO CAUSE THE BLAZER TO LEAVE
15 THE ROADWAY?

16 A WELL THE BLAZER WAS GOING TOWARDS THE SLOW LANE AND
17 THE HONDA CAME ON THE SIDE INTO HER AND SHE LOST
18 CONTROL AND WENT ON THE SIDE OFF THE SIDE OF THE ROAD.

19 Q SO THE BLAZER WAS CHANGING LANES BEFORE THE BLAZER
20 WAS STRUCK BY THE HONDA?

21 A THE BLAZER WAS CHANGING LANES, THEN GOT STRUCK BY THE
22 HONDA.

23 Q WAS THE BLAZER IN THE PROCESS, THEN, OF CHANGING LANES
24 WHEN IT WAS STRUCK BY THE HONDA? THAT'S WHAT I'M
25 ASKING YOU.

1 A YES, SIR.

2 Q AND YOU SAW IT?

3 A YES, SIR.

4 Q SO THEN AS FAR AS THE CHANGING OF THE LANES, WOULD IT
5 BE FAIR TO SAY THAT BASED ON YOUR TESTIMONY, THE BLAZER
6 WAS MOVING FROM THE FAST LANE, THE INSIDE LANE, INTO THE
7 RIGHT LANE?

8 A YES, SIR.

9 Q YOU'RE SURE ABOUT THAT?

10 A FROM THE FAST LANE INTO THE RIGHT LANE?

11 Q YES, SIR.

12 A YES, SIR.

13 Q SO IT'S MY UNDERSTANDING THAT YOU'RE SAYING, OR YOU SAID,
14 THAT THE HONDA CAR CAUSED THE BLAZER TO LEAVE THE
15 HIGHWAY?

16 A YES, SIR.

17 Q NOW YOU SAID THAT THE HONDA, AFTER THE COLLISION OF THE
18 TWO VEHICLES, WHEREVER THAT WAS, CONTINUED TO GO 17
19 NORTH?

20 A YES, SIR.

21 Q BUT YOU STOPPED?

22 A YES, SIR.

23 Q SO NOW YOU REALLY DON'T KNOW HOW FAR OR WHERE THE
24 HONDA CONTINUED NORTH ON 17?

25 A I DON'T KNOW WHETHER HE KEPT ON GOING OR TURNED BACK

1 AROUND.

2 MR. BARR: THANK YOU, SIR, I DON'T
3 HAVE ANY MORE QUESTIONS.

4 REDIRECT EXAMINATION BY MR. MODICA:

5 Q YOU NEVER GAVE A WRITTEN STATEMENT WHICH YOU SIGNED?

6 A NO, SIR.

7 MR. MODICA: THANK YOU.

8 THE COURT: YOU MAY STEP DOWN,
9 SIR. YOU'RE FREE TO LEAVE IF YOU LIKE. LET'S COME AROUND
10 AND TALK ABOUT SCHEDULING, COUNSEL.

11 (OFF THE RECORD CONFERENCE AT THE BENCH)

12 THE COURT: ALL RIGHT, IS THERE
13 SOME ISSUE WITH REGARD TO WITNESS LISTS THAT COUNSEL
14 WISHES TO PLACE ON THE RECORD?

15 MR. MODICA: YOUR HONOR, I
16 OBVIOUSLY HANDED TO THE COURT A WITNESS LIST AND I
17 DIDN'T ASK THE DEFENSE ATTORNEY FOR A WITNESS LIST, BUT
18 OF COURSE YOU KNOW THE REASON FOR GIVING A WITNESS LIST
19 IS TO FIND OUT IF MEMBERS OF THE JURY ARE AWARE WHETHER
20 THEY KNOW THOSE INDIVIDUALS. COUNSEL ALLUDED TO THE
21 FACT THAT HE MAY HAVE ONE OR TWO OTHER WITNESSES
22 WHICH NEVER APPEARED ON ANY WITNESS LIST. AND I WOULD
23 AT LEAST ASK WHO THEY ARE NOW, AND OF COURSE I WOULD
24 ASK THAT IF HE INTENDS TO CALL THEM THAT HE PROVIDE ME
25 WITH THE NECESSARY INFORMATION TO RUN CRIMINAL

1 HISTORIES.

2 THE COURT: WHETHER THAN REQUIRE
3 A RESPONSE FOR THE RECORD, WE'LL LEAVE THAT AS IT IS.
4 AND IF THERE'S SOME PROBLEMS WITH THAT, LET ME KNOW
5 WHEN WE RECONVENE. THIS PROCEEDING NOW WILL BE IN
6 RECESS UNTIL TWO-THIRTY. I ASSUME BY THE FACT THAT HE
7 DID NOT MAKE ANY FORMAL MOTION OR FORMAL RESPONSE, MR.
8 BARR, THAT THERE IS NO ISSUE UNDER RULE FIVE ABOUT
9 DISCLOSURE OF A STATEMENT ON THE LAST WITNESS THAT
10 TESTIFIED?

11 MR. BARR: I'M NOT GOING TO PURSUE
12 THAT.

13 (AT THIS TIME THE COURT RECESSED FOR LUNCH.)

14 THE COURT: LADIES AND
15 GENTLEMEN, WELCOME BACK, I TRUST YOU HAD A NICE AND
16 LENGTHY LUNCH PERIOD TODAY. YOU'LL RECALL WE'RE IN THE
17 STATE'S CASE. PLEASE CALL YOUR NEXT WITNESS, MR. MODICA.

18 Thereupon, AMY GLOVER, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MRS. BIOJLANTI:

21 Q STATE YOUR FULL NAME.

22 A AMY GLOVER.

23 Q GOOD AFTERNOON, SGT. GLOVER, CAN YOU PLEASE TELL US
24 WHERE YOU'RE EMPLOYED AND IN WHAT CAPACITY?

25 A I'M EMPLOYED WITH THE GEORGETOWN COUNTY SHERIFF'S AS A

1 PATROL SERGEANT.

2 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SHERIFF'S
3 OFFICE?

4 A APPROXIMATELY 10 YEARS.

5 Q AND EXPLAIN TO US WHAT YOUR PRESENT DUTIES AND
6 RESPONSIBILITIES ARE AS SERGEANT.

7 A I'M A SERGEANT OF PATROL, I SUPERVISE SIX OR SEVEN OTHER
8 GUYS ON MY SHIFT DAY TO DAY PATROLLING.

9 Q NOW, DIRECTING YOUR ATTENTION TO MARCH 23RD OF THIS
10 YEAR AT AROUND SEVEN IN THE MORNING, WERE YOU ON DUTY
11 THAT MORNING?

12 A YES, MA'AM.

13 Q AND TELL OUR JURY HOW YOU GOT INVOLVED WITH THE CASE
14 WE'RE HERE ABOUT TODAY.

15 A CENTRAL DISPATCH TOLD US THAT THERE WAS A BIG CHANCE
16 THAT THERE WAS A 10-83 WITH VEHICLES.

17 Q WHAT'S A 10-83?

18 A IT'S A FIGHT IN PROGRESS.

19 Q NOW WHEN YOU RECEIVED THAT DISPATCH, HOW DID YOU
20 INTERPRET THAT?

21 A I INTERPRETED IT AS ONE VEHICLE RAMMING ANOTHER VEHICLE.

22 Q AND DO YOU REMEMBER WHERE YOU WERE WHEN YOU FIRST
23 GOT DISPATCHED?

24 A I WAS A LITTLE NORTH OF LITCHFIELD.

25 Q NOW INITIALLY WHEN YOU GOT THE CALL WAS THERE SOME

1 CONFUSION ABOUT WHERE THE VEHICLES WERE LOCATED?

2 A WE WERE GIVEN AROUND THE AREA OF DEBORDIEU. AND WHEN
3 WE WERE COMING SOUTH FROM LITCHFIELD I WAS
4 GUESSING WITH THE SPEEDS OF TRAFFIC, THE SPEED LIMIT
5 IS ABOUT 60, PROBABLY AROUND PRINCE THE LOCATION TO BE
6 PROBABLY AROUND PRINCE GEORGE* WITH US COMING THAT
7 FAR BACK. SO WE WERE STARTING TO LOOK FOR THE CARS AT
8 THAT TIME.

9 Q AND WHERE WERE YOU LOCATED AT THAT POINT?

10 A PROBABLY BETWEEN NORTH CAUSEWAY AND SOUTH CAUSEWAY
11 OF PAWLEYS.

12 Q AND WHAT HAPPENED TO DIRECT YOUR ATTENTION TO GO
13 FURTHER SOUTH?

14 A CENTRAL DISPATCH ADVISED US THERE WAS A 10-50 JUST
15 SOUTH OF DEBORDIEU.

16 Q AND WHAT'S A 10-50?

17 A I'M SORRY, THAT'S A CAR WRECK.

18 Q NOW EXACTLY WHAT TIME DID YOU GET TO THE SCENE? ARE
19 YOU LOOKING AT SOMETHING RIGHT NOW TO REFRESH YOUR
20 MEMORY?

21 A YES, MA'AM, IT'S THE CAD SHEET.

22 Q AND WHAT EXACTLY IS A CAD SHEET?

23 A IT'S A PRINTOUT FROM THE COMPUTER THAT DISPATCH SENDS,
24 THE LOG SHEET; WHENEVER WE'RE ASSIGNED WHEREVER WE
25 ARE THEY LOG IT IN AND LET US KNOW WHAT TIME IT IS AND

1 WHERE WE ARE SO THEY CAN KEEP TRACK OF US.

2 Q NOW WHAT TIME WAS IT, IF YOU CAN TELL US, WHEN YOU
3 ARRIVED AT THE CRASH SCENE?

4 A 7:40 A.M.

5 Q NOW WHEN YOU ARRIVED, CAN YOU PLEASE TELL THE JURY
6 WHAT YOU DID WHEN YOU ARRIVED?

7 A THE FIRST THING I DID IS I WALKED UP TO THE CAR. THERE WAS
8 A BLACK FEMALE LAYING ON THE GROUND, SHE WAS COVERED
9 WITH A BLANKET. SHE WAS SHAKING REALLY BAD. I TOLD HE I
10 JUST NEEDED TWO THINGS ANSWERED; DID SHE KNOW WHO IT
11 WAS, IF SO, WHAT WAS HIS NAME AND WHAT WAS HE DRIVING.

12 Q BEFORE YOU TELL US WHAT HER RESPONSE WAS, EXPLAIN TO
13 US MORE IN DEPTH THE DEMEANOR OF THE VICTIM AT THAT
14 TIME.

15 A SHE WAS CRYING, HAVING TROUBLE BREATHING, HER VEHICLE
16 HAD JUST ROLLED OVER AND SHE WAS SHOOK. I DON'T KNOW
17 WHO, BUT SOMEBODY WAS HOLDING HER HEAD STILL. EMS
18 WASN'T THERE YET, SO SHE WAS SHOOK BAD.

19 Q WHEN YOU ASKED HER WHO IT WAS, OR WHAT WAS HE DRIVING,
20 WHAT WAS HER RESPONSE?

21 A RONALD COHENS, A BLUE HONDA.

22 Q AND ONCE SHE RELAYED THAT INFORMATION TO YOU WHAT DID
23 YOU DO THEN?

24 A I NOTIFIED THE UNITS ON THE TOWNSIDE,* TO BE ON THE
25 LOOKOUT FOR RONALD COHENS, I ASKED CENTRAL TO CROSS

1 REFERENCE - THEY CAN DO A COUNTY SCAN BY NAME AND PULL
2 UP ALL THE COUNTY VEHICLES TO MAKE SURE WE HAD A TAG.

3 Q AND AFTER YOU RELAYED THAT INFORMATION TO CENTRAL
4 DISPATCH, WHAT DID YOU DO THEN?

5 A SECURED THE SCENE SO WE COULD GET AN INVESTIGATOR
6 THERE.

7 Q WHICH INVESTIGATOR ARRIVED AT THE SCENE?

8 A INVESTIGATOR THACKER.

9 MRS. BIOJLANTI: THANK YOU, PLEASE
10 ANSWER ANY QUESTIONS MR. BARR HAS FOR YOU.

11 CROSS EXAMINATION BY MR. BARR:

12 Q OFFICER GLOVER, HOW ARE YOU TODAY?

13 A PRETTY GOOD.

14 Q I'M CHARLES DAVID BARR, I REPRESENT MR. COHENS.

15 A NICE TO MEET YOU.

16 Q TAKE A LOOK AT YOUR INCIDENT REPORT. HAVE YOU ALREADY
17 REFRESHED YOUR MEMORY WITH THAT?

18 A I HAVEN'T REALLY, NO, SIR.

19 Q NOW IN THE INCIDENT REPORT - AND WHAT IS AN INCIDENT
20 REPORT?

21 A IT'S A DOCUMENTATION OF THE INCIDENT THAT OCCURRED.

22 Q IN OTHER WORDS, WOULD IT BE FAIR TO SAY THAT ANY OFFICER
23 INVESTIGATING THAT ALLEGED INCIDENT, WHEN THEY GO BACK
24 TO THEIR OFFICE THEY MAKE NOTES? AND THAT WOULD BE THE
25 INCIDENT REPORT THAT DESCRIBES THE RESULTS OF THEIR

1 INVESTIGATION. IS THAT THE WAY IT WORKS?

2 A WE USE OUR NOTEBOOKS AND THE INFORMATION WE RECEIVED
3 THROUGH THE INCIDENT TO WRITE THESE, YES, SIR.

4 Q AND GENERALLY THAT INFORMATION IS TRUTHFUL AS RELIED
5 UPON?

6 A IT'S THE INFORMATION THAT'S OBTAINED, YES, SIR.

7 Q NOW YOU CAN SEE IN THAT INCIDENT REPORT THAT YOU WERE
8 RESPONDING ON HIGHWAY 17 TO A FIGHT IN PROGRESS; IS THAT
9 NOT CORRECT?

10 A NO, SIR, I WAS DISPATCHED TO AREA OF "DEBORDIEU COLONIES"
11 IN REFERENCE TO A FIGHT IN PROGRESS WITH VEHICLES.

12 Q NOW "IN REFERENCE TO A FIGHT IN PROGRESS WITH VEHICLES?"
13 NOW, THAT'S WHAT YOU WROTE?

14 A YES, SIR.

15 Q AND YOU'VE EXPLAINED THAT AND YOU SAY WHAT YOU MEANT
16 AND WHAT WAS MEANT BY THAT IS THE ONE VEHICLE WAS
17 JAMMING ANOTHER; AM I NOT CORRECT?

18 A I WAS ASKED WHAT I TOOK A 10-83 INVOLVING VEHICLES
19 WOULD BE. AND MY OPINION AS OF THE TIME I TOOK IT WAS
20 THAT ONE VEHICLE WAS RAMMING ANOTHER, YES, SIR.

21 Q THAT'S THE WAY YOU TOOK IT?

22 A YES, SIR.

23 Q NOW, TELL ME, THE ONE VEHICLE RAN INTO ANOTHER. NOW, I
24 SAW YOU HERE TODAY IN THIS COURTHOUSE, I BELIEVE, FOR THE
25 FIRST TIME I RECALL. AND YOU WERE HAVING A

1 CONVERSATION WITH THE ASSISTANT SOLICITOR. NOW, TELL
2 THE JURY AND THIS JUDGE WHETHER OR NOT THE SUBJECT OF
3 RAMMING A VEHICLE EVER CAME UP.

4 A NO, SIR.

5 Q NEVER CAME UP?

6 A NO, SIR.

7 Q TELL ME IF YOU WOULD, PLEASE, MA'AM, WHERE IN THE
8 MANUAL THAT YOU USE FOR TRAINING PURPOSES, OR WHERE
9 ANYWHERE IN ANY POLICE MANUAL CAN YOU FIND IT A DIRECT
10 THAT INTERPRETS VEHICLE FIGHT AS ONE RAMMING ANOTHER
11 AS ONE RAMMING ANOTHER ONE?

12 A THAT WAS MY OPINION. THAT'S NOT IN ANY MANUAL OR
13 DIRECTIVE AT ALL.

14 Q THAT'S YOUR OPINION?

15 A YES, SIR. THAT'S WHAT I TOOK THE CALL TO BE.

16 Q YOU WROTE DOWN ON HERE THAT A VEHICLE FIGHT WAS IN
17 PROGRESS.

18 A THAT'S HOW IT WAS DISPATCHED.

19 Q BUT YOU TOOK IT TO BE ONE RAMMING ANOTHER?

20 A YES, SIR.

21 Q NOW, OF COURSE, YOU ARE THINKING OF ONE VEHICLE RAMMING
22 ANOTHER, AND I WOULD GUESS THAT THAT WOULD HAVE
23 NOTHING TO DO WITH THE FACT THAT YOU RELIED UPON A
24 STATEMENT THAT MRS. COHENS GAVE YOU EXPLAINING HOW
25 THIS INCIDENT OCCURRED?

1 A I DIDN'T ASK AT THAT TIME. I ASKED MRS. COHENS TWO
2 QUESTIONS; WHO AND WHAT WAS THE VEHICLE DESCRIPTION.

3 Q THAT'S WHAT I WROTE DOWN IS THAT ALL YOU WANTED TO
4 KNOW IS TWO QUESTIONS, IS THAT IT?

5 A YES, SIR, I ASKED MRS. COHENS TWO QUESTIONS; WHO AND
6 WHAT WAS THE VEHICLE DESCRIPTION.

7 Q NOW FORGIVE ME, BUT NOW TELL ME, YOU'RE NOT AN
8 INVESTIGATOR, THOUGH, ARE YOU?

9 A NO, SIR, I AM NOT.

10 Q AND THE ONLY TWO QUESTIONS YOU WERE INTERESTED IN, TELL
11 ME WHAT THEY WERE.

12 A HIS NAME, AND THE VEHICLE DESCRIPTION.

13 Q HIS NAME, AND THE VEHICLE DESCRIPTION. SUPPOSE MRS.
14 COHENS WAS NOT TELLING YOU THE TRUTH ABOUT HOW THIS
15 INCIDENT OCCURRED. WHERE WOULD YOU BE IN YOUR
16 INVESTIGATION?

17 A MY PURPOSE WAS TO LOCATE THE VEHICLE IN QUESTION.

18 Q WELL, NOW YOU DIDN'T SEE AN INCIDENT?

19 A NO, SIR, I DID NOT.

20 Q AND YOU NEVER SAW MR. COHENS VEHICLE, SO NOW THE ONLY
21 THING THAT I CAN UNDERSTAND THAT YOU WOULD BE RELYING
22 ON WOULD BE WHAT MRS. COHEN TOLD YOU.

23 A YES, SIR.

24 Q NOW, WOULD IT NOT BE FAIR TO SAY THAT YOU TOOK ONLY
25 EXACTLY WHAT MRS. COHENS TOLD YOU AND YOU WENT WITH

1 IT?

2 A YES, SIR, I DID.

3 Q NOW YOU DID HAVE OCCASION TO GO TO THE SCENE AND TAKE

4 A LOOK AT IT; IS THAT CORRECT?

5 A AT DEBORDIEU? YES, SIR.

6 Q HIGHWAY 17?

7 A YES, SIR.

8 Q NOW TAKE A LOOK AT THIS EXHIBIT NUMBER FOUR. NOW TELL

9 ME WHETHER OR NOT YOU HAVE A RECOLLECTION OF HAVING

10 SEEN THAT?

11 A YES, SIR.

12 Q IF YOU WOULD, TELL ME WHETHER OR NOT THE SKID MARKS IN

13 THE PHOTOGRAPH, WHETHER OR NOT THERE HAS BEEN ANY

14 INVESTIGATION BY THE GEORGETOWN COUNTY SHERIFF'S

15 DEPARTMENT, AS FAR AS YOU KNOW, BY SLED, OR BY ANYBODY

16 ELSE TO DETERMINE WHETHER OR NOT THERE WAS ANY

17 CONNECTION BETWEEN THOSE SKID MARKS AND THIS INCIDENT?

18 A I HAVE NO IDEA.

19 Q NOW WHEN YOU LEFT THE SCENE DID YOU SEE THE TAPE UP?

20 A I'M SORRY?

21 Q DID YOU PUT A TAPE UP AROUND THE SCENE?

22 A NO, SIR.

23 Q DID SOMEBODY ELSE?

24 A NOT TO MY KNOWLEDGE. I DID NOT DO IT.

25 Q NOW WOULDN'T IT BE FAIR TO SAY THAT ORDINARILY IN ORDER

1 TO KEEP A CRIME SCENE FROM BEING TAMPERED WITH,
2 SOMEBODY DOES GO THERE AND PUTS UP A TAPE TO PREVENT
3 PEOPLE FROM TRAMPING IN AND OUT AND GOING IN AND
4 MESSING UP EVIDENCE. THAT'S WHAT YOU USUALLY DO, ISN'T
5 IT?

6 A YES, SIR, THE CRIME SCENE WAS ALREADY BLOCKED OFF BY FIRE
7 TRUCKS, PATROL CARS. THE TRAFFIC HAD BEEN MOVED TO
8 ANOTHER LANE, SO IT WAS SECURE AS IT WAS.

9 Q WELL IT WAS NOT THE FIRE DEPARTMENT'S RESPONSIBILITY TO
10 INVESTIGATE THE CRIME SCENE, WAS IT?

11 A ABSOLUTELY NOT, NO, SIR.

12 Q THE RESPONSIBILITY FOR INVESTIGATING A CRIME IN
13 GEORGETOWN COUNTY IS THE POLICE DEPARTMENT'S
14 RESPONSIBILITY ISN'T IT?

15 A I COULDN'T HEAR WHAT YOU SAID WHEN YOU WERE WALKING
16 AWAY.

17 Q IT'S THE GEORGETOWN COUNTY SHERIFF'S DEPARTMENT'S
18 RESPONSIBILITY TO INVESTIGATE ALLEGED CRIMINAL ACTIVITY?

19 A YES, SIR.

20 Q AND YOU DON'T EXPECT THE FIRE DEPARTMENT TO GO AND PUT
21 UP A TAPE?

22 A NO, SIR.

23 Q WHO IN YOUR DEPARTMENT DID ANYTHING TO PREVENT THE
24 CRIME SCENE FROM BEING CONTAMINATED, AS FAR AS YOU
25 KNOW?

- 1 A AS I SAID, I FELT IT WAS SECURE WITH THE AMOUNT OF
2 OFFICERS THAT WERE THERE KEEPING PEOPLE FROM COMING
3 INTO THE AREA. IT WAS SECURED FROM THE FIRE ENGINES
4 SITTING IN THE ROADWAY WHERE NO ONE COULD CONTAMINATE
5 IT. THAT WAS MY OPINION.
- 6 Q THAT IS YOUR OPINION?
- 7 A YES, SIR.
- 8 Q NOW LET ME ASK YOU TO TAKE A LOOK NOW AT STATE'S
9 EXHIBIT NUMBER FOUR; IN HINDSIGHT DO YOU THINK THAT
10 PERHAPS SOMEBODY IN YOUR DEPARTMENT SHOULD HAVE MADE
11 SOME EFFORT TO DETERMINE WHETHER OR NOT THERE WAS
12 SOME CONNECTION BETWEEN THE SKID MARKS AND THIS
13 INCIDENT?
- 14 A MR. BARR, I'M IN PATROL. THAT WOULD BE INVESTIGATIONS
15 THAT WOULD INVESTIGATE THE SKID MARKS. I CAN'T ANSWER
16 THOSE QUESTIONS, I'M SORRY.
- 17 Q SO IN OTHER WORDS, YOU THINK THAT THAT WOULD BE MR.
18 THACKER'S DEPARTMENT?
- 19 A YES, SIR, AS FAR AS I KNOW.
- 20 Q DO YOU KNOW WHERE HE IS?
- 21 A INVESTIGATOR THACKER?
- 22 Q YES, MA'AM.
- 23 A HE'S SITTING AT THAT TABLE.
- 24 Q NOW I WANT TO MAKE SURE THAT I'M CLEAR ABOUT WHAT
25 WOULD HAVE BEEN YOUR SPECIFIC ROLE AFTER YOUR HAVING

1 BEEN DISPATCHED TO THIS CRIME SCENE? WHAT WERE YOU
2 RESPONSIBLE FOR?

3 A AS I SAID, GATHERING INFORMATION AND SECURING THE SCENE.

4 Q GATHERING INFORMATION AND SECURING THE SCENE?

5 A YES, SIR.

6 Q TELL ME WHAT, IF ANYTHING, YOU DID, MA'AM, TO SECURE THE
7 SCENE.

8 A I FELT IT WAS SECURE ALREADY.

9 Q SO THEN YOU DIDN'T DO ANYTHING?

10 A WE MADE SURE NOBODY CAME INTO THE AREA.

11 Q YOU MADE SURE THAT NOBODY CAME INTO THE AREA?

12 A YES, SIR.

13 Q WHAT, IF ANYTHING ELSE, DID YOU DO?

14 A THAT SECURED IT.

15 Q AND GATHERING INFORMATION CONSISTED IN TOTAL OF ASKING
16 TWO QUESTIONS OF MRS. COHENS AND GETTING HER
17 RESPONSES, AND GOING ON WITH THAT?

18 A NO, SIR. I WAS ASKED WHAT I DID WHEN I ARRIVED ON THE
19 SCENE AND I SAID THAT I ASKED MRS. COHENS TWO QUESTIONS;
20 WHAT WAS HIS NAME, WHAT WAS HE DRIVING. AFTER SHE
21 WAS TREATED, I SPOKE TO OTHER WITNESSES, OBTAINED
22 STATEMENTS, AND WHEN I CLEARED THE SCENE, I WENT BACK
23 TO THE HOSPITAL AND GOT MRS. COHENS INFORMATION.

24 Q NOW AS FAR AS YOU KNOW DID ANYBODY GET ANY
25 INFORMATION FROM MR. COHENS?

1 A I HAVE NOT SEEN MR. COHENS UNTIL TODAY.

2 Q HE WAS IN CUSTODY ABOUT 18 MINUTES AFTER THE INCIDENT?

3 A OTHER OFFICERS PUT HIM IN CUSTODY, YES, SIR.

4 Q SO THEY WOULD HAVE BEEN RESPONSIBLE FOR WHAT
5 HAPPENED THERE?

6 A YES, SIR. WHILE I WAS AT THE SCENE, I WAS IN CHARGE OF
7 THAT SCENE, YES, SIR.

8 Q NOW, TELL ME WHO WAS IN CHARGE OF THE CASE FILE IN THE
9 SHERIFF'S DEPARTMENT FOR THIS CASE?

10 A INVESTIGATOR THACKER. ONCE WE DO OUR REPORTS, IF IT
11 GOES TO INVESTIGATION, IT'S THEIR CASE.

12 Q SO IN OTHER WORDS, IN TERMS OF SOMEBODY BEING IN CHARGE
13 OF THE WHOLE THING AND MAKING CERTAIN THAT ALL THE "I'S"
14 WERE DOTTED AND "T'S" CROSSED, IT IS THIS GENTLEMAN'S
15 RESPONSIBILITY TO COORDINATE THE INVESTIGATION?

16 A AS FAR AS I KNOW.

17 Q THAT WOULD INCLUDE COLLECTING FORENSIC SAMPLES TO BE
18 SENT TO SLED, PARTS OF VEHICLES AND PAINT CHIPS AND ALL
19 THIS SORT OF THING---

20 A MR. BARR, I'M IN PATROL, I'M NOT FAMILIAR WITH THE
21 PROCEDURES OF INVESTIGATIONS. I'M A PATROL OFFICER.

22 MR. BARR: THANK YOU, MA'AM. I HAVE
23 NOTHING FURTHER.

24 THE COURT: ANY REDIRECT?

25 MRS. BIOGLANTI: NO, SIR.

1 THE COURT: ANY OBJECTION TO THE
2 RELEASE OF THE WITNESS?

3 MRS. BIOGLANTI: NO, SIR.

4 MR. BARR: NO.

5 MR. MODICA: STATE CALLS DEPUTY
6 JARED BARDON.

7 Thereupon, JARED BARDON, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. MODICA:

10 Q STATE YOUR FULL NAME.

11 A DEPUTY JARED* BARDON.

12 Q CAN YOU TELL US, PLEASE, SIR, WHERE YOU'RE EMPLOYED, THE
13 LENGTH OF TIME YOU'VE BEEN SO EMPLOYED, AND IN WHAT
14 CAPACITY?

15 A YES, SIR. THE GEORGETOWN COUNTY SHERIFF'S OFFICE. I'VE
16 BEEN THERE FOR SEVEN MONTHS. I'M A ROAD PATROL DEPUTY.

17 Q AND WERE YOU SO EMPLOYED ON MARCH 23RD, 2006?

18 A YES, SIR.

19 Q AND DID YOU HAVE OCCASION IN THE EARLY MORNING HOURS,
20 SHORTLY AFTER 7:15 OR SO TO BECOME INVOLVED WITH THE
21 SEARCH FOR THE SUSPECT IN THIS CASE?

22 A YES, SIR.

23 Q AND INITIALLY DID YOU LOOK FOR A PARTICULAR DESCRIPTION
24 OF THE VEHICLE?

25 A YES, SIR, I DID.

1 Q AND WHAT WAS THAT DESCRIPTION?

2 A A BLUE IN COLOR HONDA ACCORD, 1980'S WITH FRONT END
3 DAMAGE.

4 Q NOW AT SOME POINT DID YOU SEE A VEHICLE FITTING THAT
5 DESCRIPTION?

6 A YES, I DID, SIR.

7 Q AND CAN YOU TELL US, SIR, AND IF YOU NEED ANYTHING TO
8 REFRESH YOUR RECOLLECTION, LET US KNOW. CAN YOU TELL
9 US AS DEFINITELY AS YOU CAN THE TIME FRAME UPON WHICH
10 YOU SAW A VEHICLE FITTING THAT DESCRIPTION? I TAKE IT
11 YOU'RE LOOKING AT SOMETHING TO REFRESH YOUR
12 RECOLLECTION?

13 A YES, SIR, THIS IS THE CAD SHEET FROM THE CENTRAL DISPATCH.

14 Q SOMEBODY ELSE HAS ALREADY EXPLAINED THAT, YOU CAN GO
15 AHEAD.

16 A ALSO, I REMEMBER SEEING THE VEHICLE AT AROUND 7:34 A.M.

17 Q NOW TELL US WHERE YOU WERE WHEN YOU SAW THAT VEHICLE.

18 A I WAS NORTH OF THE GEORGETOWN COUNTY DETENTION
19 CENTER ON HIGHWAY 51, BROWN'S FERRY ROAD IN THE AREA OF
20 COL. COLE* DRIVE. THE VEHICLE WAS TRAVELING NORTH ON
21 HIGHWAY 51. I WAS TRAVELING SOUTH.

22 Q YOU WERE GOING THE OPPOSITE WAY GOING TOWARDS
23 GEORGETOWN?

24 A YES, SIR.

25 Q THAT CAR WAS HEADED OUT OF TOWN ON 51?

1 A YES, SIR.

2 Q WHAT CAUGHT YOUR EYE ABOUT THIS VEHICLE?

3 A THE FRONT END DAMAGE AT THE TIME. IT SEEMS WE WERE
4 LOOKING FOR A VEHICLE THAT MATCHED IT PERFECT, BUT THE
5 FRONT END DAMAGE AS IT WAS COMING TOWARD ME WAS VERY
6 APPARENT ON THE FRONT OF THE VEHICLE, AND THAT'S WHAT
7 CAUGHT MY EYE.

8 Q WHAT DID YOU DO?

9 A I TURNED AROUND ON THE VEHICLE AS IT PASSED ME, IN THE
10 VICINITY OF COL. COLE DRIVE. I ACTIVATED MY BLUE LIGHTS TO
11 TRY AND STOP THE VEHICLE, AT WHICH TIME THE VEHICLE DID
12 NOT STOP. A PURSUIT ENSUED, ME TRAVELING NORTH FOR A
13 NUMBER OF MILES ON BROWN'S FERRY ROAD, TURN ON TO
14 OAKLAND ROAD, MY BLUE LIGHTS AND SIREN ACTIVATED THE
15 WHOLE TIME, SIR. WE STOPPED ON OAKLAND ROAD AT THE
16 ADDRESS OF IS WHERE THE PURSUIT
17 STOPPED.

18 Q NOW I TAKE IT YOU HAVE TO TURN AROUND TO FOLLOW THIS
19 VEHICLE?

20 A YES, SIR.

21 Q AND THAT TOOK YOU A LITTLE WHILE TO DO THAT?

22 A I WOULD SAY I NEVER LOST SIGHT OF THE VEHICLE. THE
23 VEHICLE NEVER GOT FAR AWAY. BUT, YES, SIR, IT DID TAKE ME
24 JUST A FEW SECONDS.

25 Q NOW WAS THE CAR THAT YOU WERE TRAVELING IN EQUIPPED

1 WITH SOME TYPE OF DEVICE THAT'S ACTIVATED UPON
2 ADMISSION OF THE BLUE LIGHTS AND SIREN?

3 A YES, SIR, A CAMERA SYSTEM IN A PATROL VEHICLE. IT COMES
4 ON WHEN YOU ACTIVATE YOUR ROTATING LIGHTS, YOUR BLUE
5 LIGHTS ON TOP OF YOUR CAR.

6 Q AND CAN YOU TELL US THE DEPUTY SHERIFF THAT HAD YOUR
7 CAR PRIOR TO YOU?

8 A YES, SIR, DEPUTY JOHN MCGANN*.

9 Q AND DO YOU KNOW WITH REGARD TO THE VIDEO, WAS THERE A
10 VIDEO IN FACT MADE OF THIS CAR CHASE THAT YOU'VE
11 DESCRIBED TO OUR JURY?

12 A YES, SIR.

13 Q AND WHEN YOU SEE THAT VIDEO DOES IT INDICATE YOUR NAME
14 ON THE VIDEO OR ANOTHER OFFICER'S NAME?

15 A ANOTHER OFFICER'S NAME, HOWEVER THE CAR NUMBER ON THE
16 VIDEO, 252, WAS MY CAR, THE CAR I WAS DRIVING.

17 Q WHO WAS THE OTHER OFFICER WHOSE NAME APPEARS THERE?

18 A DEPUTY JOHN MCGANN.

19 Q I'M SHOWING YOU A BOX WITH A VHS CASSETTE IN IT, I'M
20 REMOVING THE VHS CASSETTE AND HANDING IT TO YOU; IT
21 INDICATES STATE'S EXHIBIT NUMBER 88 FOR IDENTIFICATION
22 AND I'LL ASK YOU IF YOU RECOGNIZE THE VHS?

23 A YES, SIR.

24 Q AND WHAT DO YOU RECOGNIZE IT AS BEING?

25 A THIS IS A COPY OF THE CHASE, THE PURSUIT ON THAT DAY.

1 Q NOW HAVE YOU HAD AN OPPORTUNITY TO WATCH THAT VIDEO?

2 A YES, SIR.

3 Q AND IS IT, IN FACT, AN EXACT DUPLICATE OF THE VIDEO THAT
4 ORIGINALLY WAS DONE FROM YOUR VEHICLE?

5 A YES, SIR, IT IS.

6 Q IT HASN'T BEEN ALTERED, DELETED, OR CHANGED IN ANY
7 FASHION?

8 A NO, SIR.

9 MR. MODICA: YOUR HONOR, AT THIS
10 TIME I WOULD MOVE STATE'S EXHIBIT NUMBER 88 INTO
11 EVIDENCE AND WE'D ASK TO PUBLISH IT.

12 THE COURT: WHAT SAYS THE
13 DEFENSE?

14 MR. BARR: NO OBJECTION, JUDGE.
15 (STATE'S EXHIBIT NO. 88 ADMITTED INTO EVIDENCE.)

16 THE COURT: YOU MAY PUBLISH IT TO
17 THE JURY.

18 (AT THIS TIME THE VIDEO TAPE WAS PLAYED)

19 BY MR. MODICA:

20 Q I WANT TO ASK YOU A COUPLE THINGS ABOUT THE VIDEO SO
21 OUR JURY UNDERSTANDS. WE ARE OBSERVING BUT NOT
22 HEARING ANY SOUND. AT THE TIME THAT WE'RE OBSERVING
23 BUT NOT HEARING SOUND, CAN YOU TELL OUR JURY WHETHER
24 OR NOT YOUR BLUE LIGHTS AND SIREN WAS ON?

25 A YES, SIR, THE BLUE ACTIVATES THE CAMERA. SO WHENEVER

1 YOU SEE ANYTHING ON THE VIDEO THE BLUE LIGHTS ARE ON
2 AND THE SIREN. I HAVE TO ACTIVATE THE SIREN, BUT THE
3 CAMERA IS ACTIVATED BY THE BLUE LIGHTS.

4 Q WHY IS THERE A DELAY BETWEEN THE TIME THAT WE'RE
5 WATCHING AND THEN WE BEGIN TO HEAR THINGS?

6 A SIR, THE OLD CAMERA SYSTEM, THERE IS A MIKE PAK IN MY BELT
7 THAT YOU ACTUALLY HAD TO ACTIVATE WITH YOUR HAND.
8 AND IN THE HEAT OF THE MOMENT YOU KIND OF FORGET
9 SOMETIMES TO TURN IT ON. THE NEW SYSTEMS, WHEN THE
10 BLUE LIGHTS COME ON THE AUDIO COMES ON. BUT THAT'S WHY
11 THERE'S A SLIGHT DELAY; I HAVEN'T YET TURNED IT ON WITH
12 MY HAND.

13 Q YOU DID, IN FACT, TURN IT ON?

14 A YES, SIR.

15 Q WHEN YOU GIVE A CODE, I BELIEVE 10-0?

16 A YES, SIR.

17 Q WHAT DOES THAT CODE MEAN?

18 A CHASE IN PROGRESS.

19 Q AND CAN YOU TELL US WHEN YOU RADIOED THE 10-0?

20 A YES, SIR, S65, WHICH IS MY UNIT NUMBER BY THE CAD GOES 10-
21 0 ON THAT VEHICLE AT 7:35 A.M., 58 SECONDS.

22 Q NOW IN THE VIDEO THE ROUTE THAT YOU'RE TRAVELING - LET
23 ME BACK UP FOR A MOMENT - CAN YOU TELL US AS YOU'RE
24 CHASING THE DEFENDANT, WHAT IS THE MAXIMUM SPEED THAT
25 HE REACHED?

1 A I WOULD SAY NO FASTER THAN 75.

2 Q WHAT IS THE POSTED SPEED LIMIT THERE?

3 A 55 MILES AN HOUR, SIR.

4 Q AND FOR THE RECORD, CAN YOU IDENTIFY THE DEFENDANT HERE
5 FOR OUR JURY IN THE COURTROOM, IF YOU SEE HIM?

6 A YES, SIR, THE GENTLEMAN WITH THE YELLOW SHIRT ON AT THE
7 DEFENSE TABLE.

8 Q NOW, FROM THE TIME THAT YOU PUT ON THE BLUE LIGHTS AND
9 SIRENS, WE SEE IN THE VIDEO TAPE, UNTIL THE TIME THAT THE
10 VEHICLE STOPPED IN THE DRIVEWAY, AS WE SAW IN THE VIDEO,
11 WERE THERE PLACES FOR THE DEFENDANT TO HAVE PULLED
12 OVER?

13 A YES, SIR.

14 Q WITH SAFETY TO HIMSELF AND YOURSELF?

15 A YES, SIR.

16 Q NOW AS YOU'RE GOING DOWN THAT ROAD YOU WERE
17 TRAVELING WHEN YOU TURNED AROUND, WHAT DIRECTION ON
18 HIGHWAY 51 ARE YOU TRAVELING?

19 A BEFORE I TURNED AROUND?

20 Q NO, AFTER YOU TURNED AROUND.

21 A NORTHBOUND.

22 Q NOW YOU COMMUNICATE THE DIRECTION YOU'RE TRAVELING
23 AND WHERE YOU'RE TURNING, CORRECT?

24 A YES, SIR, I DID.

25 Q AND IF I'M NOT MISTAKEN, YOU INDICATE YOU'RE TAKING A

1 RIGHT ON OAKLAND?

2 A YES, SIR.

3 Q AT THE INTERSECTION OF HIGHWAY 51 AND OAKLAND THERE'S
4 A CHURCH THERE ON THE RIGHT-HAND SIDE?

5 A YES, SIR, THERE IS.

6 Q AND YOU CONTINUED TO TURN RIGHT AND CONTINUED DOWN
7 THAT ROADWAY?

8 A YES, SIR.

9 Q AS DEPICTED IN THE VIDEO?

10 A YES, SIR.

11 Q NOW CAN YOU TELL US USING YOUR CAD SHEET WHAT TIME DID
12 YOU COMMUNICATE THAT THE PERSON WAS EITHER STOPPED OR
13 IN CUSTODY? AND IF THERE'S A DIFFERENCE, YOU LET US
14 KNOW, PLEASE, SIR.

15 A SIR, THE CAR ACTUALLY STOPPED AT THE ADDRESS ON
16 OAKLAND ROAD, I BELIEVE AT 7:37 A.M. AND 38 SECONDS.
17 1067 TIME, WHICH IS OUR "SUBJECT IN CUSTODY CODE" WAS
18 AT 7:39 A.M., THREE SECONDS.

19 Q NOW, AFTER THE DEFENDANT WAS TAKEN INTO CUSTODY WAS
20 ANYTHING DONE WITH THE DEFENDANT'S VEHICLE?

21 A SIR, ONCE THE SUBJECT WAS IN CUSTODY WE DO AN INVENTORY
22 OF THE VEHICLE, WHICH MEANS WE GO INSIDE THE VEHICLE AND
23 MAKE SURE THERE'S NO WEAPONS, NO BOMBS, OR ANYTHING
24 LIKE THAT THAT COULD HURT THE PUBLIC. WE LOG ANYTHING
25 OF MAJOR VALUE IN THE VEHICLE ON TO A TOW SHEET. AND

1 THAT'S BASICALLY WHAT WE DID. THE VEHICLE WAS TOWED
2 TO OUR IMPOUND LOT.

3 Q TO WHAT IMPOUND LOT?

4 A THE GEORGETOWN COUNTY SHERIFF'S OFFICE IMPOUND LOT.
5 IT'S LOCATED BESIDE THE GEORGETOWN COUNTY DETENTION
6 CENTER.

7 Q FOR PURPOSES OF FOLLOW-UP INVESTIGATION?

8 A YES, SIR.

9 Q AND WHAT, IF ANYTHING, DID YOU DO TO SECURE THE FACT
10 THAT THERE WAS NO TAMPERING WITH THAT VEHICLE IN
11 BETWEEN THE TIME THAT IT WAS IN YOUR CUSTODY, TOWED,
12 AND TAKEN TO THE IMPOUND LOT?

13 A SIR, ANYBODY -- THERE WAS SOME SUBJECTS IN THE HOUSE
14 NEXT DOOR, AND AT ONE POINT WE HAD TO TELL EVERYBODY
15 NOT TO COME NEAR THE VEHICLE.

16 Q THAT'S FINE, BUT WHAT I'M INTERESTED IN IS WHAT DID YOU DO
17 TO SECURE THE VEHICLE ITSELF, THE TOWING OF THE VEHICLE,
18 AND MAKING SURE THAT NOTHING WAS DONE BETWEEN THE
19 TIME YOU STOPPED THE VEHICLE AND THE TIME IT GOT TO THE
20 IMPOUND YARD?

21 A BY SEARCHING THE VEHICLE, LOCKING THE VEHICLE, MAINTAIN
22 FOCUS ON IT THE ENTIRE TIME, LIKE WE SAW IT FROM THE TIME
23 WE STOPPED AND SEARCHED THE VEHICLE AND UNTIL IT WAS
24 TOWED TO THE IMPOUND YARD.

25 Q HOW DID YOU DO THAT, HOW DID YOU DO SPECIFICALLY IN

1 REGARD WHEN IT WAS TOWED?

2 A MY PARTNER, RUSSELL GOODALL,* AT ANY POINT THE CAR WAS
3 NEVER OUT OF OUR SIGHTS. WE KEPT CONSTANT VISUAL
4 CONTACT WITH THE CAR AT ALL TIMES.

5 Q FOLLOWED IT?

6 A YES.

7 Q FOLLOWED THE TWO TRUCK?

8 A YES, SIR, ALL THE WAY TO THE DETENTION CENTER.

9 Q WHERE THE IMPOUND YARD IS?

10 A YES, SIR.

11 Q FROM THE TIME THAT YOU STOPPED THE VEHICLE UNTIL THE
12 TIME THAT IT WAS PLACED WITHIN THE IMPOUND YARD, WAS IT,
13 OTHER THAN WHAT YOU INDICATED ABOUT SEARCHING THE
14 VEHICLE, WAS IT DISTURBED IN ANY WAY, ALTERED, CHANGED,
15 MESSED WITH?

16 A NO.

17 Q WHO WAS THE OTHER OFFICER THAT ASSISTED YOU IN THE
18 ARREST OF THE DEFENDANT?

19 A THAT WOULD BE DEPUTY ELI LEONARD. I'M SORRY, HE WAS THE
20 DEPUTY WHO ACTUALLY HANDCUFFED THE SUBJECT AND WAS
21 PRESENT WHEN WE PUT HIM INTO CUSTODY.

22 MR. MODICA: THANK YOU VERY MUCH.

23 ANSWER ANY QUESTIONS COUNSEL MIGHT HAVE FOR YOU.

24 CROSS EXAMINATION BY MR. BARR:

25 Q HOW DID YOU GET INTO THE TRUNK IN THE VEHICLE?

1 A THE KEYS WERE IN THE VEHICLE, SIR. WE OPENED THE TRUNK
2 WITH THE KEYS.

3 Q AND WHO OPENED IT UP?

4 A DEPUTY GOODALL, WHO WAS ALSO ON THE SCENE.

5 Q AND WHERE DID HE GET THE KEYS FROM?

6 MR. MODICA: OBJECTION, YOUR
7 HONOR, AS TO RELEVANCY.

8 THE COURT; WHAT'S THE RELEVANCE,
9 COUNSEL? OVERRULED, THE COURT WILL ALLOW IT, GO AHEAD.

10 BY MR. BARR:

11 Q WHERE'D HE GET THE KEYS FROM?

12 A THE IGNITION OF THE VEHICLE, SIR.

13 Q NOW I ASSUME THAT HE GOT THE KEYS AFTER HE TOOK MR.
14 COHENS INTO CUSTODY?

15 A YES, SIR, AFTER WE TOOK HIM INTO CUSTODY.

16 Q JUST REACHED IN THERE AND GOT THEM OUT?

17 A YES, SIR, THEN WE INVENTORIED THE VEHICLE.

18 Q NOW, NEITHER ONE OF YOU HAD A SEARCH WARRANT, DID YOU?

19 A NO, SIR.

20 Q PARDON ME?

21 A NO, SIR.

22 Q NOW WHEN MR. COHENS TURNED AROUND YOU TOLD HIM DON'T
23 LOOK AT YOU OR ELSE YOU'D SHOOT HIM. WHY DIDN'T YOU
24 WANT HIM TO LOOK AT YOU?

25 A SIR, IF WE HAVE TO HANDCUFF HIM, IF I PERSONALLY DID IT, WE

1 WANT THE SUBJECT LOOKING AWAY FROM US SO HE DOESN'T
2 SEE US COMING WHEN WE GO TO HANDCUFF HIM. THAT'S A
3 STANDARD PROCEDURE.

4 Q WELL, I MEAN HE WAS LAYING DOWN ON THE GROUND SOME 15,
5 20 FEET FROM YOU?

6 A THAT'S JUST WHAT WE'RE TAUGHT TO DO, SIR.

7 Q NOW, ARE YOU FAMILIAR WITH THIS OAKLAND COMMUNITY
8 AREA?

9 A YES, SIR, I AM.

10 Q AND WOULD IT BE FAIR TO SAY THE APPROXIMATE DISTANCE
11 FROM HIGHWAY 51 TO THE RESIDENCE WHERE MR. COHENS
12 TURNED HIS VEHICLE IN WAS A LITTLE LESS THAN THREE-
13 TENTHS OF A MILE, WOULD YOU AGREE WITH THAT?

14 A I DON'T KNOW, I'D PROBABLY SAY AROUND A HALF A MILE,
15 MAYBE MORE THAN THAT.

16 Q ABOUT HALF A MILE? IF IT TURNED OUT TO MEASURE LESS THAN
17 THREE-TENTHS WOULD THAT SURPRISE YOU?

18 A I'M REALLY NOT SURE, SIR.

19 Q BUT CERTAINLY YOU'RE NOT SUGGESTING IT WAS ANY GREATER
20 OR LESS THAN WHAT WAS ACTUALLY DEPICTED ON THAT
21 VIDEO, DO YOU?

22 A THAT'S AN ACCURATE DESCRIPTION IN MY OPINION, SIR.

23 Q NOW, WHERE WAS THE - YOU INDICATED THAT WHEN YOU
24 INITIALLY SAW THE VEHICLE THAT YOU EXPECTED THAT COULD
25 BE MR. COHENS, YOU WERE AT SOME LANDMARK, STREET, DO

1 YOU RECALL WHERE THAT WAS?

2 A YES, SIR.

3 Q WHERE WAS THAT?

4 A COL. COLE DRIVE.

5 Q BIG GREEN SIGN ON THE RIGHT?

6 A I BELIEVE IT 'S A BLUE STREET SIGN.

7 Q NOW HAVE YOU HAD OCCASION TO MEASURE THE DISTANCE
8 FROM COL. COLE DRIVE TO THE INTERSECTION OF OAKLAND
9 ROAD AND HIGHWAY 51?

10 A NO, SIR.

11 Q YOU DON'T KNOW HOW FAR IT IS?

12 A NO, SIR.

13 Q BUT YOU WOULD AGREE THAT IT WOULD CERTAINLY BE NO
14 GREATER OR NO LESS THAN WHAT'S ACTUALLY DEPICTED ON
15 THIS VIDEO TAPE?

16 A NO, SIR, THAT'S AN ACCURATE DESCRIPTION OF THE PURSUIT.

17 Q BUT OF COURSE THE VIDEO TAPE DOES NOT INDICATE WHERE
18 COL. COLE DRIVE IS, DOES IT?

19 A NO, SIR, I DON'T BELIEVE YOU CAN SEE THE STREET ON THE SIDE
20 OF THE ROAD.

21 Q IT'S HARD TO SEE IT ON THAT VIDEO TAPE.

22 A YES, SIR.

23 Q NOW YOU MENTIONED IN RESPONSE TO A QUESTION THAT MR.
24 MODICA ASKED YOU, YOU WERE TALKING ABOUT ACTIVATING
25 THE BLUE LIGHT AND THE SIREN. AND I THINK THAT YOU SAID

1 SOMETHING TO THE EXTENT THAT THEY BOTH ARE ACTIVATED
2 IN CONJUNCTION WITH EACH OTHER?
3 A NO, SIR, BLUE LIGHTS ARE SEPARATE FROM THE SIREN.
4 Q SEPARATE?
5 A YES, SIR.
6 Q SO THEY'RE NOT ACTIVATED TOGETHER?
7 A NO, SIR, THEY'RE SEPARATE.
8 Q WHAT ACTUALLY ACTIVATES THE BLUE LIGHT?
9 A THE BLUE LIGHT IS ACTIVATED BY A SWITCH WHICH THE
10 CAMERA IS TIED INTO THAT SWITCH. THE CAMERA IS ACTIVATED
11 WHEN I HIT MY BLUE LIGHTS.
12 Q SO THE ACTIVATION OF THE CAMERA IS CONTROLLED
13 MANUALLY BY YOU?
14 A YES, SIR.
15 Q AND WHAT ACTIVATES THE SIREN?
16 A I DO, SIR, BY A SWITCH ON MY CONSOLE.
17 Q CONTROLLED MANUALLY BY YOU?
18 A YES, SIR.
19 Q NOW YOU EXPLAINED TO MR. MODICA THAT YOU DID NOT PRESS
20 THE BUTTON BECAUSE IT JUST DID NOT OCCUR TO YOU?
21 A WHICH BUTTON, SIR?
22 Q TO ACTIVATE THE SIREN.
23 A SIR, THE SIREN WAS ACTIVATED,
24 Q OR THE BLUE LIGHT.
25 A I BELIEVE I WAS TALKING ABOUT THE AUDIO ON MY BELT.

1 Q WELL, I'M TALKING ABOUT WHERE AT LEAST WE CAN HEAR IT
2 ON THIS VIDEO.

3 A YES, SIR, NOT FOR THE FIRST FEW SECONDS. WHEN YOU HEAR IT
4 IS WHEN I TURN IT ON, MY MICROPHONE.

5 Q YOU DON'T TURN ON ONE WITHOUT TURNING ON THE OTHER, DO
6 YOU?

7 A NO, SIR, BOTH OF THEM WILL COME ON AT SOME POINT. IT'S
8 ALL MANUAL, EVERYTHING'S MANUAL.

9 Q WELL I NOTICED THAT YOU DID DRIVE FOR A WHILE, AN
10 APPRECIABLE AMOUNT OF TIME, AND WE DIDN'T HEAR
11 ANYTHING, WE JUST SAW YOU BEHIND THE VEHICLE.

12 A YES, SIR, THE BLUE LIGHTS WERE ON, AND THE SIREN, NOT MY
13 AUDIO WHENEVER YOU DIDN'T HEAR IT.

14 Q AS I UNDERSTAND IT YOU WERE INITIALLY TRAVELING EAST
15 WHEN YOU ENCOUNTERED MR. COHENS?

16 A THAT'S TOWARD GEORGETOWN, SIR. SOUTH OR EAST.

17 Q SOUTH OR EAST. HE WAS TRAVELING WEST, IN THE OPPOSITE
18 DIRECTION.

19 A THE OPPOSITE DIRECTION, YES, SIR.

20 Q NOW WHEN YOU MET HIM YOU SAY YOU HAD TO TURN AROUND.

21 A YES, SIR.

22 Q AND DID YOU WRITE AN INCIDENT REPORT, TOO?

23 A YES, SIR, MY SUPPLEMENTAL SHOULD BE ON THE SECOND PAGE.

24 Q IT SAYS, IS IT TRUE THAT YOU INDICATED - DO YOU HAVE A
25 COPY?

1 A YES, SIR.

2 Q AND I BELIEVE YOU DESCRIBED WHAT WE SAW IN THIS VIDEO AS
3 SAYING YOU INITIATED THE TRAFFIC STOP, THE VEHICLE FAILED
4 TO STOP, AND A POLICE VEHICLE PURSUIT ENSUED; IS THAT
5 CORRECT?

6 A YES, SIR.

7 Q AND WHAT YOU HAVE SHOWN US ON THE VIDEO INSOFAR AS
8 YOU APPREHENDING MR. COHENS?

9 A YES, SIR.

10 Q NOW I HEARD YOU ASKING HIM WHY DIDN'T HE STOP. DID YOU
11 ASK HIM THAT?

12 A YES, SIR, I DID.

13 Q AND WHAT DID HE TELL YOU?

14 A HE DIDN'T SAY ANYTHING, SIR.

15 Q DID HE APPEAR TO BE SCARED?

16 A HE DIDN'T APPEAR TO BE SCARED TO ME, NO, SIR.

17 Q DID HE SAY ANYTHING?

18 A AFTER I READ HIM HIS RIGHTS HE DIDN'T SAY ANYTHING
19 PERTAINING TO THE VEHICLE PURSUIT OR ANYTHING ELSE.

20 Q NOW I NOTICE YOU DIDN'T ASK HIM WHETHER OR NOT HE
21 HEARD THE SIREN OR SAW THE BLUE LIGHT.

22 A I DID NOT, SIR.

23 Q AND I NOTICED THAT YOU DIDN'T ASK HIM WHETHER OR NOT
24 HIS WINDOWS WERE WOUND UP OR WOUND DOWN?

25 A NO, SIR.

1 Q DO YOU KNOW WHETHER THEY WERE WOUND UP OR DOWN?

2 A I BELIEVE THEY WERE UP.

3 Q NOW WHEN YOU INITIALLY TURNED AROUND AND GAVE CHASE
4 TO MR. COHENS, WAS THERE ANYTHING BETWEEN YOUR VEHICLE
5 AND HIS?

6 A NO, SIR.

7 Q NOW, OF COURSE, THE VIDEO DID NOT SHOW WHAT, IF
8 ANYTHING, TOOK PLACE PRIOR TO THE TIME THAT YOU
9 ACTIVATED IT, CAN IT?

10 A NO, SIR.

11 Q NOW TELL ME, OFFICER, REALLY, ARE YOU TELLING THE LADIES
12 AND GENTLEMEN OF THIS JURY TODAY THAT YOU HAVE AN
13 INDEPENDENT RECOLLECTION OF DRIVING 75?

14 A I REMEMBER TELLING DISPATCH LOOKING AT MY SPEEDOMETER
15 WE WERE DOING 70 AT ONE POINT, I WOULD SAY NO FASTER
16 THAN 75 THAT WE TRAVELED.

17 Q YOU TOLD THAT TO DISPATCH, YOU SAID?

18 A YES, SIR. I TOLD IT TO MY SUPERVISOR, I HAVE TO ADVISE HER
19 OF MY SPEED AS WE GO EITHER FASTER OR SLOWER.

20 Q NOW, OF COURSE, IN A PROSECUTION FOR FAILURE TO STOP FOR
21 BLUE LIGHT, WOULD YOU NOT AGREE THAT THAT KIND OF
22 INFORMATION WOULD CERTAINLY BE SOMETHING THAT YOU
23 WOULD FIND USEFUL IN THE PROSECUTION, WOULD IT NOT BE?

24 A THE SPEED?

25 Q YES, SIR.

1 A NO, SIR, I DON'T BELIEVE SO.

2 Q HOW LONG HAVE YOU BEEN A POLICE OFFICER?

3 A TWO YEARS AND ABOUT SEVEN MONTHS.

4 Q WHAT DID YOU DO BEFORE YOU WERE WITH GEORGETOWN
5 COUNTY?

6 A I WAS A COLLEGE STUDENT. OH, BEFORE I WENT
7 GEORGETOWN?

8 Q YES, SIR.

9 A I WAS A POLICE OFFICER IN THE CITY OF LIBERTY, SOUTH
10 CAROLINA IN PICKENS COUNTY AT THE MUNICIPAL POLICE
11 DEPARTMENT.

12 Q CITY OF LIBERTY IN PICKENS COUNTY?

13 A YES, SIR.

14 Q HOW LONG DID YOU DO THAT?

15 A I WAS THERE FOR A YEAR AND A HALF.

16 Q AND OF COURSE YOU HAVE BEEN TO SCHOOL, TO SLED AND
17 EVERYTHING NOW?

18 A YES, SIR.

19 Q TO THE TRAINING AND ALL OF THAT?

20 A YES, SIR.

21 Q AND THEY DID NOT TELL YOU ANYTHING ABOUT THE SPEED OF
22 A VEHICLE IN A SITUATION WHERE YOU WERE PURSUING A
23 VEHICLE FOR FAILURE TO STOP FOR A BLUE LIGHT IN THE
24 INSTRUCTION MANUAL?

25 A NO, SIR, AS LONG AS THE CHASE REMAINS SAFE. IF THE VEHICLE

1 IS NOT STOPPING, IT SHOULDN'T MATTER WHAT THE SPEED IS.

2 IF THEY'RE NOT STOPPING, THEY'RE FAILING TO STOP.

3 Q HAVE YOU PROSECUTED ANY OF THESE BEFORE?

4 A FAILURE TO STOP FOR A BLUE LIGHT, SIR?

5 Q YES.

6 A YES, SIR, I HAVE. BUT THE SUBJECT PLED GUILTY, IT WASN'T A
7 TRIAL.

8 Q SO THIS IS YOUR FIRST TRIAL FOR THAT CHARGE?

9 A FIRST ONE.

10 MR. BARR: I HAVE NO FURTHER
11 QUESTIONS.

12 THE COURT: IS THERE REDIRECT?

13 REDIRECT EXAMINATION BY MR. MODICA:

14 Q JUST ONE QUESTION; THE IDEA BEHIND, AS YOU SAID, FAILURE
15 TO STOP FOR A BLUE LIGHT IS NOT HOW FAST THE VEHICLE IS
16 GOING, IT'S THAT IT IS NOT STOPPING?

17 A YES, SIR, ONCE THE BLUE LIGHT IS ACTIVATED IF THE VEHICLE
18 DOES NOT STOP, THAT'S FAILURE TO STOP FOR A BLUE LIGHT.

19 MR. MODICA: THANK YOU.

20 THE COURT: YOU MAY STEP DOWN.

21 YOU'RE FREE TO LEAVE IF YOU WISH. YOU'RE NOT REQUIRED TO,
22 BUT YOU MAY LEAVE.

23 MR. BARR: JUDGE, HOLD IT, I'VE GOT
24 ONE OTHER QUESTION.

25 THE COURT: ONLY IF IT'S ON THE

1 ISSUE---

2 MR. BARR: IT'S NOT BEYOND THE
3 SCOPE. I CAN ASK IT RIGHT HERE. YOU WOULD AGREE THAT
4 THE SPEED OF THE VEHICLE WOULD TELL YOU SOMETHING
5 ABOUT WHETHER OR NOT THE DRIVER WAS POTENTIALLY
6 TRYING TO LOSE YOU, WOULDN'T YOU?

7 THE WITNESS: NO, SIR.

8 MR. BARR: YOU DON'T THINK SO?

9 THE WITNESS: IF HE IS NOT STOPPING---

10 MR. MODICA: YOU'RE GOING TO HAVE
11 TO SPEAK UP.

12 THE COURT: COUNSEL, I'M GOING TO
13 HAVE TO END THAT CONVERSATION THERE BECAUSE WE CAN'T
14 PICK IT UP WITH THE MICROPHONE. AND YOU'RE FREE TO GO,
15 SIR. ALL RIGHT, LET'S HAVE YOU COME AROUND AND WE'LL
16 TALK SCHEDULING ONE MOMENT.

17 (OFF-THE-RECORD CONFERENCE AT THE BENCH.)

18 THE COURT: ALL RIGHT, LADIES AND
19 GENTLEMEN, OUR NEXT WITNESS MAY BE MORE LENGTHY THAN
20 THE PREVIOUS ONE. WE'LL STOP NOW AND TAKE OUR 15
21 MINUTE BREAK FOR THE AFTERNOON. WE'LL LET YOU GO
22 OUTSIDE IF YOU WISH, PLEASE DON'T DISCUSS THE CASE. LET'S
23 EVERYONE REMAIN WHERE THEY ARE WHILE OUR JURY DEPARTS
24 THE COURTROOM.

25 (AT THIS TIME THE COURT RECESSED FOR A 15 MIN. BREAK)

1 THE COURT: ALL RIGHT, LADIES AND
2 GENTLEMEN, WELCOME BACK TO THE COURTROOM FROM YOUR
3 BREAK. MR. MODICA, ARE YOU READY FOR YOUR NEXT WITNESS?

4 Thereupon, MICHAEL THACKER,
5 being first duly sworn, testified as follows:

6 THE COURT: COUNSEL, BEFORE YOU
7 BEGIN LET ME SAY TO THE JURY; I HAD TOLD YOU PREVIOUSLY
8 THAT THE COURT HAD ENTERED A SEQUESTRATION ORDER,
9 MEANING THAT WITNESSES WERE SEQUESTERED IN ANOTHER
10 ROOM. THERE ARE EXCEPTIONS TO THAT SEQUESTRATION
11 ORDER; THE DEFENDANT, OF COURSE, BEING ALLOWED TO BE
12 PRESENT THROUGHOUT THE TRIAL, THE ALLEGED VICTIM BEING
13 ALLOWED TO BE PRESENT THROUGHOUT THE TRIAL , AND THE
14 PROSECUTING OFFICER OF THE CASE ALSO ALLOWED. AND
15 THAT'S WHY THIS WITNESS HAS BEEN PRESENT THROUGHOUT
16 THESE PROCEEDINGS. GO AHEAD, COUNSEL

17 DIRECT EXAMINATION BY MR. MODICA:

18 Q STATE YOUR FULL NAME.

19 A MICHAEL THACKER.

20 Q PLEASE TELL US WHERE YOU'RE EMPLOYED, IN WHAT CAPACITY,
21 AND THE LENGTH OF TIME YOU'VE BEEN SO EMPLOYED.

22 A I'M EMPLOYED WITH THE GEORGETOWN COUNTY SHERIFF'S
23 OFFICE. I WORK IN CRIMINAL INVESTIGATIONS DIVISION. I'VE
24 BEEN WORKING AT THE SHERIFF'S OFFICE FOR APPROXIMATELY
25 FIVE AND A HALF YEARS AND CURRENTLY I'M IN THE VIOLENT

1 CRIMES SECTION, OR THE CRIMES AGAINST PERSONS
2 INVESTIGATIVE UNIT.

3 Q NOW ON MARCH 23RD OF 2006 DID YOU HAVE OCCASION TO GO
4 TO THE WRECK SCENE NEAR THE DEBORDIEOU SIDE ON HIGHWAY
5 17 NORTH HERE IN GEORGETOWN COUNTY?

6 A YES, SIR.

7 Q AND WHEN YOU ARRIVED THERE DID YOU TAKE OVER AS THE
8 CRIME SCENE INVESTIGATOR?

9 A YES, SIR.

10 Q CAN YOU TELL OUR JURY WHETHER OR NOT YOU DID ANYTHING
11 IN REGARD TO SECURING THE WHITE SUV THAT WE'VE BEEN
12 TALKING ABOUT IN THIS CASE IN TERMS OF PRESERVING IT FOR
13 EVIDENCE AND FURTHER EVALUATION?

14 A FIRST I SPOKE WITH THE FIRE DEPARTMENT PERSONNEL THAT
15 WAS ON THE SCENE TO ENSURE THAT THE VEHICLE HAD BEEN
16 MADE SAFE FROM FIRES OR ANY FLARE-UPS. AT THAT TIME I
17 BEGAN WALKING THROUGH THE SCENE TO IDENTIFY ANYTHING
18 POTENTIALLY THERE.

19 Q I KNOW THAT. DID YOU DO ANYTHING TO THE SUV TO TAKE IT
20 AWAY FROM THE SCENE AFTER YOU DID YOUR WORK AT THE
21 CRIME SCENE? DID YOU DO ANYTHING WITH THE SUV TO TAKE
22 IT AWAY FROM THE SCENE OR FOR FURTHER EVALUATION AT
23 THE IMPOUND?

24 A YES, IT WAS TAKEN FROM THE WRECKER TO THE IMPOUND LOT
25 AT THE DETENTION CENTER. AND I HAD FOLLOWED THAT

1 VEHICLE TO KEEP THE CHAIN.

2 Q WHAT IF ANYTHING WAS DONE TO TRY AND NOT DISTURB THE
3 WRECK OF THE SUV---

4 MR. BARR: JUDGE, HE'S LEADING THE
5 WITNESS.

6 THE COURT: SUSTAINED.

7 BY MR. MODICA:

8 Q TELL OUR JURY THE PROCEDURE REGARDING TAKING THE SUV
9 FROM THE SCENE.

10 A WELL THIS VEHICLE IN PARTICULAR WAS UPSIDE DOWN. I HAD
11 TO ASK THE WRECKER DRIVER TO HAVE IT PUT BACK ON THE
12 RIGHT SIDE AND ASKED THEM TO DO THAT CAREFULLY TO
13 ENSURE THAT IT DIDN'T GET ANY DAMAGE TO IT, OR LIMIT
14 THAT, IF POSSIBLE. AT THAT TIME IT'D LOADED ON TO THE
15 WRECKER. I FOLLOW THAT WRECKER TO THE IMPOUND LOT
16 THAT'S AT THE DETENTION CENTER AND IT'S LOCKED IN THAT
17 IMPOUND LOT AT THAT TIME.

18 Q AND WHILE YOU WERE OBSERVING THIS PROCEDURE WAS CARE
19 TAKEN?

20 A YES, SIR.

21 Q NOW DID YOU HAVE OCCASION WHILE YOU WERE DOING YOUR
22 INVESTIGATION AT THE CRIME SCENE TO TAKE PHOTOGRAPHS
23 OF PORTIONS OF THE CRIME SCENE?

24 A I DID.

25 Q AND IN ADDITION DID YOU COLLECT SOME EVIDENCE?

1 A I DID, ALSO, YES, SIR.

2 Q WHAT I'M GOING TO DO IS I'M GOING TO ASK YOU TO GO
3 THROUGH PHOTOGRAPHS NUMBER 1 THROUGH 78, AND I WANT
4 YOU TO INDICATE TO OUR JURY WHETHER OR NOT YOU TOOK
5 THESE PHOTOGRAPHS.

6 A (WITNESS COMPLIES)

7 Q NOW WITH REGARD TO THE 78 PHOTOGRAPHS, WERE YOU THE
8 INDIVIDUAL WHO TOOK THE PHOTOGRAPHS?

9 A YES, SIR.

10 Q NOW, DO THE PHOTOGRAPHS DEPICT PORTIONS OF THE CRIME
11 SCENE?

12 A YES, SIR.

13 Q THOSE PHOTOGRAPHS THAT DEPICT PORTIONS OF THE CRIME
14 SCENE, DO THEY FAIRLY AND ACCURATELY DEPICT THOSE
15 PORTIONS OF THE CRIME SCENE, DO THEY FAIRLY AND
16 ACCURATELY DEPICT THOSE PORTIONS OF THE CRIME SCENE AS
17 IT EXISTED ON MARCH 23RD, 2006?

18 A YES.

19 Q DID YOU ALSO HAVE OCCASION TO TAKE SOME OF THE
20 EVIDENCE BACK TO YOUR LAB AT THE SHERIFF'S DEPARTMENT
21 AND PHOTOGRAPH THEM?

22 A YES, SIR.

23 Q THOSE PHOTOGRAPHS, DO THEY FAIRLY AND ACCURATELY
24 DEPICT PORTIONS OF ITEMS THAT WERE RECOVERED FROM THE
25 CRIME SCENE AS THEY EXISTED WHEN YOU TOOK THOSE

1 PHOTOGRAPHS?

2 A YES, SIR.

3 Q WERE THEY MANIPULATED, ALTERED, OR CHANGED IN ANY
4 FASHION?

5 A NO, SIR.

6 Q DID YOU ALSO TAKE THE PHOTOGRAPHS OF THE DEFENDANT'S
7 VEHICLE AND THE VICTIM'S VEHICLE AT THE GEORGETOWN
8 COUNTY IMPOUND LOT DURING A CERTAIN TIME PERIOD?

9 A YES, SIR.

10 Q AND DO THOSE PHOTOGRAPHS FAIRLY AND ACCURATELY DEPICT
11 PORTIONS OF THE DEFENDANT'S VEHICLE AND THE VICTIM'S
12 VEHICLE AS THEY EXISTED WHEN YOU TOOK THOSE
13 PHOTOGRAPHS?

14 A YES.

15 Q DID YOU IN ANY WAY ALTER THE DEFENDANT'S VEHICLE, OR THE
16 VICTIM'S VEHICLE, THE WHITE SUV, IN ANY FASHION?

17 A NO, SIR.

18 Q DID THERE COME A TIME THAT YOU REMOVED CERTAIN ITEMS
19 FROM THE DEFENDANT'S VEHICLE?

20 A YES, SIR.

21 Q AND THAT WAS DONE WHERE?

22 A THAT WAS DONE AT THE IMPOUND LOT.

23 Q AND THERE WAS PHOTOGRAPHS OF THAT VEHICLE ALONG WITH
24 THOSE ITEMS?

25 A YES, SIR.

1 Q AND OTHER THAN DOING THOSE THINGS, WAS THAT ALL THAT
2 WAS DONE TO THE DEFENDANT'S VEHICLE?

3 A AS FAR AS ITEMS REMOVED?

4 Q YES.

5 A THERE WAS SOME ITEMS REMOVED FROM THE VICTIM'S VEHICLE,
6 ALSO.

7 Q OTHER THAN REMOVING THOSE ITEMS, DID YOU DO ANYTHING
8 ELSE TO ALTER THE DEFENDANT'S VEHICLE OR THE VICTIM'S
9 VEHICLE?

10 A NOTHING OTHER THAN THE ITEMS THAT WERE COLLECTED AND
11 THE SAMPLES TAKEN.

12 MR. MODICA: AT THIS TIME I
13 WOULD MOVE ALL EXHIBITS NUMBER 1 THROUGH 78 INTO
14 EVIDENCE.

15 THE COURT: ARE THERE
16 OBJECTIONS TO ADMITTING STATE'S EXHIBITS 1-78, COUNSEL?

17 MR. BARR: I OBJECT IF HE'S
18 OFFERING THEM ALL AS ONE EXHIBIT.

19 THE COURT: NO, ALL 78
20 EXHIBITS MARKED NUMBER ONE THROUGH SEVENTY-EIGHT.

21 MR. BARR: I HAVE NO
22 OBJECTION.

23 THE COURT: IT'S GOING TO TAKE
24 A MOMENT, SO LET'S LET OUR COURT REPORTER MARK EACH OF
25 THOSE BEING IN EVIDENCE SO THERE'D BE NO QUESTION ABOUT

1 IT.

2 (STATE'S EXHIBITS 1-78 ADMITTED INTO EVIDENCE.)

3 THE COURT: ALL RIGHT, COUNSEL.

4 BY MR. MODICA:

5 Q STAND OVER THERE AND KIND OF FACE THIS WAY. NOW, THE
6 CRIME SCENE?

7 A YES, SIR.

8 Q CRIME SCENE?

9 A YES, SIR.

10 Q CRIME SCENE?

11 A YES, SIR.

12 Q NOW HAVE YOU SEEN THIS PHOTOGRAPH OF SKID MARKS?

13 A YES, SIR.

14 Q NOW DO YOU ALSO SEE HERE THE DEPARTURE OFF THE ROAD
15 TO THE RIGHT AND OWN INTO THE TREES, CORRECT?

16 A YES, SIR.

17 Q AS PART OF YOUR EVALUATION OF WHAT TRANSPIRED---

18 MR. BARR: OBJECTION, JUDGE. FOR
19 THE RECORD WE WOULD MOVE TO STRIKE THE LAST COUNSEL
20 WHICH WAS MADE BY COUNSEL, WHICH WAS TESTIMONY
21 CONCERNING EVIDENCE.

22 THE COURT: ALL RIGHT, COUNSEL,
23 PLEASE, AGAIN, DON'T LEAD AND DON'T TESTIFY, JUST SIMPLY
24 LET THE WITNESS TESTIFY. SUSTAINED. GO AHEAD.

25 BY MR. MODICA:

- 1 Q COULD YOU DESCRIBE FOR OUR JURY WHERE THE SKID MARKS
2 AND OTHER MARKS THAT ARE INDICATED, THEIR APPROXIMATE
3 RELATIONSHIP?
- 4 A THERE WERE TWO SETS, ONE SET THAT WAS DETERMINED TO BE
5 CAUSED BY THE VICTIM'S VEHICLE, AND ANOTHER SET HERE IN
6 FRONT OF THIS PATROL CAR.
- 7 Q HOW CLOSE ARE THOSE TWO MARKS?
- 8 A THEY ARE VERY CLOSE, PROBABLY, MAYBE A FOOT, TWO FOOT
9 MAXIMUM.
- 10 Q NEXT, CRIME SCENE?
- 11 A YES.
- 12 Q NEXT, WHAT IS THE RELEVANCE OF THE CRIME SCENE?
- 13 A THE CRIME SCENE.
- 14 Q WHAT'S THE RELEVANCE OF THE TREE?
- 15 A THIS IS THE TREE THAT THE VICTIM WAS DRIVING WHERE IT WAS
16 STRUCK.
- 17 Q NEXT ONE, CRIME SCENE?
- 18 A CRIME SCENE.
- 19 Q CLOSER UP OF THE TREE?
- 20 A CLOSE UP OF THE TREE.
- 21 Q NEXT?
- 22 A CRIME SCENE.
- 23 Q NEXT?
- 24 A CRIME SCENE.
- 25 Q WHAT WAY FACING, PLEASE?

1 A THIS IS A PICTURE TAKEN NORTHBOUND SIDE FACING SOUTH.
2 Q NEXT?
3 A CRIME SCENE.
4 Q NEXT, CRIME SCENE?
5 A YES, SIR
6 Q NEXT?
7 A CRIME SCENE.
8 Q WHAT PART OF THE SUV IS THAT, PLEASE?
9 A THIS IS A PIECE OF THE FRONT GRILL SECTION OF THE WHITE
10 BLAZER.
11 Q NEXT, CRIME SCENE?
12 A SAME.
13 Q NEXT, CRIME SCENE?
14 A SCENE.
15 Q NEXT?
16 A CRIME SCENE.
17 Q NEXT?
18 A THAT'S ALSO THE CRIME SCENE.
19 Q NEXT?
20 A CRIME SCENE.
21 Q WHAT PORTION OF THE VEHICLE IS THAT, PLEASE?
22 A THAT'S ON THE SIDE ON THE BACK BUMPER OF THE WHITE
23 BLAZER.
24 Q PASSENGER OR DRIVER'S SIDE?
25 A THIS ONE'S THE DRIVER'S SIDE.

1 Q NEXT?

2 A THAT'S ALSO ON THE SIDE, THE BACK BUMPER OF THE WHITE

3 BLAZER, BUT THAT'S ON THE DRIVER'S SIDE.

4 Q NEXT?

5 A THAT'S ALSO THE BACK BUMPER OF THE WHITE BLAZER ON THE

6 PASSENGER SIDE.

7 Q STATE'S EXHIBIT NUMBER 18 NEXT?

8 A SAME.

9 Q AND WHAT IS NUMBER ONE?

10 A NUMBER ONE, THAT IS A PIECE OF BLUE PLASTIC THAT WAS

11 RECOVERED AT THE SCENE.

12 Q NEXT, 19?

13 A THAT'S A CLOSE-UP OF THE SAME PIECE.

14 Q NUMBER 20?

15 A IS AGAIN A PIECE OF BLUE PLASTIC RECOVERED FROM THE

16 SCENE.

17 Q 21?

18 A THAT IS A CLOSE-UP OF THE SAME.

19 Q 22?

20 A THREE, FOUR, AND FIVE ARE ALL BLUE PLASTIC PIECES FROM

21 THE SCENE.

22 Q 23?

23 A CLOSE UP OF NUMBER THREE.

24 Q 24?

25 A CLOSE-UP OF NUMBER FOUR.

1 Q 25?

2 A CLOSE-UP OF NUMBER FIVE.

3 Q 26?

4 A THAT IS A PIECE OF BLUE PLASTIC RECOVERED FROM THE SCENE.

5 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER 85, I BELIEVE. CAN
6 YOU TELL US WHAT THAT IS, SIR?

7 A THIS IS ITEM NUMBER SIX, A PLASTIC PIECE RECOVERED FROM
8 THE SCENE.

9 Q LET THE RECORD REFLECT THAT THE WITNESS IS REMOVING IT.
10 WHO RECOVERED THIS FROM THE SCENE?

11 A I RECOVERED IT.

12 Q AND DID YOU PLACE IT INTO EVIDENCE?

13 A I DID.

14 Q AND IS IT IN THE SAME CONDITION AS IT WAS AS PICTURED IN
15 STATE'S EXHIBIT NUMBER 21 OR 22, THE PHOTOGRAPH? I'M
16 SORRY, STATE'S EXHIBIT NUMBER 26, THE PICTURE THAT WE SEE
17 NOW?

18 A YES.

19 MR. MODICA: YOUR HONOR, AT THIS
20 TIME I WOULD MOVE STATE'S EXHIBIT NUMBER 85 INTO
21 EVIDENCE.

22 THE COURT: WHAT SAYS THE
23 DEFENSE?

24 MR. BARR: YOUR HONOR, AT THIS TIME
25 WE WOULD OBJECT. I WOULD ASSUME THAT AT SOME POINT

1 THE STATE DOES HAVE SOME FORENSIC EXPERT THAT CAN
2 CONNECT THAT OBJECT.

3 THE COURT: BUT AT THIS JUNCTURE,
4 HAVING IDENTIFIED IT AT THE SCENE AND A PHOTOGRAPH OF IT
5 FROM THE SCENE, WITH THE TESTIMONY OF THE WITNESS I FIND
6 IT APPROPRIATE TO ADMIT IT INTO EVIDENCE.

7 (STATE'S EXHIBIT NO. 85 ADMITTED INTO EVIDENCE.)

8 BY MR. MODICA:

9 Q I'M SHOWING YOU WHAT'S MARKED AS STATE'S EXHIBIT NO. 86
10 AND ASK YOU TO LOOK THE CONTENTS OF IT. LET THE RECORD
11 REFLECT THAT THE WITNESS IS COMPLYING.

12 A (WITNESS COMPLIES.)

13 Q DO YOU RECOGNIZE OF STATE'S EXHIBIT NO. 87?

14 A YES.

15 Q AND WHAT DO YOU RECOGNIZE IT AS BEING?

16 A THIS IS ITEM NUMBER SEVEN RECOVERED FROM THE SCENE.

17 Q TAKEN INTO EVIDENCE?

18 A YES.

19 Q IS IT IN THE SAME CONDITION AS IT WAS WHEN YOU TOOK IT
20 INTO EVIDENCE BACK ON MARCH 23RD OF 2006?

21 A YES, SIR.

22 MR. MODICA: YOUR HONOR, AT THIS
23 TIME I WOULD MOVE STATE'S EXHIBIT NUMBER 86 INTO
24 EVIDENCE.

25 THE COURT: ANY OBJECTION?

1 MR. BARR: JUDGE, AGAIN, UNTIL THERE
2 IS SOME QUALIFIED PERSON THAT CAN CONNECT THIS BY WAY
3 OF MATERIALITY TO THIS INCIDENT, WE WOULD HAVE TO
4 OBJECT AT THIS POINT, YOUR HONOR.

5 THE COURT: SAME OBJECTION NOTED.
6 AND THE COURT ALLOWS IT IN TO EVIDENCE.

7 (STATE'S EXHIBIT NO. 86 ADMITTED INTO EVIDENCE.)

8 BY MR. MODICA:

9 Q STATE'S EXHIBIT NUMBER 29 , PLEASE, CAN YOU IDENTIFY
10 THAT?

11 A THAT IS A CLOSE-UP OF THE SAME ITEM, NUMBER SEVEN.

12 Q STATE'S EXHIBIT 30, WHAT'S THIS PHOTOGRAPH OF?

13 A THAT'S A PHOTOGRAPH OF THE DEFENDANT'S VEHICLE TAKEN
14 AT THE IMPOUND LOT.

15 Q WHAT I'D LIKE YOU TO DO IS TO CONCENTRATE ON THE TWO
16 AREAS THAT I'M POINTING TO HERE. COULD YOU TELL OUR JURY
17 WHETHER OR NOT YOU DID ANYTHING IN REGARDS TO THOSE
18 TWO AREAS THAT I JUST POINTED TO?

19 A BOTH OF THESE ITEMS HERE, AND ALSO THIS ITEM, AND THIS
20 ITEM HERE WERE BOTH COLLECTED BY MYSELF.

21 Q TAKEN OFF THE VEHICLE?

22 A YES, THEY WERE BOTH CONNECTED. THIS WAS ONLY
23 CONNECTED BY THE WIRING, WHICH WAS UNPLUGGED. AND THIS
24 PART OF THE BUMPER WAS CONNECTED BARELY BY THIS
25 SECTION AND IT PULLED OFF. BOTH OF THOSE ITEMS WERE

1 TAKEN OFF AND PLACED INTO EVIDENCE.

2 Q CAN WE GO TO STATE'S EXHIBIT NUMBER 31, THE
3 PHOTOGRAPH?

4 A THIS IS A CLOSE-UP OF THE SAME AREA, THIS BEING THE LIGHT
5 ASSEMBLY THAT I COLLECTED AND A PORTION OF THE BUMPER,
6 THAT WAS COLLECTED, ALSO.

7 Q EXHIBIT NUMBER 32, PHOTOGRAPH?

8 A THIS IS ITEM NUMBER NINE, WHICH IS THE LIGHT ASSEMBLY
9 WHICH WAS TAKEN FROM THE DEFENDANT'S VEHICLE.

10 Q I AM SHOWING YOU STATE'S EXHIBIT NUMBER 87 FOR
11 IDENTIFICATION, THE BROWN PAPER BAG WITH CONTENTS. I
12 ASK YOU TO REMOVE THE CONTENTS AND INDICATE TO THE
13 JURY WHETHER OR NOT YOU RECOGNIZE IT.

14 A THIS IS ITEM NUMBER NINE THAT I COLLECTED FROM THE
15 DEFENDANT'S VEHICLE.

16 Q HAS IT BEEN ALTERED, CHANGED, OR IS IT IN THE FASHION AS
17 WHEN YOU COLLECTED IT?

18 A SAME CONDITION.

19 MR. MODICA: AT THIS TIME I
20 WOULD MOVE STATE'S EXHIBIT NUMBER 87 INTO EVIDENCE.

21 THE COURT: SAME MATERIALITY
22 OBJECTION FROM THE DEFENSE?

23 MR. BARR: NO, IT CAME
24 DIRECTLY FROM THE VEHICLE.

25 (STATE'S EXHIBIT NO. 87 ADMITTED INTO EVIDENCE.)

1 BY MR. MODICA:

2 Q PHOTOGRAPH NUMBER 32.

3 A THAT IS ALSO NUMBER 10, THE PARTIAL BUMPER ASSEMBLY
4 FROM THE DEFENDANT'S VEHICLE THAT WAS REMOVED AT THE
5 IMPOUND.

6 Q I'M SHOWING YOU THESE STATE'S NUMBER 84 AND ASK YOU TO
7 REMOVE THE CONTENTS OF THE PAPERBAG AND INDICATE TO
8 OUR JURY WHETHER OR NOT YOU RECOGNIZE THE CONTENTS.

9 A THIS IS ITEM NUMBER 10 DEPICTED IN THE PICTURE.

10 Q AND ITEM NUMBER 10, WHERE WAS IT TAKEN FROM?

11 A THIS WAS TAKEN FROM THE FRONT DRIVER'S SIDE OF THE
12 DEFENDANT'S VEHICLE AT THE IMPOUND LOT.

13 Q AS YOU PREVIOUSLY TOLD OUR JURY FROM THE PREVIOUS
14 PICTURE?

15 A YES.

16 Q IS IT IN THE SAME CONDITION TODAY AS IT WAS WHEN IT WAS
17 REMOVED?

18 A YES, SIR.

19 MR. MODICA: AT THIS TIME I WOULD
20 MOVE STATE'S EXHIBIT NUMBER 84 INTO EVIDENCE.

21 THE COURT: WHAT SAYS DEFENSE?

22 MR. BARR: NO OBJECTION.

23 (STATE'S EXHIBIT NO. 84 ADMITTED INTO EVIDENCE.)

24

25 BY MR. MODICA:

1 Q PHOTOGRAPH NUMBER 34, PLEASE?

2 A THIS IS ITEM NUMBER SIX AND NUMBER TEN. THIS IS AT THE
3 SHERIFF'S OFFICE, BOTH ITEMS WERE PHOTOGRAPHED
4 TOGETHER.

5 Q JUST SO OUR JURY IS CLEAR, WHERE DID ITEM SIX COME FROM?

6 A NUMBER SIX WAS COLLECTED AT THE SCENE, HIGHWAY 17,
7 NORTHBOUND LANE. AND ITEM NUMBER TEN WAS COLLECTED
8 FROM THE DEFENDANT'S VEHICLE AT THE IMPOUND LOT.

9 Q PHOTOGRAPH 35, PLEASE?

10 A AGAIN, AS THE PREVIOUS PICTURES, THIS IS ITEMS NUMBER SIX
11 AND TEN. AND IN HERE I PUT THESE ITEMS TOGETHER.

12 A PHOTOGRAPH NUMBER 36?

13 A THIS IS THE SAME TWO ITEMS, NUMBER SIX AND TEN. HERE I
14 HAVE THEM TURNED THE PROPER WAY AND SHOWING THEM
15 WHERE THEY FIT TOGETHER.

16 Q AND PHOTOGRAPH NUMBER 37?

17 A THIS IS A PHOTOGRAPH OF THE DEFENDANT'S VEHICLE AT THE
18 IMPOUND LOT. THIS PICTURE WAS TAKEN SHOWING THE PART
19 OF THE BUMPER THAT WAS COLLECTED, AND ALSO SOME WHITE
20 TRANSFER THAT WAS ALONG WITH THE DAMAGE TO THE
21 VEHICLE HERE.

22 Q WHAT DO YOU MEAN BY TRANSFER?

23 A JUST WHITE TRANSFER, THE WHITE PAINT THAT IS ON THIS BLUE
24 VEHICLE---

25 MR. BARR: OBJECTION,

1 MR. MODICA: YOUR HONOR, THAT IS
2 WITHIN THE REALM OF ANYBODY BEING ABLE TO SEE IT APPEARS
3 TO BE WHITE PAINT.

4 THE COURT: COUNSEL, THAT WOULD
5 TEND TO BE WITHIN THE COMMON PURVIEW, AND I OVERRULE
6 YOUR OBJECTION. THAT'S FOR THE JURY TO DETERMINE
7 WHETHER THAT'S APPROPRIATE COMMENT. GO AHEAD.

8 BY MR. MODICA:

9 Q 38?

10 A THIS IS A CLOSE-UP OF THE DRIVER'S SIDE FRONT PANEL OF THE
11 DEFENDANT'S VEHICLE. THIS IS SOME DAMAGE TO THE VEHICLE
12 AND, AGAIN, SOME WHITE TRANSFER THAT APPEARS TO BE
13 WHITE PAINT.

14 Q STATE'S EXHIBIT 39, PHOTOGRAPH?

15 A THIS IS THE BACKSIDE VIEW OF THE DEFENDANT'S VEHICLE,
16 LOOKING AT ANY AREAS AND NONE NOTED AS HAVING
17 DAMAGE.

18 Q STATE'S EXHIBIT 40?

19 A THIS IS THE OTHER SIDE DEPICTING THE BACK SIDE OF THE
20 DEFENDANT'S VEHICLE, AND NO AREAS FOUND TO BE DAMAGED.

21 Q STATE'S EXHIBIT NUMBER 41, PHOTOGRAPH?

22 A THIS IS THE FRONT VIEW. HERE IT APPEARED THERE WAS
23 DAMAGE TO THE PASSENGER SIDE OF THE VEHICLE AS WELL AS
24 THIS WHITE TRANSFER ALONG THAT SIDE, ALSO.

25 Q 42?

- 1 A THIS IS A CLOSE-UP OF THE SAME SIDE OF THE VEHICLE
2 SHOWING DAMAGE TO THE SIDE OF THE CAR AND ALSO THE
3 TRANSFER.
- 4 Q 43?
- 5 A THIS IS A PHOTOGRAPH OF THE INTERIOR OF THE DEFENDANT'S
6 VEHICLE.
- 7 A 44?
- 8 A THIS IS ALSO A PHOTOGRAPH OF THE INTERIOR OF THE
9 DEFENDANT'S VEHICLE.
- 10 Q 45?
- 11 A THIS IS A CLOSE-UP OF THE FRONT PASSENGER SEAT OF THE
12 DEFENDANT'S VEHICLE.
- 13 Q NOW DID YOU HAVE AN OCCASION TO TAKE THIS INTO
14 EVIDENCE?
- 15 A THIS PAPERWORK WAS COLLECTED INTO EVIDENCE.
- 16 Q SHOWING YOU STATE'S EXHIBIT NUMBER 80 IN EVIDENCE AND
17 ASK YOU IF THAT'S A COPY OF ONE OF THE PAGES CONTAINED
18 WITHIN THE ITEMS THAT YOU TOOK AS EVIDENCE THAT IS
19 DEPICTED IN THE PHOTOGRAPH STATE'S EXHIBIT NUMBER 45?
- 20 A YES, SIR.
- 21 Q STATE'S EXHIBIT 46, A PHOTOGRAPH?
- 22 A THIS IS SHOWING ITEM 17, THIS IS THE PAPERWORK
23 PHOTOGRAPH FROM THE SHERIFF'S OFFICE.
- 24 Q STATE'S EXHIBIT 47, PHOTOGRAPH?
- 25 A THIS IS A PHOTOGRAPH OF THE PASSENGER SEAT OF THE

1 DEFENDANT'S VEHICLE, THIS IS THE CELL PHONE THAT WAS
2 COLLECTED. IT WAS OBSTRUCTED IN THE PREVIOUS PICTURE BY
3 THE PAPERWORK.

4 Q SHOWING YOU STATE'S EXHIBIT NUMBER 82, A MANILA
5 ENVELOPE; MAY I ASK YOU TO REMOVE THE CONTENTS AND
6 PLEASE INDICATE TO OUR JURY WHETHER OR NOT YOU
7 RECOGNIZE THE CONTENTS?

8 A YES.

9 Q WHAT DO YOU RECOGNIZE THAT AS BEING?

10 A THIS IS THE BLACK CELL PHONE AND CHARGER THAT I
11 COLLECTED FROM THE DEFENDANT'S VEHICLE.

12 Q IS IT IN THE SAME CONDITION AS YOU COLLECTED IT?

13 A YES, SIR.

14 MR. MODICA: AT THIS TIME I WOULD
15 MOVE STATE'S EXHIBIT NUMBER 82 INTO EVIDENCE.

16 MR. BARR: NO OBJECTIONS.

17 (STATE'S EXHIBIT NO. 82 ADMITTED INTO EVIDENCE.)

18 BY MR. MODICA:

19 Q NOW PLEASE TELL OUR JURY IN REGARD TO STATE'S EXHIBIT
20 NUMBER TWO, WHAT IF ANYTHING YOU DID TO DETERMINE
21 WHAT WAS THE LAST PHONE CALL MADE ON THIS PHONE PRIOR
22 TO THE DEFENDANT BEING APPREHENDED AND IT BEING TAKEN
23 INTO EVIDENCE BY YOU?

24 A THE CELL PHONE, I COLLECTED IT AND PLACED IT INTO
25 EVIDENCE. THE PHONE WAS NOT CHARGED AT THE TIME.

1 Q WHAT DID YOU DO?

2 A I ATTEMPTED TO CHARGE IT WITH THE CHARGER THAT WAS
3 WITH THE PHONE, BUT I WAS UNSUCCESSFUL. IT WOULD NOT
4 CHARGE THE PHONE.

5 Q WHAT DID YOU DO AFTER THAT?

6 A I WENT TO THE ALLTELL OFFICE IN GEORGETOWN AND THEY
7 GAVE ME THE PROPER CHARGE FOR THAT PHONE AND I
8 CHARGED IT.

9 Q AFTER CHARGING IT WHAT, IF ANYTHING, DID YOU DO WITH THE
10 PHONE?

11 A THE FIRST THING I DID WAS HIT THE RECALL BUTTON. NOW ON
12 SOME PHONES IT WOULD BE THE SAME BUTTON AS YOU WOULD
13 USE TO DIAL. AND IT SHOWED A PARTIAL NUMBER, WHICH WAS
14 STAR 67, AND I'LL HAVE TO LOOK AT MY NOTE TO KNOW THE
15 NUMBER SPECIFICALLY, BUT IT WAS AN INCOMPLETE NUMBER
16 THAT WAS ON THERE. AND I ALSO SEARCHED IT AND FOUND
17 THE LAST 10 NUMBERS DIALED AND FOUND NUMBER ALSO STAR
18 67, AND THE NUMBER THAT WAS LISTED BEHIND THAT WAS
19 ALSO THE SAME NUMBER AS THE VICTIM'S PHONE NUMBER. AND
20 THAT WAS A CALL PLACED AT APPROXIMATELY 7:12 A.M. ON
21 THE DATE OF THE INCIDENT.

22 Q NOW WHAT SIGNIFICANCE IS STAR 67?

23 A THE STAR 67 YOU CAN USE IT WITH CELL PHONES, ALSO WITH
24 HOME PHONES, ON BOTH SERVICES TO BLOCK YOUR NUMBER TO
25 THE PERSON THAT YOU ARE CALLING TO. IT WILL BLOCK IT AS

1 A PRIVATE NUMBER,

2 Q SO YOU CAN'T TELL WHO'S CALLING?

3 A CORRECT.

4 Q PHOTOGRAPH NUMBER 48?

5 A THAT IS ITEM 16, THE BLACK CELL PHONE.

6 Q STATE'S EXHIBIT NUMBER 49?

7 A THAT IS A PHOTOGRAPH OF THE TRUNK OF THE DEFENDANT'S
8 VEHICLE.

9 Q STATE'S EXHIBIT 50?

10 A THAT IS A PHOTOGRAPH AT THE IMPOUND LOT OF THE VICTIM'S
11 VEHICLE.

12 Q STATE'S EXHIBIT 51?

13 A THAT IS A PHOTOGRAPH OF THE UNDERSIDE BUMPER ASSEMBLY
14 OF THE VICTIM'S VEHICLE, THE FRONT BUMPER, NO DAMAGE TO
15 IT.

16 Q STATE'S EXHIBIT NUMBER 52?

17 A THAT IS A PHOTOGRAPH OF THE GRILL ASSEMBLY TO THE
18 VICTIM'S VEHICLE. THIS IS ALSO THE SAME PHOTOGRAPH AT
19 THE SCENE.

20 Q FROM YOUR OBSERVATIONS OF THE BUMPER THAT WAS
21 DEPICTED IN 51 AND THE GRILL DEPICTED IN 52, CAN YOU
22 INDICATE TO OUR JURY WHETHER IT APPEARED THAT THE WHITE
23 SUV HAD BEEN INVOLVED IN RAMMING OR HITTING?

24 A THERE WAS NO INDICATION---

25 MR. BARR: OBJECTION, YOUR HONOR.

1 THE COURT: ON WHAT BASIS,
2 COUNSEL?

3 MR. BARR: YOUR HONOR, THIS
4 WITNESS IS JUST SIMPLY NOT COMPETENT TO MAKE A
5 DETERMINATION WITHOUT THE KIND OF SCIENTIFIC TESTING
6 BEING DONE THAT'S REQUIRED TO MAKE THAT DETERMINATION.

7 THE COURT: WELL, COUNSEL,
8 ACTUALLY I BELIEVE THAT WOULD BE WITHIN THE PURVIEW OF
9 THE BELATED OPINION. I OVERRULE YOUR OBJECTION.

10 BY MR. MODICA:

11 Q CAN YOU ANSWER THAT QUESTION, PLEASE?

12 A AFTER INSPECTING THE GRILL AND THE UNDERSIDE OF THE
13 FRONT BUMPER, I SAW NO AREAS THAT WOULD DISPLAY ANY
14 DAMAGE OR ANY TRANSFER.

15 Q STATE'S EXHIBIT 53, PHOTOGRAPH?

16 A THAT IS A PHOTOGRAPH OF THE VICTIM'S VEHICLE AT THE
17 IMPOUND LOT.

18 Q STATE'S 54?

19 A THAT IS ALSO A PICTURE OF THE VEHICLE AT THE IMPOUND LOT
20 SHOWING THIS TO BE THE FRONT.

21 Q 55?

22 A THIS IS A PHOTOGRAPH OF THE DRIVER'S SIDE OF THE VICTIM'S
23 VEHICLE.

24 Q PLEASE INDICATE TO OUR JURY WHAT, IF ANY, SIGNIFICANCE
25 YOU SEE IN REGARD TO THE LOWER PORTION OF THE VEHICLE, IN

1 THE DRIVER AND PASSENGER'S SIDE?

2 A THIS PHOTOGRAPH OF THE DRIVER'S SIDE, THERE IS DAMAGE
3 AND ALSO TRANSFER, NOT ONLY ON THE BACK DOOR, BUT
4 ALSO UP THROUGH THE BOTTOM SIDE OF THE FRONT DOOR.

5 Q STATE'S 56?

6 A THIS IS A CLOSE UP VERSION OF THE BACKDOOR ON THE
7 DRIVER'S SIDE SHOWING DAMAGE AND TRANSFER ON TO THIS
8 PIECE OF MOLDING THAT WAS ON THE DRIVER'S SIDE
9 BACKDOOR.

10 Q I AM SHOWING YOU STATE'S EXHIBIT NUMBER 83 AND ASK THAT
11 YOU REMOVE THE CONTENTS. AND LET THE RECORD REFLECT
12 THE WITNESS IS COMPLYING.

13 A (WITNESS COMPLIES.)

14 Q DO YOU RECOGNIZE THE CONTENTS OF EXHIBIT NUMBER 83?

15 A YES.

16 Q WHAT DO YOU RECOGNIZE IT AS BEING?

17 A THIS IS THE PIECE OF MOLDING THAT WAS PULLED FROM THE
18 BACKDOOR OF THE DRIVER'S SIDE.

19 Q DOES STATE'S EXHIBIT NUMBER 83, OTHER THAN REMOVING IT,
20 IS IT IN THE SAME CONDITION IT WAS WHEN YOU REMOVED IT
21 BACK IN MARCH OF 2006?

22 A YES, SIR.

23 MR. MODICA: YOUR HONOR, AT THIS
24 TIME I WOULD MOVE STATE'S EXHIBIT NUMBER 83 INTO
25 EVIDENCE.

1 THE COURT: OBJECTIONS?

2 MR. BARR: NO.

3 (STATE'S EXHIBIT NO. 83 ADMITTED INTO EVIDENCE.)

4 BY MR. MODICA:

5 Q I SHOW YOU NOW STATE'S EXHIBIT 57, DO YOU RECOGNIZE
6 THAT?

7 A THAT IS A PHOTOGRAPH OF THE SAME PIECE OF MOLDING
8 MARKED AT THE SHERIFF'S OFFICE.

9 Q STATE'S EXHIBIT, PHOTOGRAPH NUMBER 58?

10 A THAT IS A CLOSE UP OF THE SAME PIECE OF MOLDING.

11 Q STATE'S EXHIBIT PHOTOGRAPH 59?

12 A THAT IS ANOTHER PHOTOGRAPH OF THE VICTIM'S VEHICLE FROM
13 THE DRIVER'S SIDE.

14 Q STATE'S EXHIBIT NUMBER 60?

15 A THIS IS A PHOTOGRAPH OF THE VICTIM'S VEHICLE ON THE
16 PASSENGER BACKSIDE SHOWING DAMAGE TO THE BACKSIDE OF
17 THE VEHICLE AS WELL AS IN THIS AREA HERE, AND THE TIRE
18 WELL.

19 Q STATE'S EXHIBIT PHOTOGRAPH 61?

20 A THIS IS A PHOTOGRAPH OF THE VICTIM'S VEHICLE TAKEN FROM
21 THE PASSENGER'S SIDE OF THE FRONT.

22 Q 62?

23 A THAT IS THE PASSENGER'S SIDE.

24 Q 63?

25 A THIS IS A PHOTOGRAPH OF THE PASSENGER'S SIDE BACK ABOVE

1 THE TIRE WELL. THIS PART OF THE VEHICLE RIGHT HERE IS A
2 BLUE PAINT TRANSFER PLACE ON THE WHITE PAINT.

3 Q 64?

4 A A CLOSEUP OF THE BLUE TRANSFER ON THAT SAME PART OF
5 THE VEHICLE.

6 Q WHAT, IF ANYTHING, DID YOU DO RELATIVE TO WHAT IS
7 DEPICTED IN STATE'S EXHIBITS 63 AND 64?

8 A I SCRAPED THIS ITEM HERE TO COLLECT THE BLUE TRANSFER
9 FROM THE WHITE.

10 Q STATE'S 65 PHOTOGRAPH?

11 A THIS IS SHOWING WHAT CONDITION THAT SAME BLUE TRANSFER
12 AREA WAS AFTER I SCRAPED IT TO REFLECT THE BLUE
13 TRANSFER.

14 Q 66?

15 A AGAIN, THAT'S THE SAME PHOTOGRAPH CLOSEUP OF THE SAME
16 AREA.

17 Q 67?

18 A THIS IS THE SAME AREA HERE A LITTLE BIT FURTHER BACK TO
19 SHOW IN WHAT AREA IT IS LOCATED.

20 Q 68?

21 A THIS IS THE SAME SIDE OF THE PASSENGER BACK. UP HERE
22 WOULD BE WHERE THE BLUE TRANSFER WAS. DOWN HERE
23 THERE WAS SOME BLACK TRANSFER THAT COULD HAVE
24 POSSIBLY BEEN RELATED TO THE TIRE.

25 Q 69?

- 1 A THIS IS THE BACK PASSENGER SIDE TIRE, BLUE TRANSFER ON
2 THE TIRE ITSELF.
- 3 Q 70?
- 4 A THIS IS A CLOSEUP OF THE SAME AREA TRANSFER.
- 5 Q 71?
- 6 A THIS AGAIN IS A CLOSEUP OF THE BLUE TRANSFER OF THE TIRE.
- 7 Q 72?
- 8 A AND THIS IS A PHOTOGRAPH, THIS PART OF THE RIM AREA OF
9 THAT SAME TIRE. UP HERE IS A BLUE TRANSFER AND THIS IS
10 WHERE THIS METAL HAS BEEN IN CONTACT WITH SOMETHING
11 WHERE SOMETHING SCRAPED IT DOWN.
- 12 Q 73?
- 13 A THIS IS A PHOTOGRAPH OF THE INTERIOR DRIVER'S SIDE. THIS IS
14 THE DRIVER'S SEAT RIGHT HERE.
- 15 Q 74?
- 16 A THIS IS A PHOTOGRAPH TAKEN FROM THE PASSENGER WINDOW
17 FRONT THROUGH THE DRIVER'S SIDE.
- 18 Q 75?
- 19 A AND THIS IS TAKEN OF THE DRIVER'S SIDE.
- 20 Q STEERING WHEEL?
- 21 A NO, NOT THE STEERING WHEEL, BUT OF THE SUNVISOR. THIS IS
22 THE SUNVISOR HANGING DOWN ON THE DRIVER'S SIDE.
- 23 Q 76?
- 24 A ANOTHER PHOTOGRAPH SHOWING THE INTERIOR FRONT AND
25 ALSO THE ROOF HAD CAVED IN, AND WHAT DEPTH.

1 Q 77?

2 A THIS IS THE VICTIM'S POCKETBOOK AS WELL AS THE CELLPHONE
3 THAT WAS COLLECTED FROM THE VEHICLE.

4 Q 78?

5 A THIS IS THE VICTIM'S CELLPHONE COLLECTED OUT OF THE
6 FLOORBOARD OF THE VEHICLE.

7 Q THANK YOU. YOU CAN HAVE A SEAT. NOW RELATIVE TO THE
8 DEFENDANT'S CELLPHONE WHICH IS IN EVIDENCE, TELL US
9 ABOUT THE NUMBERS. IF YOU NEED TO, LOOK AT YOUR NOTES
10 TO REFRESH YOUR RECOLLECTION. DOES LOOKING AT THOSE
11 NOTES REFRESH YOUR MEMORY?

12 A UH-HUH. WHAT WAS DISPLAYED ON THE LAST NUMBERS DIALED
13 WAS STAR 67 833868. THAT WAS WHAT WAS ON THAT
14 SECTION.

15 Q CAN YOU REPEAT THE NUMBER ONE MORE TIME, PLEASE?

16 A STAR 67 833868.

17 Q SOME OF THESE ITEMS WERE SUBMITTED TO SLED FOR
18 PURPOSES OF ANALYSIS; IS THAT CORRECT?

19 A YES, SIR.

20 Q AMONG THEM WOULD HAVE INCLUDED STATE'S EXHIBIT NUMBER
21 84, THE BUMPER?

22 A YES.

23 Q YOUR ITEM NUMBER EIGHT, STATE'S EXHIBIT NUMBER 83?

24 A YES.

25 Q YOUR ITEM NUMBER SIX, STATE'S EXHIBIT NUMBER 85?

1 A YES.

2 Q STATE'S EXHIBIT NUMBER 87, YOUR ITEM NUMBER NINE?

3 A YES.

4 Q AND STATE'S EXHIBIT NUMBER 86, YOUR ITEM NUMBER SEVEN?

5 A YES.

6 Q WERE THERE OTHER ITEMS ALSO SUBMITTED TO SLED, THAT WE
7 HAVEN'T COVERED, SUCH AS PAINT SCRAPINGS?

8 A YES.

9 Q ALL OF THESE ITEMS THAT YOU HAVE NOW IDENTIFIED THAT
10 HAVE COME BACK FROM SLED, THEY ARE IN FACT FROM THE
11 SAME - THE ONES THAT WE'VE GOT OVER HERE NOW IN COURT
12 IN FRONT OF OUR JURY - THOSE ARE ALL THE SAME, THEY LOOK
13 THE SAME, THEY HAVE NOT BEEN ALTERED, OR CHANGED IN
14 ANY FASHION?

15 A CORRECT.

16 MR. MODICA: THANK YOU, ANSWER
17 ANY QUESTIONS COUNSEL MIGHT HAVE FOR YOU.

18 CROSS EXAMINATION BY MR. BARR:

19 Q OFFICER THACKER, THE PHOTOGRAPHS THAT YOU TOOK, AND
20 YOU TOOK QUITE A FEW OF THEM, THEY'VE ALL BEEN ADMITTED
21 INTO EVIDENCE, I BELIEVE; EXHIBITS NUMBER ONE THROUGH 78;
22 YOU TOOK ALL OF THOSE PHOTOGRAPHS?

23 A YES, SIR.

24 Q AND IS IT FAIR TO SAY THAT AS FAR AS THE PHOTOGRAPHS,
25 WHAT YOU REPORTED BY WAY OF THE PHOTOGRAPHS, WHAT

1 YOU REPORTED BY WAY OF THE PHOTOGRAPHS, IN EACH ONE
2 WAS EXACTLY WHAT YOU SAW WHEN YOU ARRIVED AT THE
3 SCENE?

4 A YES, SIR.

5 Q THE ITEM NUMBERS THAT YOU COLLECTED, PHYSICAL ITEMS,
6 YOU CATALOGED THEM AND A NUMBER OF THEM YOU SENT TO
7 SLED FOR FORENSIC ANALYSIS; IS THAT CORRECT?

8 A YES, SIR.

9 Q WOULD IT BE FAIR TO SAY WITH RESPECT TO THE PURPOSE OF
10 SENDING THESE ITEMS TO SLED, THAT THE PURPOSE IS TO MAKE
11 SOME SCIENTIFIC DETERMINATION OF EITHER THE CHARACTER OF
12 THE OBJECT OR WHERE THEY POSSIBLY CAME FROM?

13 A YES, SIR.

14 Q NOW WOULD YOU NOT AGREE THAT WITH RESPECT TO THE
15 CHARACTER OF ANY TANGIBLE MATERIAL YOU CANNOT
16 DETERMINE THE CHEMICAL COMPOSITION OF THAT TANGIBLE
17 MATERIAL BY SIMPLY LOOKING AT IT, CAN YOU?

18 A DEPENDING ON WHAT THE ITEM IS.

19 Q WELL, THERE'S SOMETHING THAT YOU KEEP REFERRING TO AS
20 TRANSFER.

21 A YES, SIR.

22 Q AND IN ONE INSTANCE YOU EVEN CALLED IT PAINT.

23 A YES, SIR.

24 Q NOW, YOU DON'T DENY THAT THE TRUTH OF THE MATTER IS
25 WHATEVER YOU REFER TO AS TRANSFER IS SIMPLY SOMETHING

1 Q THAT YOU DON'T KNOW WHAT IT IS; IS THAT CORRECT?

2 A WELL WHAT I REFER TO IT AS, IT DOESN'T BELONG ON THAT
3 PARTICULAR ITEM.

4 Q DO YOU KNOW CHEMICALLY WHAT THE SUBSTANCE IS?

5 A I DO NOT

6 Q ALL RIGHT, SIR. AND THE SUBJECT ITEM REFERRED TO AS PAINT
7 COULD BE PAINT, IT COULD BE CHALK, COULD IT NOT?

8 A YES, SIR.

9 Q ALL RIGHT. NOW, BUT OF COURSE IF YOU REALLY WANT TO
10 FIND OUT IF IT WAS PAINT, OR WHATEVER IT WAS, AND YOU
11 COLLECT IT AND SEND IT SO SLED, THEY COULD ANALYZE IT
12 AND TELL YOU EXACTLY WHAT IT IS?

13 A YES, SIR.

14 Q ALL RIGHT, SIR. NOW AS FAR AS THE TANGIBLE ITEMS THAT
15 YOU COLLECTED, I BELIEVE YOU COLLECTED ITEMS 1 THROUGH
16 14 THAT YOU ACTUALLY SENT TO SLED; IS THAT CORRECT?

17 A I WOULD HAVE TO LOOK AT MY SHEET TO ACCURATELY TELL
18 YOU THAT.

19 Q TAKE A LOOK AT IT, PLEASE.

20 A WHAT WAS SENT WAS ITEMS 1 -7, 8, 9, & 10. AND THEN ALSO
21 THERE WAS FOUR PAINT SAMPLES TAKEN. THERE WAS A WHITE
22 NOME,* FROM THE VICTIM'S VEHICLE, A BLUE NOME* FROM THE
23 DEFENDANT'S VEHICLE, WHITE TRANSFER OR WHITE SUBSTANCE
24 FROM THE DEFENDANT'S VEHICLE, AND BLUE FROM THE VICTIM'S
25 VEHICLE.

- 1 Q NOW YOU'VE HAD OCCASION AT SOME POINT DURING THE
2 COURSE OF YOUR INVESTIGATION TO TAKE A LOOK AT THE SLED
3 LAB REPORT, HAVEN'T YOU?
- 4 A ON WHICH ONE, NOW?
- 5 Q ON ALL THE ITEMS THAT YOU SENT TO SLED.
- 6 A YES, SIR.
- 7 Q YOU'RE FAMILIAR WITH THAT; WHEN I SAY LAB REPORT THERE
8 ARE A NUMBER OF ITEMS 1 -6 AND 7 -14, YOU'RE FAMILIAR
9 WITH THOSE?
- 10 A I CAN LOOK. I DON'T HAVE THE PAPER IN FRONT OF ME.
- 11 Q HERE IT IS.
- 12 A THIS ITEM HERE IS NOT MY ITEM NUMBERS.
- 13 Q YOU DIDN'T SEND THOSE?
- 14 A THIS IS ITEM 1 -6 WERE MINE, 7, 8 & 9. ITEM 11, 12, 13, & 14,
15 THAT'S NOT EVIDENCE ITEM NUMBER FOR ME, THAT'S ITEMIZED
16 FOR THE EVIDENCE FOR THE SHEET.
- 17 Q WHO SENT THAT TO SLED?
- 18 A I DID.
- 19 Q SO YOU ARE FAMILIAR WITH IT, I MEAN 11 - 14 IS NOTHING
20 THAT YOU'RE NOT FAMILIAR WITH? THEY'RE JUST ITEMS THAT
21 YOU SENT TO SLED TO BE ANALYZED IN CONNECTION WITH THIS
22 INVESTIGATION?
- 23 A CORRECT.
- 24 Q NOW IN ADDITION TO ALL OF THE ITEMS ON THIS SLED REPORT,
25 THERE ARE ALSO ADDITIONAL ITEMS THAT YOU SENT TO SLED

- 1 TO BE ANALYZED, IS IT FAIR TO SAY THAT'S CORRECT?
- 2 A THE ITEMS THAT ARE LISTED AND WHAT I'VE TOLD YOU OFF OF
- 3 MY SHEET.
- 4 Q THAT YOU JUST WENT OVER WITH MR. MODICA.
- 5 A THE ITEMS THAT'S LISTED ON THAT RETURN, YES, SIR.
- 6 Q NOW WHENEVER YOU FOUND AN ITEM AT THE CRIME SCENE, DID
- 7 YOU MAKE A CATALOG OR SOME NOTE AS TO WHERE YOU
- 8 FOUND IT?
- 9 A IT WAS CATALOGED BY THE PHOTOGRAPH.
- 10 Q THE PHOTOGRAPHS?
- 11 A YES, SIR.
- 12 Q SO EVERYTHING THAT YOU FOUND YOU TOOK A PHOTOGRAPH
- 13 OF?
- 14 A YES, SIR.
- 15 Q AND IF YOU WANTED, IF I WANTED TO ASK YOU WHERE YOU
- 16 FOUND ITEM NUMBER 10, YOU WOULD HAVE TO LOOK AT YOUR
- 17 PHOTOGRAPHS IN ORDER TO ANSWER THAT QUESTION FOR ME?
- 18 A YES, SIR.
- 19 Q ALL RIGHT. NOW WITH RESPECT TO WHAT YOU FOUND WHEN
- 20 YOU WENT TO THE - WELL, I DON'T MIND CALLING IT THE CRIME
- 21 SCENE - AREA THAT WAS CORDED* OFF BY WHAT I BELIEVE IT
- 22 HAS BEEN TESTIFIED TO, AND I DON'T KNOW IF IT'S TRUE OR
- 23 FALSE, BY THE FIRE DEPARTMENT. NOW WHEN YOU GOT THERE
- 24 THE YELLOW TAPE WAS UP; IS THAT RIGHT?
- 25 A YELLOW TAPE AROUND THE VEHICLE, YES, SIR.

1 Q NOW OF COURSE -- HOW MUCH TIME TRANSPIRED BETWEEN THE
2 TIME OF THE AUTOMOBILE CRASH AND THE TIME THAT YOU
3 ARRIVED ON THE SCENE?

4 A WELL, I CAN LOOK AT MY NOTES AND TELL YOU WHEN I
5 ARRIVED.

6 Q TELL ME WHEN YOU GOT THERE.

7 A THAT WAS AT APPROXIMATELY 7:44 A.M.

8 Q NOW WHEN YOU GOT THERE AT 7:44---

9 A WELL, EXCUSE ME, I'M INCORRECT, THAT'S WHEN I WAS
10 REQUESTED TO COME THERE; I ARRIVED AT 7:58.

11 Q YOU GOT THERE AT 7:58?

12 A YES, SIR.

13 Q AND IF I REMEMBER CORRECTLY, AND LOOK AT YOUR FILE, THE
14 911 CALL WENT IN AT 7:21. I BELIEVE WE SUBSEQUENTLY
15 CALCULATED IT TO BE ABOUT 18 MINUTES SINCE THAT TIME
16 BEFORE MR. COHENS WAS TAKEN INTO CUSTODY. SO YOU GOT
17 THERE - AND WHEN I SAY GOT THERE, I'M TALKING FROM THE
18 911 CALL, 7:21 TO 7:58, SUBTRACT AND YOU'LL GET THE
19 DIFFERENCE. AND THAT'S THE TIME IT TOOK YOU TO GET
20 THERE, IS THAT CORRECT?

21 A WELL, I WASN'T NOTIFIED UP UNTIL THAT FIRST TIME THAT I
22 GIVE YOU.

23 Q WELL, WHEN YOU GOT THERE DO YOU KNOW WHETHER OR NOT
24 ANYTHING HAD BEEN MOVED?

25 A I WAS ADVISED NO.

1 Q I'M NOT TALKING ABOUT HOW YOU WERE ADVISED, I'M TALKING
2 ABOUT WHAT YOU KNOW. NOW IS IT FAIR TO SAY THAT YOU
3 DON'T KNOW WHETHER ANYTHING HAD BEEN TAMPERED WITH?

4 A I DON'T BELIEVE I UNDERSTAND WHAT YOU'RE ASKING, SIR.

5 Q I AM ASKING YOU, DO YOU KNOW WHETHER THE SCENE HAD
6 BEEN TAMPERED WITH; YES OR NO?

7 A NO, I WOULDN'T KNOW.

8 Q IN OTHER WORDS, EVEN THOUGH YOU HAVE CATALOGED ITEMS
9 BASED ON THEIR LOCATION AND YOU HAVE TAKEN
10 PHOTOGRAPHS OF THAT, IT REALLY DOESN'T MEAN A WHOLE
11 LOT BECAUSE YOU DON'T KNOW WHETHER OR NOT THE ITEMS
12 WERE MOVED; ISN'T THAT CORRECT?

13 A I'M NOT SURE I UNDERSTAND WHAT YOU'RE ASKING.

14 Q NOW, IN ADDITION, AS FAR AS NOT KNOWING WHETHER OR NOT
15 THEY WERE MOVED, UNLESS IT'S SOME ITEM THAT YOU HAVE A
16 CHEMICAL ANALYSIS REPORT ON FROM SLED - AND YOU HAVE
17 THE SLED MAN HERE, ISN'T HE?

18 A I IMAGINE SO, YES, SIR.

19 Q SO UNLESS YOU'VE GOT SOME KIND OF CHEMICAL ANALYSIS
20 FROM HIM, EVERY PIECE OF ITEM THAT YOU COLLECTED, THAT
21 YOU TOOK PHOTOGRAPHS OF, IT THE WIND MIGHT HAVE BLOWN
22 IT UP, IT MIGHT HAVE BEEN THERE TEN DAYS, TWO DAYS,
23 TWENTY DAYS. THE SIMPLE FACT OF THE MATTER IS YOU DON'T
24 KNOW, DO YOU?

25 A WELL, I CAN ACCURATELY TELL YOU THAT THOSE ITEMS I

1 COLLECTED---

2 Q TELL ME WHETHER YOU KNOW OR NOT.

3 A I CAN TELL YOU NO, I CAN TELL YOU THEY HAVE NOT BEEN---

4 Q ---TELL ME THE TRUTH---

5 A ---NO, THEY HAVEN'T---

6 Q ---DO YOU NOT---

7 MR. MODICA: YOUR HONOR, CAN HE
8 ANSWER A QUESTION?

9 THE COURT: SUSTAIN THE OBJECTION.
10 COUNSEL, HE IS TRYING TO TELL YOU.

11 BY MR. BARR:

12 Q DO YOU KNOW?

13 A YES.

14 Q AND YOU WEREN'T THERE TO KNOW WHETHER IT WAS
15 TAMPERED WITH, WERE YOU?

16 A PRIOR TO MY ARRIVAL, NO.

17 Q AND YOU DON'T KNOW CERTAINLY HOW THEY GOT THERE
18 BECAUSE YOU WEREN'T THERE WHEN THEY WERE PLACED
19 THERE, DO YOU?

20 A I WAS NOT THERE WHEN THEY WERE PLACED THERE.

21 Q SO THE SIMPLE FACT OF THE MATTER IS YOU DON'T KNOW HOW
22 LONG THEY'VE BEEN THERE OR WHERE THEY CAME FROM, DO
23 YOU?

24 A WELL I CAN ACCURATELY TELL YOU THAT THE ITEMS WERE
25 COLLECTED FROM THE HIGHWAY AND ALSO FROM THE SIDE OF

1 THE ROAD, NOT IN THE DITCH AREA BUT RIGHT ADJACENT TO
2 THE ROADWAY.

3 Q AND YOU DON'T KNOW WHO HAD CAME ALONG BEFORE YOU
4 AND TOOK IT OUT OF THE HIGHWAY AND MOVED IT, OR WHO
5 BROUGHT IT THERE IN THEIR POCKET AND PUT IT DOWN THERE,
6 OR WHEREVER IT CAME FROM, DO YOU?

7 A I COULDN'T ANSWER FROM BEFORE I ARRIVED THERE, NO, SIR.

8 Q ALL RIGHT. NOW LET ME GET TO THE STANDARDS. NOW IN
9 TERMS OF CRIMINAL INVESTIGATION, AND AS A CRIMINAL
10 INVESTIGATOR IN PREPARING ITEMS TO BE ANALYZED
11 SCIENTIFICALLY, YOU'RE FAMILIAR WITH WHAT IS REFERRED TO
12 AS A STANDARD, AREN'T YOU?

13 A A STANDARD?

14 Q YES, SIR.

15 A YES, SIR.

16 Q NOW WOULD YOU NOT AGREE THAT A STANDARD IS ESSENTIAL,
17 AN ITEM THAT YOU KNOW THE CHEMICAL NATURE OF, AND YOU
18 WANT TO CONDUCT SOME CHEMICAL TESTS TO DETERMINE
19 WHETHER OR NOT SOME OTHER ITEM MAY BE RELATED TO
20 WHAT YOU ALREADY KNOW ABOUT THE STANDARD; IS THAT
21 CORRECT?

22 A A STANDARD WOULD BE A KNOWN SAMPLE.

23 Q YES, SIR. ALL RIGHT. WAS ANYBODY ELSE RESPONSIBLE FOR
24 COLLECTING EVIDENCE, ANYBODY ELSE WITH THE SHERIFF'S
25 DEPARTMENT, FOR COLLECTING EVIDENCE AT THIS ALLEGED

1 CRIME SCENE, OTHER THAN YOU?

2 A I WAS THERE, IT WAS ME.

3 Q YOU HAD NOT ASSISTANTS, YOU WERE THE MAN IN CHARGE?

4 A I WAS THERE, YES, SIR.

5 Q NOW IN ADDITION TO WORKING AT THE CRIME SCENE, YOU ALSO
6 MANAGED THE CASE FILE IN THIS CASE?

7 A I WAS ASSIGNED THE CASE, YES, SIR.

8 Q YOU ARE AWARE, AND WERE AWARE, UNDER STATEMENTS THAT
9 WERE MADE BY MRS. COHENS CONCERNING HER VEHICLE BEING
10 BUMPED IN THE BACK BY MR. COHENS VEHICLE; YOU WERE
11 AWARE OF THAT, WEREN'T YOU?

12 A YES, SIR.

13 Q AS AN INVESTIGATOR, WOULD YOU NOT AGREE THAT IN ORDER
14 TO CONFIRM WHETHER OR NOT THERE WAS CONTACT BETWEEN
15 THE FRONT OF MR. COHENS VEHICLE AND THE REAR OF MRS.
16 COHENS VEHICLE, IT WOULD BE HELPFUL TO COLLECT SOME
17 PAINT SAMPLES OF ANY YOU FOUND?

18 A FROM WHERE?

19 Q FROM THE REAR OF---

20 A ---FROM THE REAR OF HER VEHICLE---

21 THE COURT: GENTLEMEN, ONE
22 AT A TIME. MY COURT REPORTER'S TRYING TO TAKE THIS
23 DOWN. ONE AT A TIME.

24 BY MR. BARR:

25 Q FROM THE REAR OF MRS. COHENS VEHICLE AS WELL AS THE

1 FRONT BUMPER OF MR. COHENS VEHICLE?

2 A WELL I WOULD HAVE. THEY WERE LOOKED AT, AND THERE WAS
3 NONE FOUND THROUGH ANY TRANSFER---

4 Q ---DON'T TELL US WHAT ANYBODY ELSE TOLD YOU.

5 MR. MODICA: JUDGE---

6 THE COURT: MR. MODICA, SIT DOWN,
7 YOU DON'T NEED TO ADD TO THIS. COUNSEL, DO NOT CUT OFF
8 THE WITNESS ONE MORE TIME. I'M GOING TO TELL YOU DO NOT
9 CUT OFF THIS WITNESS AGAIN WHEN HE'S ANSWERING YOU, MY
10 COURT REPORTER SIMPLY CANNOT TAKE IT DOWN. DO NOT CUT
11 OFF THE WITNESS. NOW ASK YOUR NEXT QUESTION.

12 MR. BARR: I APOLOGIZE IF I'VE CUT HIM
13 OFF. IT'S NOT MY INTENT TO CUT HIM OFF.

14 THE WITNESS: I CAN ANSWER THE
15 QUESTION, YOUR HONOR.

16 BY MR. BARR:

17 Q PARDON ME?

18 A YOU CAN ANSWER THE QUESTION.

19 Q DID YOU UNDERSTAND THE QUESTION?

20 A I UNDERSTOOD IT, YES, SIR.

21 Q DO I NEED TO REPEAT IT?

22 A NO, SIR, YOU DO NOT. IF I COULD JUST ANSWER IT, THAT
23 WOULD BE FINE.

24 Q LET ME REPEAT IT AGAIN BECAUSE I WANT TO MAKE SURE THAT
25 I UNDERSTAND THE QUESTION THAT I ASKED. WOULD YOU NOT

1 AGREE THAT IN THIS INVESTIGATION IT WOULD HAVE BEEN VERY
2 HELPFUL IF YOU COULD HAVE FOUND PAINT SAMPLES FROM THE
3 FRONT OF MR. COHENS VEHICLE THAT WOULD MATCH THE REAR
4 OF MRS. COHENS VEHICLE?

5 A OKAY. I LOOKED AT BOTH THE BUMPER---

6 Q ---THE QUESTION WAS WOULD YOU NOT AGREE THAT IT WOULD
7 BE HELPFUL?

8 THE COURT: ALL RIGHT, JUST A
9 MOMENT. COUNSEL, YOU CUT HIM OFF YET AGAIN. GO AHEAD
10 AND ANSWER, SIR, AS YOU INTENDED TO ANSWER.

11 THE WITNESS: YES, SIR. I LOOKED AT
12 THE BUMPER OF MRS. COHENS VEHICLE AS WELL AS HIS FRONT
13 BUMPER AND FOUND NO TRANSFER, NO ITEMS, NO DAMAGE,
14 THAT WOULD BE CONSISTENT WITH A PAINT TRANSFER TO
15 COLLECT.

16 MR. BARR: YOUR HONOR, I THINK
17 WHAT'S GOING ON - I HAVE NO PROBLEMS WITH HIM EXPLAINING
18 HIS ANSWER, BUT MY QUESTION WAS A YES OR NO QUESTION,
19 AND I JUST WANTED HIM TO ANSWER MY QUESTION FIRST AND
20 HOWEVER HE WANTS TO EXPLAIN HIMSELF, HE'S PERFECTLY
21 FREE TO DO THAT.

22 THE COURT: COUNSEL, OF COURSE
23 OBVIOUSLY THE JURY IS SITTING HERE WELL AWARE OF THAT.
24 HERE IS YOUR QUESTION, HERE IS YOUR ANSWER; THEY FULLY
25 UNDERSTAND THE POSITION THAT BOTH COUNSEL AND THE

1 WITNESS TAKE. IT'S NOT NECESSARY TO FORCE HIM INTO SOME
2 PARTICULAR YES OR NO. THE JURY HAS THE BENEFIT OF IT.
3 PLEASE MOVE ON.

4 BY MR. BARR:

5 Q DID YOU FIND ANYTHING THAT YOU THOUGHT COULD PERHAPS
6 BE ANY PAINT SAMPLES FROM MRS. COHENS VEHICLE ON THE
7 FRONT BUMPER OF MR. COHENS VEHICLE THAT YOU SENT TO
8 SLED TO BE ANALYZED.

9 A I DIDN'T FIND ANY ON THE FRONT BUMPER, NO, SIR.

10 Q DID YOU FIND ANY ON THE REAR, ANY PAINT SAMPLES FROM THE
11 REAR OF MRS. COHENS VEHICLE THAT YOU COLLECTED THAT
12 COULD HAVE POSSIBLY BEEN PAINT SCRAPINGS FROM MR.
13 COHENS VEHICLE AND SENT TO SLED?

14 A I DIDN'T COLLECT ANY FROM THE REAR, NO, SIR.

15 Q DID YOU LOOK?

16 A YES, SIR.

17 Q BUT YOU DIDN'T FIND ANY?

18 A DIDN'T FIND ANYTHING.

19 THE COURT: ANYTHING FURTHER?

20 MR. BARR: YES, SIR, COURT'S

21 INDULGENCE, JUDGE. JUST A FEW MORE QUESTIONS.

22 BY MR. BARR:

23 Q WITH RESPECT TO THE PHOTOGRAPHS THAT YOU AND MR.
24 MODICA LOOKED AT IN YOUR DIRECT TESTIMONY, THOSE THAT
25 DEPICTED DAMAGE TO VEHICLES, WOULD IT BE FAIR TO SAY

1 THAT THE DAMAGE TO MR. COHENS VEHICLE AS REFLECTED IN
2 STATE'S EXHIBIT - I CAN'T REMEMBER THE NUMBER - THE
3 DAMAGE THAT IS REFLECTED TO MR. COHENS VEHICLE IN
4 WHICHEVER EXHIBIT IT IS, YOU DON'T KNOW HOW IT HAPPENED,
5 HOW IT GOT THERE, HOW LONG IT WAS THERE, DO YOU?

6 A WHICH ONE?

7 Q IN ANY OF THE PICTURES THAT YOU TOOK.

8 A THE TRANSFERS, YOU'RE ASKING, OR THE---

9 Q IN ANY OF THEM. I THINK IT WAS STATE'S EXHIBIT NUMBER 37.
10 TAKE A LOOK AT STATE'S EXHIBIT NUMBER 37, THE DAMAGE TO
11 MR. COHENS VEHICLE.

12 A OKAY.

13 Q YOU DON'T KNOW HOW THAT GOT THERE, DO YOU?

14 A NO, SIR.

15 Q AND YOU DON'T KNOW HOW LONG IT WAS THERE, DO YOU?

16 A WELL I CAN SAFELY SAY THAT THERE'S SOME OTHER DAMAGED
17 AREAS THERE THAT HAD ALREADY RUST THROUGH THE PAINT
18 THAT ARE A LOT OLDER THAN THOSE DAMAGED AREAS.

19 Q A LOT OLDER?

20 A YES.

21 Q THAT MEANS THEY'VE BEEN THERE A LONG TIME?

22 A YES, SIR.

23 Q YOU DON'T KNOW HOW LONG THEY'VE BEEN THERE?

24 A I DO NOT.

25 Q YOU DON'T KNOW HOW LONG ANY OF THE DAMAGE HAS BEEN

- 1 THERE?
- 2 A I DO NOT, SIR.
- 3 Q NOW, STATE'S EXHIBIT NUMBER FOUR, ARE YOU FAMILIAR WITH
- 4 STATE'S EXHIBIT NUMBER FOUR; DO YOU REMEMBER THIS EXHIBIT
- 5 RIGHT HERE, THE ONE WITH THE TIRE TREAD MARKS?
- 6 A OKAY.
- 7 Q WHEN YOU ARRIVED AT THE SCENE, OF COURSE YOU SAW
- 8 THESE TREAD MARKS BECAUSE YOU TOOK A PHOTOGRAPH OF
- 9 THEM, DIDN'T YOU?
- 10 A WELL, ACTUALLY I WAS TAKING THE PHOTOGRAPH - THE
- 11 FOCUS WAS ON THE AREA WHERE THE VICTIM'S VEHICLE WENT
- 12 OFF THE ROAD.
- 13 Q NOW WOULD YOU NOT AGREE THAT THESE TREAD MARKS, AT
- 14 LEAST FROM WHAT YOUR INVESTIGATION HAS SHOWN, MRS.
- 15 COHENS VEHICLE SUPPOSEDLY WAS BUMPED WHILE IT WAS IN
- 16 THE LEFT LANE. YOU DID HAVE THE BENEFIT OF MR. MOYES*,
- 17 THE WITNESS - WHAT WAS HIS NAME, MR. MOYES?*
- 18 A THE WITNESS'S INFORMATION, YES, SIR.
- 19 Q AND OF COURSE IF YOU LOOK AT THESE TREAD MARKS, THE
- 20 MARKING THAT SHOWS MRS. COHENS VEHICLE GOING OFF ON
- 21 THE EDGE OF THE ROAD INTO THE WOODS DID NOT COME
- 22 THROUGH THE TREAD MARKS ON THE ROAD, DID THEY?
- 23 A ARE THEY CAUSED FROM THE SAME VEHICLE, ARE YOU ASKING
- 24 ME?
- 25 Q WELL THEY COULDN'T HAVE BEEN CAUSED FROM THE SAME

1 VEHICLE BECAUSE I THINK YOUR INFORMATION WAS THAT SHE
2 WAS OVER ON THE OTHER SIDE OF THE ROAD, CORRECT?

3 A THE WITNESS INFORMATION, ARE YOU TALKING ABOUT THE---

4 Q THE WITNESS INFORMATION.

5 A IN THE FAST LANE AS OPPOSED TO THE---

6 Q YES.

7 A THE WITNESS INFORMATION PLACED THEM ON THAT SIDE, YES,
8 SIR.

9 Q NOW DID YOU CONSIDER IT PERHAPS A LITTLE BIT UNUSUAL
10 THAT ALL OF A SUDDEN THE SKID MARKS FROM MRS. COHENS
11 VEHICLE WOULD JUST START AT THE EDGE OF THE ROAD AND
12 YOU NOT SEE WHERE THEY CAME ACROSS THE SLOW LANE? DID
13 THAT OCCUR TO YOU?

14 A WAS IT STRANGE THAT I DIDN'T SEE ANY?

15 A DID YOU GET A LITTLE BIT CONCERNED ABOUT THAT FROM AN
16 INVESTIGATORY STANDPOINT, WERE YOU A LITTLE BIT
17 CONCERNED ABOUT THAT?

18 A NO, I WAS NOT.

19 Q YOU WEREN'T?

20 A NO, SIR.

21 Q NOW, YOU DID SEE THE TIRE MARKS?

22 A THE STRAIGHT LINES?

23 Q YES, SIR.

24 A YES, SIR.

25 Q WERE YOU CONCERNED ABOUT THAT?

- 1 A NO, SIR, I WAS NOT.
- 2 Q YOU WEREN'T?
- 3 A NO, SIR.
- 4 Q DO YOU KNOW WHERE THEY CAME FROM?
- 5 A I DO NOT.
- 6 Q AND YOU WEREN'T CONCERNED ABOUT THEM?
- 7 A NOT WITH THE PLACEMENT OF THEM AS WHERE THEY WERE IN
- 8 RELATION TO THE VICTIM'S SKID MARKS.
- 9 Q WELL, THEY WERE RIGHT IN THE MIDDLE OF YOUR CRIME SCENE.
- 10 A YES, SIR.
- 11 Q THEY WERE RIGHT IN THE MIDDLE OF YOUR PHOTOGRAPH? NOW
- 12 DID YOU GO AND TAKE A SAMPLE OF THE RUBBER TO SEE HOW
- 13 LONG IT HAD BEEN THERE? YOU COULD HAVE FOUND THAT
- 14 OUT, COULDN'T YOU?
- 15 A I DIDN'T TAKE A SAMPLE OF THE RUBBER, NO, SIR.
- 16 Q AND YOU COULD HAVE FOUND OUT WHETHER OR NOT THE
- 17 RUBBER THAT'S THERE IN THAT PHOTOGRAPH MATCHES THE
- 18 TIRES ON MR. COHENS VEHICLE, COULDN'T YOU NOT?
- 19 A I'M NOT SURE IF I COULD OR NOT.
- 20 Q WELL YOU COULD HAVE SENT IT TO SLED, THEY COULD HAVE
- 21 TOLD YOU, COULDN'T THEY? YOU DO IT EVERY DAY.
- 22 A I DON'T KNOW IF THEY COULD OR NOT. I CAN SEND IT, YES, SIR,
- 23 Q WELL YOU SAID ALL THAT OTHER STUFF, WHY ARE YOU SAYING
- 24 NOW THAT YOU DON'T THINK THAT THEY CAN TELL YOU
- 25 WHETHER OR NOT SOME RUBBER CAME FROM A CERTAIN TIRE?

1 A YOU ASKED ME IF I KNEW IF THE THEY COULD DO THAT. I DON'T
2 KNOW IF THEY CAN DO THAT. I CAN SEND IT, IT'S POSSIBLE TO
3 SEND IT, YES, SIR.

4 THE COURT: ANYTHING
5 FURTHER, COUNSEL?

6 MR. BARR: JUST A SECOND,
7 JUDGE. I HAVE NOTHING FURTHER AT THIS TIME.

8 THE COURT: IS THERE REDIRECT?

9 MR. MODICA: NO, YOUR HONOR.

10 MAY I APPROACH FOR A MOMENT, YOUR HONOR?

11 (OFF-THE-RECORD CONFERENCE AT THE BENCH.)

12 THE COURT: ALL RIGHT, LADIES
13 AND GENTLEMEN, THERE'S BEEN A STIPULATION ENTERED INTO
14 BY COUNSEL WHICH WOULD PREVENT THE CALLING OF AN
15 ADDITIONAL WITNESS ON A PARTICULAR POINT. MR. MODICA,
16 I'M GOING TO ALLOW YOU TO STATE THE STIPULATION, PLEASE.

17 MR. MODICA: YES, YOUR HONOR.

18 IT IS STIPULATED THAT DEPUTY STEPHEN SMITH OF THE
19 GEORGETOWN POLICE DEPARTMENT ON MARCH 22ND, 2006 AT
20 NINE P.M., SERVED THE PAPERS ON THE DEFENDANT HIMSELF,
21 WHICH INCLUDES STATE'S EXHIBIT NUMBER 80. AND THAT IS
22 STIPULATED BETWEEN THE PARTIES. NINE P.M. AT HIS
23 RESIDENCE,

24 THE COURT: AND STATE'S

25 EXHIBIT 80 IS WHAT?

1 MR. MODICA: STATE'S EXHIBIT
2 80 IS THE COVER SHEET FOR THE ORDER TO SHOW CAUSE IN
3 THE FAMILY COURT PETITION.
4 THE COURT: ALL RIGHT, VERY
5 GOOD. NOW DOES THE DEFENSE AGREE TO THAT STIPULATION?
6 MR. BARR: YES, SIR.
7 THE COURT: VERY GOOD. THEN
8 SO STIPULATED, LADIES AND GENTLEMEN. YOU SHOULD
9 ACCEPT THAT AS A FACT, A PROVEN FACT OF THE CASE AND
10 STIPULATED BY COUNSEL. ALL RIGHT, WE'RE GOING TO END
11 OUR PROCEEDINGS FOR TODAY. THERE ARE OTHER WITNESSES
12 THAT WILL BE CALLED IN THE PROSECUTION'S CASE
13 TOMORROW. AND WHAT I'M GOING TO DO IS ASK YOU TO BE IN
14 THE JURY ROOM AT NINE O'CLOCK TOMORROW. WE'LL BEGIN AT
15 NINE IN THE MORNING. PLEASE EVERYONE BE ON TIME. THAT
16 INCLUDES COUNSEL, THE PARTIES, AND THE JURORS SO WE CAN
17 BEGIN PROMPTLY AT NINE.
18 AND I'M GOING TO ASK YOU AGAIN TONIGHT. LADIES
19 AND GENTLEMEN, AS I DID LAST NIGHT, PLEASE DO NOT
20 DISCUSS THE FACTS OF THE CASE WITH ANYONE. JUST HAVE A
21 GOOD NIGHT'S REST. DON'T UNDERTAKE SOME TYPE OF
22 INVESTIGATION ON YOUR OWN. AND BE BACK AT NINE O'CLOCK
23 TOMORROW MORNING TO RECONVENE. LET'S EVERYONE ELSE
24 REMAIN WHERE THEY ARE WHILE OUR JURY DEPARTS THE
25 COURTROOM. HAVE A NICE EVENING, LADIES AND GENTLEMEN.

1 MR. BARR: YOUR HONOR, THERE
2 IS ONE ADDITIONAL MATTER.

3 THE COURT: LET'S MAKE SURE
4 OUR JURORS ARE AROUND THE CORNER. GO AHEAD, MR. BARR.

5 MR. BARR: JUDGE, I'VE GOT A
6 DEFENDANT WHO'S IN THE FLORENCE COUNTY DETENTION
7 CENTER, MR. DENNISON*, WHO UNFORTUNATELY HAD A BENCH
8 WARRANT ISSUED FOR HIM. WE FILED A MOTION MORE THAN 10
9 DAYS AGO AND WE'VE BEEN UNABLE TO COME TO ANY KIND OF
10 AGREEMENT CONCERNING A POTENTIAL BOND. I'D LIKE TO GET
11 HIM BACK BEFORE THE COURT SOME TIME TOMORROW, IF I CAN.

12 THE COURT: YOU SAY HE'S IN
13 THE FLORENCE COUNTY DETENTION CENTER?

14 MR. BARR: GEORGETOWN
15 COUNTY.

16 MRS. BIOGLANTI: YOUR HONOR,
17 THAT'S MY CASE. I DON'T HAVE ANY OBJECTION TO THAT.
18 WE'VE JUST BEEN BUSY THE WHOLE WEEK, AS YOU KNOW.

19 THE COURT: I'LL LET YOU ALL
20 WORK ON THAT.

21 MR. BARR: JUDGE, I ASKED
22 EARLIER AND I'VE NOT GOTTEN ANY POSITIVE RESPONSE.

23 THE COURT: YOU HAVE YOUR
24 RESPONSE NOW, WHICH IS A POSITIVE ONE, AND WE'LL TAKE A
25 LOOK AT THAT.

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MR. BARR: THANK YOU.

MRS. BIOGLANTI: HE DIDN'T ASK,
HE JUST. . .

THE COURT: NOW, MR. MODICA,
JUST SO I KNOW, HOW MANY MORE WITNESSES REMAIN IN THE
STATE'S CASE?

MR. MODICA: I BELIEVE THAT I
WILL BE ONLY CALLING ONE MORE WITNESS.

THE COURT: ALL RIGHT, THIS
COURT IS IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING.
PLEASE UNDERSTAND, MR. BARR, YOU WILL BE GOING DIRECTLY
INTO YOUR CASE TOMORROW AS SOON AS THE STATE'S LAST
WITNESS IS FINISHED. COURT IS ADJOURNED FOR THE DAY.

-----THE PROCEEDINGS WERE ADJOURNED FOR THIS DAY-----

THE COURT: GOOD MORNING.
COUNSEL, LET ME GET YOU TO APPROACH, IF YOU WILL. I THINK
WE'RE WAITING FOR ONE OF OUR JURORS TO ARRIVE.

AND WHILE WE'RE WAITING, IS THERE ANYTHING
FOR THE RECORD NOW BEFORE WE GO BACK INTO THE TRIAL OF
THIS MATTER FROM THE STATE? AND DEFENSE? HEARING
NOTHING, LADIES AND GENTLEMEN WE HAVE SEVERAL OF YOU
HERE FOR DIFFERENT REASONS TODAY. MY NAME IS JUDGE
BAXLEY, IF THIS IS YOUR FIRST DAY IN THE COURTROOM. WE
ARE STILL IN A TRIAL AND WE HAVE A WITNESS WE'RE GOING
TO TAKE FIRST THING THIS MORNING. THE JURY IS HERE? VERY

1 GOOD, THEN PLEASE BRING IN THE JURY.

2 GOOD MORNING LADIES AND GENTLEMEN, WELCOME
3 TO THE COURTROOM. I TRUST YOU HAD A NICE EVENING. AND
4 LET ME ASK SINCE WE WERE LAST TOGETHER, IS THERE ANY
5 MEMBER OF OUR JURY PANEL WHO'S HAD ANY DISCUSSION
6 CONCERNING THE FACTS OF THIS CASE WITH ANYONE, OR ANY
7 CONTACT BY ANYONE CONCERNING THIS CASE? IF THAT
8 APPLIES TO YOU, PLEASE RAISE YOUR HAND. I SEE THAT NO
9 ONE'S RAISED THEIR HANDS. AGAIN, WELCOME BACK TO THE
10 COURTROOM. THANK YOU FOR COMPLYING WITH THE COURT'S
11 REQUEST. YOU WILL RECALL WE ARE IN THE STATE'S CASE.
12 AND MR. MODICA, PLEASE CALL YOUR NEXT WITNESS, SIR.

13 Thereupon, JENNIFER STONER,
14 being first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. MODICA:

16 Q STATE YOUR FULL NAME.

17 A JENNIFER M. STONER.

18 Q COULD YOU PLEASE TELL US WHERE YOU'RE EMPLOYED?

19 A I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT
20 DIVISION IN THE TRACE EVIDENCE SECTION OF THE FORENSICS
21 DIVISION.

22 Q CAN YOU LIFT THAT MICROPHONE TOWARDS YOU? WHAT
23 DIVISION?

24 A THE TRACE EVIDENCE SECTION.

25 Q COULD YOU GIVE US A LITTLE BACKGROUND EXPERIENCE THAT

1 YOU HAVE THAT LED YOU TO COME TO SLED AND BE IN THAT
2 DIVISION?

3 A I RECEIVED A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY IN
4 1997 FROM CALIFORNIA UNIVERSITY OF PENNSYLVANIA. IT'S A
5 STATE SCHOOL IN THE TOWN OF CALIFORNIA, PA, WHICH IS
6 NEAR A TOWN WHERE I GREW UP. UPON COMPLETION OF MY
7 DEGREE, I BEGAN A SUMMER INTERNSHIP PROGRAM WITH SLED IN
8 THE TRACE EVIDENCE SECTION BECAUSE AT THAT TIME I
9 WASN'T CERTAIN WHICH CAREER PATH I WANTED TO TAKE. CSI
10 WASN'T BIG THEN, THE T.V. SHOWS WEREN'T OUT, SO I JUST
11 WANTED TO SEE WHAT THEY DID IN THAT AREA.

12 DURING THIS INTERNSHIP I WORKED UNDER A SUPERVISOR,
13 WORKED CASES WITH THEM, RAN CRIME SCENES, AND JUST SAW
14 BASICALLY WHAT THE EVIDENCE WAS, WHAT THEY DID WITH IT,
15 AND HOW THE JOB PROCEEDED. UPON COMPLETION OF THAT
16 INTERNSHIP I ACCEPTED A POSITION IN THE DRUG ANALYSIS
17 DEPARTMENT. THIS IS A DEPARTMENT IN WHICH WE ANALYZE
18 CONTROLLED SUBSTANCES, PRESCRIPTION SUBSTANCES, AND
19 POISONS. I BEGAN A TRAINING PROGRAM THERE.

20 I ALSO ATTENDED THE SOUTH CAROLINA CRIMINAL
21 JUSTICE ACADEMY BECAUSE SLED AGENTS AT THAT TIME WERE
22 CERTIFIED POLICE OFFICERS. UPON COMPLETION OF MY DRUG
23 TRAINING PROGRAM, I ANALYZED POISONS, THE ILLICIT DRUGS,
24 AND THE CONTROLLED SUBSTANCES FOR APPROXIMATELY A
25 YEAR. AT THAT TIME THERE WAS A OPENING IN TRACE

1 EVIDENCE AND I PUT IN A REQUEST FOR A TRANSFER, WHICH I
2 RECEIVED. AND I BEGAN A THREE YEAR TRAINING PROGRAM
3 WITHIN THAT DEPARTMENT UNDER THE SUPERVISOR OF THAT
4 DEPARTMENT AND OTHER SENIOR ANALYSTS IN THAT AREA.
5 THE TRAINING PROGRAM BASICALLY TOOK ME THROUGH ALL
6 THE EVIDENCE THAT THE TRACE EVIDENCE DEPARTMENT WOULD
7 SEE; HOW YOU ANALYZE THE EVIDENCE, HOW YOU TESTIFY IN
8 COURT ON THAT EVIDENCE, THE INSTRUMENTATION YOU NEED
9 TO ANALYZE IT.

10 I ALSO ATTENDED NUMEROUS COURSES, CLASSES AND
11 WORKSHOPS THAT WERE GIVEN IN THAT AREA ON THE
12 INSTRUMENTATION AND ALSO AREAS IN FORENSIC SCIENCE
13 THAT I NEEDED TO KEEP UP ON. UPON COMPLETION OF THIS
14 PROGRAM I WAS QUALIFIED AS A TRACE EVIDENCE EXAMINER
15 AND I WAS ABLE TO TAKE MY OWN CASES, WHICH IS WHERE I'VE
16 BEEN NOW FOR EIGHT YEARS.

17 Q CAN YOU TELL US WHAT IT IS TO DO TRACE EVIDENCE, WHAT'S
18 THAT MEAN?

19 A THE TRACE EVIDENCE DEPARTMENT IS JUST ONE OF MANY
20 DISCIPLINES IN THE FORENSICS FIELD. WE HAVE EIGHT
21 DIFFERENT AREAS THAT WE ANALYZE EVIDENCE IN. WE
22 ANALYZE GUNSHOT RESIDUE EVIDENCE, WHICH I'M SURE YOU'VE
23 ALL HEARD ABOUT; IT'S SAMPLES COLLECTED FROM SUSPECTS
24 OR VICTIMS HANDS OR CLOTHING THAT WE ANALYZE THE
25 SAMPLES TO SEE IF THEY HAD POSSIBLY FIRED A WEAPON. WE

1 ANALYZE VICTIM'S CLOTHING IN WHAT WE CALL A BULLETHOLE
2 EXAMINATION; WE ANALYZE THE AREA AROUND THE HOLE TO
3 SEE IF WE CAN DETERMINE HOW FAR THE VICTIM WAS FROM THE
4 GUN WHEN THEY WERE SHOT. WE ALSO ANALYZE FIBER
5 EVIDENCE. IF YOU HAVE SOMEONE THAT BREAKS INTO A HOUSE,
6 THEY BREAK THROUGH A WINDOW, THEY COULD POSSIBLY
7 LEAVE FIBERS FROM THEIR CLOTHING ON THAT WINDOW. WE
8 CAN DO A FIBER COMPARISON BETWEEN THE UNKNOWN FIBERS
9 AND THE FIBERS THAT ARE COMPRISING THE SUSPECT'S
10 CLOTHING.

11 WE ALSO ANALYZE GLASS EVIDENCE. IF YOU HAVE ALSO
12 A BREAKING AND ENTERING AND YOU HAVE GLASS FOUND ON
13 THE SUSPECT, WE COULD DO A GLASS COMPARISON OR A GLASS
14 FRACTURE MATCH BACK TO THE WINDOW THAT WAS BROKEN.
15 WE ALSO LOOK AT GLASS EVIDENCE IF YOU HAVE AN
16 AUTOMOBILE ACCIDENT. IF A PEDESTRIAN IS HIT BY A VEHICLE
17 WE WILL PROCESS THE VICTIM'S CLOTHING FOR GLASS AND
18 ATTEMPT TO MATCH IT TO THE VEHICLE THAT WAS
19 SUPPOSEDLY THE VEHICLE THAT HIT THEM.

20 WE ANALYZE PAINT EVIDENCE, AND WE DO TWO
21 DIFFERENT KINDS OF PAINTS. WE LOOK AT ARCHITECTURAL
22 PAINT AND AUTOMOTIVE PAINT. ARCHITECTURAL PAINT IS
23 GOING TO BE A PAINT USUALLY IN, ONCE AGAIN BURGLARIES
24 AND BREAKING INTO A BUILDING. IF A SUSPECT PRIES OPEN A
25 WINDOW OR DOOR JAM, THERE'S THE POSSIBILITY OF PAINT

1 TRANSFER TO THE TOOL THAT WAS USED TO PRY OPEN THAT
2 DOOR. THE OFFICERS WILL COLLECT A STANDARD FROM THAT
3 DOOR AND WE WILL DO A COMPARISON BETWEEN THE PAINT ON
4 THE TOOL AND THE PAINT THAT COMPRISES THE DOOR OR THE
5 WINDOW.

6 WE ANALYZE - YOU ALSO HAVE AUTOMOTIVE PAINT, AND
7 I'M SORRY I SKIPPED THAT. IF YOU HAVE A PEDESTRIAN THAT'S
8 HIT BY A VEHICLE, WE PROCESS THE CLOTHING AND THEN LOOK
9 FOR ANY PAINT CHIPS ON THAT CLOTHING. WE CAN THEN DO A
10 COMPARISON BETWEEN THE UNKNOWN PAINT THAT WAS FOUND
11 AND THE PAINT THAT IS MADE UP OF THE SUSPECT'S VEHICLE.

12 WE ANALYZE EXPLOSIVE DEBRIS. IF THERE'S A BOMB
13 THAT GOES OFF, THEY'LL BRING US THE DEBRIS, OR IF THEY
14 HAVE DUMMY DEVICES, WE ANALYZE IT TO FIND OUT IF THERE IS
15 ACTUALLY A TRUE EXPLOSIVE THAT WAS USED. AND WE ALSO
16 ANALYZE FIRE DEBRIS EVIDENCE, WHICH IS IF YOU HAVE A FIRE;
17 A HOUSE OR A BUILDING BURNS, OR EVEN A VEHICLE, THEY WILL
18 COLLECT SAMPLES FROM IT. WE ANALYZE IT TO SEE IF AN
19 ACCELERANT WAS USED TO START THAT FIRE AS OPPOSED
20 JUST TO NATURAL CAUSES DUE TO ELECTRICAL WIRING OR JUST
21 A FIRE STARTING.

22 WE ALSO ANALYZE, TRACE OTHER EXAMINATIONS. THIS IS
23 THE LAST FIELD THAT ENCOMPASSES NUMEROUS EXAMS THAT
24 DON'T FIT INTO THE OTHER AREAS THAT I SPOKE ABOUT.

1 THIS FIELD INCLUDES THE ANALYSIS OF WHAT'S CALLED
2 METHA-AMINOANTHRA-QUINONE*, IT'S MAAQ FOR SHORT.
3 IT'S THE BANK DYE THAT'S USED IN THE EXPLOSIVE DYE PACKS.
4 IF SOMEONE ROBS A BANK AND THE TELLERS PUT THESE DYE
5 PACKS IN THEM AND THEY EXPLODE, THEY'LL HAVE THIS DYE ON
6 THEIR CLOTHING, POSSIBLY IN THEIR VEHICLE. AND WE
7 ANALYZE FOR THE PRESENCE OF THAT CHEMICAL, WHICH
8 PROVES THAT IT WAS FROM A BANK.

9 WE ALSO ANALYZE DUCT TAPE. IF YOU HAVE A
10 VICTIM THAT WAS BOUND WITH DUCT TAPE AND THEY FOUND
11 DUCT TAPE ON A SUSPECT, WE COULD COMPARE THE TWO,
12 POSSIBLY DO A FRACTURE MATCH COMPARISON ON IT.

13 WE ALSO ANALYZE DIFFERENT PIECES OF PLASTIC.
14 WE PERFORM FRACTURE MATCHES ON NUMEROUS MATERIALS.
15 WE ALSO PERFORM ROPE AND CORD EXAMINATIONS, AND JUST
16 ANY SUBSTANCE THAT THEY BRING IN THAT THEY WANT TO
17 KNOW WHAT IT'S COMPOSED OF, WE DO AN EXAMINATION FOR
18 THAT.

19 Q NOW I DON'T KNOW IF YOU SAID IT; WHAT DOES SLED STAND
20 FOR?

21 A SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

22 Q NOW IN THOSE EIGHT DISCIPLINES THAT YOU JUST TOLD OUR
23 JURY ABOUT, ARE YOU QUALIFIED TO DO EXAMINATION IN EACH
24 OF THOSE AREAS BY SLED?

25 A YES, I AM.

1 Q NOW HAVE YOU TESTIFIED---

2 A NO, EXCUSE ME. I HAVE NOT STARTED FIRE DEBRIS TRAINING
3 YET. THAT IS MY LAST AREA. WE RECENTLY MERGED WITH THE
4 ARSON DEPARTMENT AND I HAVE NOT GONE THROUGH THE
5 TRAINING IN FIRE DEBRIS AS OF YET.

6 Q AND WITH REGARD TO THE SEVEN, HAVE YOU BEEN QUALIFIED
7 TO EXAMINE BY SLED?

8 A YES, I HAVE.

9 Q HAVE YOU TESTIFIED AS AN EXPERT IN THE FIELD OF TRACE
10 EVIDENCE PREVIOUSLY IN COURTS IN THIS STATE AS WELL AS
11 ELSEWHERE?

12 A I HAVE TESTIFIED APPROXIMATELY 50 TIMES IN THIS STATE AND
13 IN THE STATE OF NEW MEXICO BETWEEN DRUG ANALYSIS
14 EVIDENCE AND TRACE EVIDENCE.

15 Q AS AN EXPERT?

16 A AS AN EXPERT.

17 MR. MODICA: YOUR HONOR, AT THIS
18 TIME I WOULD MOVE THAT SHE BE QUALIFIED AS AN EXPERT IN
19 TESTIMONY REGARDING TRACE EVIDENCE.

20 THE COURT: AND WHAT SAY THE
21 DEFENSE?

22 MR. BARR: NO OBJECTION.

23 THE COURT: LADIES AND GENTLEMEN,
24 JUST A WORD OF EXPLANATION. THIS WITNESS IS APPEARING
25 AND IS OFFERED AS AN EXPERT WITNESS. WHAT THAT MEANS

1 IS IS THE WITNESS HAS SOME PARTICULAR EXPERTISE,
2 KNOWLEDGE, OR TRAINING IN A PARTICULAR FIELD UPON WHICH
3 YOU ARE CALLED UPON TO MAKE A FACTUAL FINDING. AND THE
4 WITNESS HAS OFFERED TO ASSIST YOU IN THAT REGARD.
5 PLEASE UNDERSTAND THAT WITH AN EXPERT WITNESS'S
6 TESTIMONY, YOU SHOULD WEIGH THE CREDIBILITY AND
7 BELIEVABILITY JUST AS YOU WOULD ANY OTHER WITNESSES
8 TESTIMONY. THE DIFFERENCE BETWEEN AN EXPERT AND A LAY-
9 WITNESS, AND ALL OUR PREVIOUS WITNESSES HAVE BEEN LAY-
10 WITNESSES, IS THAT A LAY WITNESS CAN TELL WHAT THEY
11 SAW AND WHAT THEY HEARD. AN EXPERT WITNESS CAN GO
12 FURTHER AND TELL WHAT THEY SAW AND WHAT THEY HEARD,
13 AND WHAT OPINION THEY DERIVE FROM WHAT THEY SAW AND
14 HEARD.

15 PLEASE UNDERSTAND AN EXPERT'S TESTIMONY IS
16 NEVER GIVEN FOR THE PURPOSE OF CONTROLLING THE JURY,
17 BUT FOR ASSISTING THE JURY. YOU GIVE IT WHAT WEIGHT YOU
18 DEEM IT IS ENTITLED TO BASED UPON THE PRESENTATION AND
19 THE WITNESS IS QUALIFIED IN THE AREA OF TRACE EVIDENCE.
20 MR. MODICA, YOU MAY PROCEED.

21 BY MR. MODICA:

22 Q NOW, I THINK YOU TOUCHED ON WHAT'S CALLED FRACTURE
23 MATCHES. COULD YOU FOR A MOMENT TELL OUR JURY A LITTLE
24 BIT MORE ABOUT WHAT YOU MEAN BY FRACTURE MATCHES AND
25 HOW YOU GO ABOUT DOING THAT TYPE OF WORK?

1 A A FRACTURE BY DEFINITION IS THE PROCESS OF BREAKING
2 SOMETHING. WHENEVER WE HAVE A FRACTURE MATCH
3 EXAMINATION, WHAT WE'RE TRYING TO DO IS TO PUT TWO OR
4 MORE PIECES BACK TOGETHER ALONG THE FRACTURED LINES.
5 MANY DIFFERENT MATERIALS OF ANY SIZE AND ANY SHAPE CAN
6 UNDERGO A FRACTURE MATCH. AND I'M SURE ALL OF YOU AT
7 SOME TIME HAVE ACTUALLY DONE A FRACTURE MATCH IF
8 YOU'VE BROKEN A PLATE, OR YOUR CHILD'S BROKEN A FIGURINE
9 OR A VASE, IF YOU'VE PUT IT BACK TOGETHER AND GLUED IT
10 BACK TOGETHER ALONG THOSE FRACTURE LINES, THAT'S A
11 FRACTURE MATCH.

12 AND YOU MAY EVEN - WHEN YOU RIP OFF A CHECK
13 FROM A CHECKBOOK AND YOU RIP IT AND YOU HAVE TO TAPE
14 IT, YOU'RE PUTTING THAT PAPER BACK TOGETHER ALONG THE
15 FRACTURE LINES. THAT IS WHAT WE CONSIDER A FRACTURE
16 MATCH.

17 Q WHAT KIND OF SUBSTANCES DO YOU DO FRACTURE MATCHES
18 ON?

19 A WE CAN PERFORM FRACTURE MATCHES ON THE ENDS OF DUCT
20 TAPE. IF YOU HAVE A ROLL OF DUCT TAPE AND THE LAST PIECE
21 THAT WAS TORN FROM IT, WE CAN ATTEMPT TO DO A
22 FRACTURE MATCH ON THAT. WE CAN DO IT ON WOOD, ON
23 METAL, PIECES OF PLASTIC, GLASS, PAINT, AND NUMEROUS
24 OTHER TRACE ITEMS.

25 Q NOW IN REGARD TO THIS CASE WERE YOU CALLED UPON TO DO

1 SOME EXAMINATION THAT WAS SENT TO YOU BY THE
2 GEORGETOWN COUNTY SHERIFF'S OFFICE?

3 A I WAS.

4 Q AND WAS A PARTICULAR LAB CASE NUMBER THAT WAS
5 ASSIGNED TO THE EVIDENCE THAT WAS SUBMITTED TO SLED?

6 A YES, THERE WAS. ALL OUR LAB NUMBERS START WITH THE
7 LETTER "L" TO DIFFERENTIATE IT FROM OUR FIELD OFFICE
8 CASES, SO IT WAS "L-064837."

9 Q I'M SHOWING YOU WHAT'S MARKED AS STATE'S EXHIBIT NUMBER
10 87, AND IT'S A PAPERBAG WITH CONTENTS. I'M GOING TO ASK
11 YOU FIRST IF YOU RECOGNIZE THE OUTSIDE OF THE BAG, AND IF
12 SO, PLEASE TELL THE JURY HOW YOU RECOGNIZE IT.

13 A I DO RECOGNIZE IT. WHENEVER WE RECEIVE CASES WE OPEN UP
14 OUR EVIDENCE ON THE SEALED OUTER CONTAINERS, AND I WILL
15 PUT THE LAB NUMBER, THE ITEM NUMBER, MY INITIALS AND THE
16 DATE THAT I OPENED THAT EVIDENCE. AND THIS IS MY WRITING
17 AND MY INITIALS ON THIS PIECE OF EVIDENCE.

18 Q NOW COULD YOU REMOVE THE CONTENTS OF STATE'S EXHIBIT
19 NUMBER 87? LET THE RECORD REFLECT THAT THE WITNESS IS
20 COMPLYING.

21 A (WITNESS COMPLIES.)

22 Q I ASK YOU IF YOU RECOGNIZE THE CONTENTS THAT FROM THE
23 BAG?

24 A I DO. THIS IS ONE OF THE ITEMS OF EVIDENCE THAT I LOOKED
25 AT IN THIS CASE.

1 Q IT MIGHT BE A SILLY QUESTION, BUT HOW DO YOU RECOGNIZE
2 IT?

3 A ACTUALLY THIS CASE WE WILL PUT OUR INITIALS ON IT, IN THIS
4 CASE I DID NOT WRITE ON IT, BUT I ACTUALLY PERFORMED THIS
5 ANALYSIS TWO WEEKS AGO, SO I DO REMEMBER THIS PIECE OF
6 EVIDENCE.

7 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER 86, ALSO IN
8 EVIDENCE; AND ASK YOU IF YOU RECOGNIZE THAT?

9 A I ALSO RECOGNIZE THIS PIECE DUE TO THE SAME THING. I HAVE
10 THE LAB NUMBER, THE ITEM NUMBER, THE DATE AND THE
11 INITIALS, AND MY INITIALS ON THE EVIDENCE.

12 Q LET THE RECORD REFLECT THAT THE WITNESS IS REMOVING THE
13 CONTENTS OF ITEM NUMBER #86. DO YOU RECOGNIZE THE ITEM
14 THAT YOU REMOVED?

15 A I DO. AND, YET, AGAIN, I DID NOT MARK ON THIS PARTICULAR
16 ITEM, BUT SINCE IT WAS SUCH A RECENT CASE I DO RECOGNIZE
17 IT.

18 Q NOW WOULD YOU TELL OUR JURY - BUT FIRST, IF I MIGHT, BY
19 WAY OF ILLUSTRATION---

20 MR. BARR: DEFENDANT WILL
21 STIPULATE THAT ALL OF THESE ITEMS ARE PARTS OF THE
22 DEFENDANT'S VEHICLE, THAT THEY CAME FROM THE VEHICLE.

23 THE COURT: COUNSEL, DOES THAT
24 MAKE A DIFFERENCE IN YOUR PRESENTATION?

25 MR. MODICA: WELL, I THINK THE STATE

1 HAS ALREADY PROVED THAT, BUT I'M GLAD FOR THAT
2 STIPULATION.

3 THE COURT: VERY GOOD.

4 BY MR. MODICA:

5 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER 89, A PHOTOGRAPH.
6 DO YOU RECOGNIZE WHAT'S DEPICTED IN THAT PHOTOGRAPH?

7 A YES.

8 Q DID YOU CAUSE THAT PHOTOGRAPH TO BE TAKEN?

9 A I TOOK THE EVIDENCE TO OUR PHOTO DEPARTMENT AND THEY
10 MOUNTED THE TWO PIECES AND TOOK A PHOTOGRAPH OF IT.

11 Q AND 89 REFLECTS 87 AND 86 TOGETHER, CORRECT?

12 A THAT'S CORRECT. IT REFLECTS IT TOGETHER, BUT IT'S NOT -
13 WHENEVER WE PHOTOGRAPH IT---

14 Q IT'S NOT IN EVIDENCE.

15 MR. MODICA: AT THIS TIME I WOULD
16 MOVE STATE'S EXHIBIT 89 INTO EVIDENCE.

17 THE COURT: WHAT SAY THE DEFENSE?

18 MR. BARR: NO OBJECTION.

19 (STATE'S EXHIBIT NO. 89 ADMITTED INTO EVIDENCE.)

20 BY MR. MODICA:

21 Q NOW THAT IT'S IN EVIDENCE, IF YOU WANT TO ADDRESS IT TO
22 THE JURY, THAT'S FINE.

23 A WHEN YOU LOOK AT THE PIECE, WE HAD TO HOLD IT TOGETHER
24 WITH MOLDING CLAY, SO YOU CAN SEE THE FRACTURE LINE, IT
25 LOOKS QUITE WIDE ON THIS PICTURE. IT ACTUALLY GOES

1 TOGETHER BETTER, BUT TO PICTURE IT WE COULDN'T GET IT TO
2 STAY THAT CLOSE USING THE MOLDING CLAY AND WE DIDN'T
3 WANT TO ALTER THE EVIDENCE IN ANY WAY, SO THAT'S WHY IT
4 LOOKS LIKE THERE'S A GAP IN IT.

5 MR. MODICA: MAY I PUBLISH?

6 THE COURT: YOU MAY. HAND IT TO

7 THE JURY.

8 BY MR. MODICA:

9 Q NOW TELL OUR JURY WHAT YOU DID IN REGARD TO ITEMS
10 EIGHTY-SIX AND EIGHTY-SEVEN IN ORDER TO PERFORM YOUR
11 ANALYSIS AS A FRACTURE MATCH.

12 A WHEN I RECEIVED THIS EVIDENCE, WE GET WHAT IS CALLED A
13 LOG-IN SHEET WITH OUR EVIDENCE THAT LISTS THE ITEMS, AND
14 IT LISTS WHAT REQUESTS THAT THE OFFICERS WANT US TO DO
15 ON THAT ITEM. SINCE WE DO THE EIGHT DIFFERENT DISCIPLINES
16 WE NEED TO KNOW WHAT THEY WANT DONE ON IT SO THAT WE
17 DON'T HAVE TO GUESS.

18 IN THIS CASE I HAD ITEMS ONE THROUGH SEVEN AND THEY
19 HAD A REQUEST TO PERFORM A FRACTURE MATCH TO ITEMS
20 NINE AND TEN, AND ALSO A PAINT ANALYSIS. SINCE A
21 FRACTURE MATCH IS A DEFINITE TEST THAT PROVES THAT TWO
22 ITEMS WERE AT ONE TIME ONE TIME, AND PAINT ANALYSIS
23 CANNOT TELL YOU THAT. IT CAN TELL YOU THAT IT CAN BE
24 FROM A CERTAIN VEHICLE, OR FROM ANOTHER VEHICLE THAT
25 WAS ON THE SAME ASSEMBLY LINE AT THE SAME TIME. WE

1 CHOOSE TO DO THE FRACTURE MATCH FIRST---

2 Q EXCUSE ME FOR A MOMENT. YOU BROUGHT UP AN INTERESTING
3 POINT. AM I CORRECT IN UNDERSTANDING YOU THAT A
4 FRACTURE MATCH IS MORE IMPORTANT FOR YOUR ANALYSIS
5 THAN A PAINT MATCH?

6 A IN THE AREAS OF TAPE, PLASTIC, METAL, WOOD, AND GLASS A
7 FRACTURE MATCH. IF YOU HAVE A FRACTURE MATCH, THAT IS
8 THE STRONGEST ACHIEVABLE ASSOCIATION YOU CAN MAKE
9 BETWEEN TWO ITEMS. SO ONCE YOU A FRACTURE MATCH YOU
10 KNOW THOSE TWO PIECES WERE AT ONE TIME ONE. SO
11 ANYTHING ELSE YOU ANALYZE IN THAT CASE CAN'T MAKE IT
12 ANY STRONGER.

13 Q WELL, HOW DOES THAT COMPARE TO MATCHING THE PAINT?

14 A WHEN YOU MATCH PAINT, IF WE HAVE PAINT FOUND ON A
15 SUSPECT VEHICLE OR ON A VICTIM VEHICLE OR ON A VICTIM'S
16 CLOTHING, WE LOOK AT THE LAYER STRUCTURE OF THE PAINT.
17 BECAUSE WHEN A PAINT GOES THROUGH THE PROCESS AT THE
18 PLANT, THEY'RE GOING TO DO AN E-COAT ON THE PAINT, WHICH
19 IS THEY DEPOSIT METALS ON IT TO PREP IT FOR YOUR PAINT.
20 THEY'RE GOING TO PERFORM USUALLY TWO PRIMER LAYERS,
21 YOUR COLOR COAT, WHICH CAN BE METALLIC OR NON-
22 METALLIC, AND THEN A CLEAR COAT. SOME MANUFACTURERS
23 DON'T USE A CLEAR COAT.

24 WE LOOK AT THE CHEMICAL COMPOSITION OF EACH
25 LAYER, THE SIZE OF EACH LAYER, AND DIFFERENT

1 CHARACTERISTICS OF IT AND COMPARE IT TO OUR UNKNOWN
2 PAINT. EVEN THOUGH WE HAVE PROVEN THAT THOSE TWO
3 PAINTS ARE THE SAME, THAT PAINT COULD BE THE SAME AS
4 THE CAR THAT WAS IN FRONT OF THAT CAR ON THE ASSEMBLY
5 LINE. SO IT IS A MATCH THAT TELLS YOU IT COULD HAVE COME
6 FROM THAT CAR, BUT I CAN ALSO INCLUDE OTHER VEHICLES.

7 Q NOW AS IT RELATES TO THE MATCH FRACTURE IN THE PLASTIC
8 IN THIS CASE, WHAT DOES THAT TELL YOU?

9 A COULD YOU REPHRASE THAT, I'M SORRY?

10 Q I'LL GET BACK TO THAT QUESTION. SO WHAT DID YOU DO IN
11 REGARD TO 86 AND 87?

12 A IN THIS CASE I TOOK THE PIECES OUT THAT THEY WANTED A
13 FRACTURE MATCH OF AND I DID A VISUAL EXAMINATION. I
14 LOOKED AT ITEM NUMBER NINE FIRST BECAUSE IT WAS
15 NUMERICALLY BEFORE TEN, SO I PULLED OUT NINE FIRST. I
16 LOOKED AT IT, I LOOKED AT THE COLOR THAT I HAVE OF THE
17 PLASTIC, I LOOKED AT THE CONTOURS OF THE PLASTIC, I
18 LOOKED AT THE SURFACE DEFECTS THAT WERE PRESENT ON IT.
19 AND THEN I LOOKED AT THE PIECES THAT I HAD THAT THEY
20 WANTED MATCHED BACK TO THAT PIECE.

21 WHEN I FOUND A PIECE THAT LOOKED LIKE IT FIT, I
22 PUT IT TOGETHER. I ACTUALLY CALLED MY SUPERVISOR IN SO I
23 COULD GET HIS OPINION ON IT. HE LOOKED AT IT AND WE
24 DECIDED THAT IT WAS A MATCH. AT THAT POINT WE DO A
25 STEREO MICROSCOPE EXAM. A STEREO MICROSCOPE IS

1 MICROSCOPE THAT WE USE TO LOOK AT THE SURFACE
2 FEATURES OF ITEMS THAT WE'RE ANALYZING. I PLACED IT
3 UNDER THE MICROSCOPE AND I DID A COMPARISON OF THE
4 DEFECTS THAT WERE FOUND ON THE SURFACE, OF THE
5 STRIATIONS THAT WERE PRESENT, THE SCRATCHES THAT WERE
6 PRESENT, AND BASICALLY JUST THE FIT OF THE FRACTURE. I
7 LOOKED AT THE FRONT OF THE FRACTURE AND THE SIDE AND
8 THE BACK OF THE FRACTURE.

9 Q AND WHAT DID THAT INDICATE?

10 A IT INDICATED THAT THESE TWO WERE IN FACT A FRACTURE
11 MATCH AND THAT THE PIECE - THEY WERE AT ONE TIME ONE
12 PIECE.

13 Q ALL RIGHT, 86 AND 87 AT ONE TIME WERE THE SAME PIECE?

14 A THAT'S CORRECT.

15 Q ANY QUESTION IN YOUR MIND ABOUT THAT?

16 A NO.

17 Q NOW I'D ASK YOU TO FINISH LOOKING AT STATE'S EXHIBIT
18 NUMBER 89, WHICH IS WHAT YOU INDICATED BEING THE TWO
19 PIECES TOGETHER USING MOLDING. YOU HAD TALKED ABOUT
20 SCRATCHES AND STRIATIONS. ARE THEY DEPICTED IN THAT
21 PHOTOGRAPH?

22 A YOU CAN SEE THE LARGER SCRATCHES, BUT THERE'S ALSO
23 SMALLER ONES THAT YOU CANNOT SEE THAT I SAW UNDER THE
24 MICROSCOPE. SO YOU CAN SEE THE LARGER OF THE SCRATCHES
25 PRESENT ON THIS PICTURE.

1 Q SO BESIDES THE JURY SEEING IT WITH THEIR NAKED EYE, YOU
2 WENT BEYOND THAT AND SAW IT MICROSCOPICALLY?

3 A RIGHT. AND THE REASON WE DO THAT IS SOMETIMES - IN THIS
4 CASE I HAD A LOT OF AREAS THAT ACTUALLY FRACTURED
5 MATCHED UP AGAINST IT. I HAD A LOT OF DIFFERENT DIVETS
6 AND POINTS AND BREAKAGE POINTS. SOMETIMES WHEN YOU
7 HAVE GLASS OR METAL YOU WON'T GET AS MANY POINTS OF
8 BREAKAGE. IN THAT CASE IF YOU'VE EVER BUILT A JIGSAW
9 PUZZLE AND YOU HAVE THAT PIECE THAT LOOKS LIKE IT FITS
10 BUT IT'S NOT QUITE A FIT, THAT'S WHY WE LOOK AT IT UNDER
11 THE MICROSCOPE, BECAUSE WE WANT TO MAKE SURE THAT FIT
12 IS PERFECT. BECAUSE YOU CAN LOOK AT IT VISUALLY AND YOU
13 MIGHT NOT HAVE THAT FIT, BUT UNDER THE MICROSCOPE
14 YOU'RE GOING TO SEE EVERY LITTLE DETAIL OF THAT FIT.

15 Q NOW AFTER YOU MADE THIS COMPARISON AND CAME TO THIS
16 CONCLUSION, DID YOU GO BEYOND THERE IN TERMS OF OTHER
17 FRACTURED PART MATCHES OR PAINT COMPARISONS?

18 A I DID NOT BECAUSE THE EVIDENCE WANTED ME TO PERFORM A
19 FRACTURE MATCH AND A PAINT EXAMINATION, BUT ONCE I HAD
20 THE FRACTURE MATCH COMPARISON COMPLETED, I HAD
21 PROVEN THAT THE TWO PIECES WERE AT ONE TIME ONE UNIT,
22 AND THAT WAS THE QUESTION THEY WANTED ANSWERED. SO I
23 DID NOT GO ANY FURTHER.

24 Q SO THAT MEANS THAT YOU DIDN'T MAKE A COMPARISON WITH
25 THEIR ITEM NUMBER 10?

1 A I DID NOT DO A COMPARISON WITH ITEM NUMBER 10.

2 Q BECAUSE YOU'D ALREADY REACHED A CONCLUSION?

3 A RIGHT.

4 Q AND WE WERE TALKING ABOUT - AND, OF COURSE, CAN YOU
5 TELL US WHETHER OR NOT YOU DID A PAINT COMPARISON?

6 A I DID NOT PERFORM A PAINT EXAMINATION.

7 Q AGAIN, WHY?

8 A BECAUSE THE PAINT EXAMINATION IS NOT AS CONCLUSIVE AS
9 THE FRACTURE MATCH. THE FRACTURE MATCH IS THE BEST
10 EVIDENCE THAT YOU CAN HAVE IN THIS CASE. THE PAINT
11 EXAMINATION WOULD NOT HAVE ADDED ANYTHING TO IT.

12 Q BASED UPON WHAT YOU SAID ABOUT VEHICLES ROLLING OFF AN
13 ASSEMBLY LINE, IN REGARD TO MATCH MATCHES IT WOULD BE
14 INCLUSIVE BUT NOT ABSOLUTE; IS THAT KIND OF WHAT YOU'RE
15 SAYING?

16 A THAT'S CORRECT.

17 Q WHEREAS A FRACTURE MATCH IS AN ABSOLUTE?

18 A THAT'S CORRECT.

19 Q NOW CAN THE JURY GO BACK WITH THOSE PIECES AND
20 MANIPULATE THEM LIKE YOU DO, EXCEPT OBVIOUSLY NOT
21 MICROSCOPICALLY?

22 A YES.

23 Q NOW IN REGARD TO AUTOMOBILE TIRES, IF YOU TAKE A SAMPLE
24 OF RUBBER OFF A ROADWAY, CAN YOU COMPARE IT AND MAKE
25 IT A CONCLUSION AS TO A KNOWN RUBBER FROM AN

1 AUTOMOBILE TIRE?

2 A WE DO NOT HAVE A TIRE RUBBER DATA BASE. MOST TIRES ARE
3 MADE OF THE SAME RUBBER. THE ONLY THINK I COULD DO IS I
4 COULD ANALYZE THE DEBRIS FROM THE ROAD, WHICH WAS
5 THOUGHT TO BE RUBBER, AND SAY THAT IT'S CONSISTENT WITH
6 A RUBBER. IT COULD BE FROM A TIRE, BUT I CAN'T MATCH IT TO
7 A CERTAIN TYPE OF TIRE.

8 MR. MODICA: THANK YOU, I HAVE NO
9 FURTHER QUESTIONS.

10 CROSS EXAMINATION BY MR. BARR:

11 Q MRS. STONER, I THINK WE MET COMING IN THIS MORNING.

12 A AT THE GAS STATION, YES.

13 Q HOW ARE YOU DOING THIS MORNING?

14 A I'M DOING FINE.

15 Q NOW, ISN'T IT TRUE THAT WITH RESPECT TO FORENSIC
16 ANALYSIS BY WAY OF COMPARISON, IF YOU WERE TO BE
17 PROVIDED---

18 A IF I WERE WHAT, EXCUSE ME?

19 Q IF YOU WERE PROVIDED - I SHOW YOU NOW WHAT INTO
20 EVIDENCE AS STATE'S EXHIBIT NUMBER FOUR.

21 A OKAY.

22 Q SEE ALL THOSE TREAD MARKS?

23 A I SEE WHAT APPEARS TO BE TREAD MARKS.

24 Q BASED ON WHAT YOU DO AS A FORENSIC EXAMINER, NOW IN
25 YOUR OPINION, COULD SAMPLES OF RUBBER THAT WAS LEFT IN

1 THAT ROAD, COULD THEY HAVE BEEN TAKEN?

2 A YOU COULD HAVE PROBABLY PICKED UP A SAMPLE OF THE
3 RUBBER, WHICH AS I STATED, I COULD DO A COMPARISON AND
4 SAY THAT IT IS CONSISTENT WITH RUBBER---

5 Q HOLD ON A SECOND.

6 MR. MODICA: YOUR HONOR---

7 MR. BARR: JUDGE, I THINK I'M
8 ENTITLED TO HAVE THE PERSON ANSWER. AND THEN IF THE
9 WITNESS WANTS TO EXPLAIN HER ANSWER, THEN SHE CAN
10 EXPLAIN IT. THAT'S WHAT THE RULES SAY. BUT SHE DOES
11 HAVE TO ANSWER MY QUESTION.

12 THE COURT: NO NEED TO BE
13 CONFRONTIVE, THAT'S FINE. GO AHEAD, MA'AM, AND ANSWER
14 THE QUESTION. IF YOU HAVE FURTHER EXPLANATION AFTER
15 YOUR ANSWER, GO AHEAD.

16 BY MR. BARR:

17 Q CAN SAMPLES BE TAKEN?

18 A POSSIBLY IF THERE IS ENOUGH ON THE ROADWAY TO PICK UP,
19 YOU COULD COLLECT IT.

20 Q YOU COULD TAKE SAMPLES IF YOU HAD TO GO THERE WITH A
21 CHISEL AND A PICK AND PICK IT OUT OF THE ROAD, COULDN'T
22 YOU?

23 A WITH A WHAT?

24 Q A CHISEL AND A PICK.

25 A I WOULD ASSUME YOU COULD. I'VE NEVER DONE IT.

1 Q WELL YOU DON'T WORK ON THAT END OF IT, YOU WORK IN THE
2 LABORATORY END BUT NOT THE COLLECTION END, DO YOU?

3 A NOT ANYMORE. WE USED TO, BUT NOT AT THIS TIME, NO.

4 Q ISN'T IT TRUE WITH RESPECT TO EXAMINING EVIDENCE, WHAT
5 SLED DOES AND WHAT YOUR LABORATORY DOES IS THEY
6 EXAMINE TRACE MATERIALS THAT IS PRESENTED BY SHERIFF'S
7 DEPARTMENTS, POLICE DEPARTMENTS; THAT IS WHAT THEY DO,
8 DON'T THEY?

9 A AND OUR OWN AGENTS. WE HAVE A CRIME SCENE UNIT THAT
10 ALSO COLLECTS EVIDENCE. BUT WE ANALYZE EVIDENCE
11 COLLECTED BY THE DIFFERENT DEPARTMENTS.

12 Q YOU'RE ABSOLUTELY RIGHT. AND FROM TIME TO TIME WHEN THE
13 VARIOUS STATE AGENCIES, OR FEDERAL AGENCIES, OR
14 WHOEVER THEY ARE CALL ON SLED FOR ASSISTANCE, YA'LL
15 EVEN SEND PEOPLE OUT THERE TO HELP THEM INVESTIGATE,
16 DON'T' YOU?

17 A THAT IS CORRECT, FOR CERTAIN TYPES OF ACTS, YES, WE DO.

18 Q YES, MA'AM, YOU'RE NOT GOING TO SUGGEST TO US FROM A
19 FORENSIC STANDPOINT THAT THERE'S SOMETHING IMPOSSIBLE
20 ABOUT COLLECTING RUBBER SAMPLES FROM THOSE BLACK
21 TREAD MARKS IN THE HIGHWAY, ARE YOU?

22 A IF IT IS THICK ENOUGH YOU COULD PICK UP A PIECE OF THAT
23 RUBBER AND COLLECT IT.

24 Q NOW IF I GIVE YOU STRAND OF MY HAIR, WHICH IS TRACE
25 EVIDENCE, AND AND YOU TAKE IT TO YOUR LAB, YOU CAN

1 DETERMINE WHETHER OR NOT IT CAME FROM MY HEAD THROUGH
2 DNA, NOW I KNOW YOU DON'T DENY THAT YOU COULD PICK UP
3 A SAMPLE OF THAT RUBBER AND TAKE IT TO YOUR
4 LABORATORY---

5 MR. MODICA: OBJECTION AS TO FORM.
6 HE MADE A STATEMENT.

7 THE COURT: I'M GOING TO SUSTAIN
8 THAT.

9 MR. BARR: I'LL REPHRASE THE
10 QUESTION.

11 THE COURT: THE WITNESS HAS ALSO
12 STATED THAT THIS IS NOT HER AREA OF WORK. I'M NOT
13 CERTAIN THAT THERE'S ANY BENEFIT IN PURSUING THIS
14 FURTHER, PLEASE MOVE ON.

15 BY MR. BARR:

16 Q WERE YOU PRESENTED FOR EXAMINATION IN YOUR LABORATORY
17 ANY RUBBER SAMPLES?

18 A NO, I WAS NOT.

19 Q NOW IF YOU HAD BEEN PRESENTED IN YOUR LABORATORY WITH
20 A SAMPLE OF RUBBER, AND SOMEBODY BROUGHT YOU FOUR
21 TIRES, COULD YOU NOT BY WAY OF CONSISTENCY DETERMINE
22 WHETHER OR NOT THE RUBBER SAMPLES THAT THEY PRESENTED
23 YOU WITH WOULD BE CONSISTENT WITH THE FOUR TIRES THAT
24 YOU GOT?

25 A IF I HAVE A TRACE RUBBER SAMPLE, WHICH IS A SMALL PIECE

1 PICKED OFF THIS ROAD, I CAN SAY IT'S CONSISTENT WITH
2 RUBBER. LIKE PAINT, ALL TIRES ARE MADE OUT OF THE SAME
3 RUBBER. I'M NOT GOING TO BE ABLE TO TELL YOU THAT IT IS
4 ONE TIRE AND ONE TIRE ONLY. IT COULD BE ANY TIRE THAT
5 MADE THAT RUBBER MARK ON THAT ROAD.

6 Q SEE, YES, MA'AM, AND THAT'S NOT WHAT I'M ASKING FOR. I
7 UNDERSTAND THAT THERE ARE MILLIONS OF CARS OUT THERE
8 UP AND DOWN THE ROAD AND ALL KIND OF TIRES, BUT WHAT
9 I'M ASKING YOU IS WHETHER OR NOT THE RUBBER SAMPLES
10 THAT YOU WERE BROUGHT, IF YOU WERE BROUGHT THAT
11 SAMPLE, COULD YOU NOT DETERMINE WHETHER OR NOT IT WAS
12 CONSISTENT WITH THE FOUR TIRES THAT YOU GOT?

13 A NO, I COULD JUST SAY IT WAS CONSISTENT WITH RUBBER,
14 WHICH COULD BE CONSISTENT WITH ANY TIRE THAT IS OUT
15 THERE.

16 Q BUT THE RUBBER THAT'S ON THOSE TIRES, YOU COULD SAY
17 WHETHER OR NOT IT'S CONSISTENT WITH THE RUBBER ON THE
18 FOUR TIRES YOU'VE GOT?

19 A BUT IT WOULDN'T MEAN ANYTHING BECAUSE IT ALSO
20 CONSISTENT WITH ANYTHING ELSE.

21 Q NO, MA'AM, I'M NOT ASKING WHAT IT WOULD MEAN. I'M JUST
22 ASKING IF YOU ANALYZE IT WHETHER OR NOT YOU COULD
23 DETERMINE THAT IT'S CONSISTENT.

24 A IF I ANALYZE THE RUBBER - IF I HAD RUBBER BROUGHT TO ME IN
25 THIS CASE AND I ANALYZED IT I COULD TELL YOU WHAT THE

1 CHEMICAL COMPONENTS WERE OF IT, I COULD SAY IT WAS
2 CONSISTENT WITH RUBBER. I COULD LOOK AT THE TIRES AND
3 TELL YOU WHAT THE CHEMICAL COMPONENTS WERE AND SAY
4 THEY'RE CONSISTENT WITH RUBBER. THAT IS WHAT I COULD DO
5 IN A CASE IF THIS WERE BROUGHT TO ME.

6 Q ARE YOU SAYING THAT WHEN YOU ANALYZE THE RUBBER ON
7 THE TIRES AND YOU COME UP WITH SOME RESULTS, YOU
8 CANNOT AS A SCIENTIST DETERMINE WHETHER OR NOT THAT
9 RUBBER IS CONSISTENT WITH A SAMPLE THAT YOU'VE GOT?

10 A IT WOULD BE SCIENTIFICALLY IRRESPONSIBLE OF ME TO DO
11 THAT. BECAUSE WHEN YOU LOOK AT POLYMERS, WHEN YOU
12 LOOK AT RUBBERS, WHEN YOU LOOK AT DIFFERENT
13 SUBSTANCES, THE MAJORITY OF THEM ARE MADE OUT OF THE
14 SAME THING. IF YOU LOOK AT LIKE THIS LIGHT RIGHT HERE, THIS
15 PLASTIC, IF THEY HAD BROUGHT A PIECE OF PLASTIC FROM THE
16 SCENE WITH NO FRACTURE MATCH TO THIS, ALL THAT PLASTIC
17 THAT IS ORANGE IS GOING TO BE MADE OF THE SAME CHEMICAL
18 STUFF. SO I COULDN'T TELL YOU IF IT CAME FROM THIS LIGHT
19 OR IF IT CAME TEN OTHER LIGHTS OR A HUNDRED OTHER LIGHTS.
20 THE SAME THING WITH RUBBER. RUBBER IS RUBBER
21 CHEMICALLY. THERE IS NOTHING DIFFERENT ABOUT IT, SO I
22 COULD NOT TELL YOU IT CAME FROM A CERTAIN TIRE.

23 Q MRS. STONER, WITH RESPECT TO WHAT HAS BEEN ENTERED
24 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 87, WHICH IS A
25 PIECE OF LIGHT FROM A LIGHT FIXTURE ON A VEHICLE, AND WE

1 STIPULATED THAT IT IS FROM THE DEFENDANT'S VEHICLE.
2 WOULD YOU NOT AGREE WITH WHAT YOU TESTIFIED TO
3 REGARDING THIS PIECE OF TRACE EVIDENCE IS THAT YOU HAVE
4 IDENTIFIED THAT IT CAME FROM A CERTAIN VEHICLE?

5 A I WAS TOLD THAT WAS A PIECE THAT CAME FROM THE
6 SUSPECT'S VEHICLE. I WAS TOLD THIS CAME FROM THE CRIME
7 SCENE. I PERFORMED A FRACTURE MATCH EXAMINATION ON
8 THESE TWO PIECES TO SHOW THAT THEY WERE AT ONE TIME A
9 SINGLE UNIT.

10 Q AND IN OTHER WORDS, AS I SAID, YOU WERE SITTING IN THE
11 COURTROOM, YOU HEARD US STIPULATE THAT WE AGREED THEY
12 ALL CAME FROM THE SAME PLACE?

13 A YOU AGREED THAT THESE PIECES, BOTH PIECES, CAME FROM THE
14 SUSPECT'S VEHICLE?

15 Q YES, MA'AM.

16 A OKAY. I WASN'T CERTAIN WHAT YOUR STIPULATIONS WERE.

17 Q THAT'S EXACTLY WHAT I SAID. NOW LET ME JUST CUT TO THE
18 QUESTIONS I WANT TO ASK; NOW WITH RESPECT TO THE FIELD
19 OF FORENSIC ANALYSIS, WOULD YOU NOT AGREE THAT FIELDS
20 OF SCIENCES ARE ABSOLUTE AND FORENSIC ANALYSIS IS NO
21 DIFFERENT?

22 A COULD YOU REPEAT THAT?

23 Q WOULD YOU NOT AGREE - AND I'LL GIVE YOU TIME TO THINK
24 ABOUT IT - THAT IN YOUR SCIENTIFIC FIELD THERE ARE A FEW
25 ABSOLUTES JUST AS IN MOST OTHER DISCIPLINES?

1 A YES, THERE ARE A FEW ABSOLUTES.

2 Q FEW ABSOLUTES.

3 A A LOT OF THE EXAMS THAT WE PERFORM - IF I DO A FIBER
4 COMPARISON ON FIBERS FROM A SCENE TO A VICTIM'S
5 CLOTHING, IF HE BOUGHT THAT SHIRT AT WAL-MART, HOW
6 MANY DIFFERENT ITEMS OF THAT SHIRT ARE OUT THERE? YEAH,
7 IT COULD HAVE MATCHED THE OTHER SHIRTS, BUT IT'S JUST
8 CIRCUMSTANTIAL EVIDENCE. AND IF I HAVE ENOUGH OF IT
9 BUILDS TO SHOW IF I HAVE FIBERS, IF I HAVE GLASS, ALL OF
10 THAT GOES TOGETHER. BUT, YES, IT'S NOT AN ABSOLUTE. I
11 CAN'T SAY THAT FIBER CAME FROM THAT SHIRT UNLESS I HAVE
12 A TORN PATTERN WHICH I PERFORM A FRACTURE MATCH ON
13 WHICH ACTUALLY SHOWS. BECAUSE I'VE EXPLAINED THAT
14 FRACTURE MATCHES ARE UNIQUE AND WHEN YOU HAVE A
15 FRACTURE MATCH YOU HAVE SO MANY DIFFERENT PROCESSES
16 THAT COME TOGETHER TO PERFORM THAT FRACTURE MATCH,
17 THAT IS WHAT MAKES IT UNIQUE. EVERY MATERIAL IS GOING TO
18 HAVE A TENCIL* STRIPE, WHICH IS WHAT - YOU HAVE TO
19 BYPASS THAT TO BREAK IT.

20 SO YOU'RE GOING TO HAVE A FORCE APPLIED TO
21 THAT MATERIAL, YOU'RE GOING TO HAVE THE DIRECTION THE
22 FORCE WAS APPLIED, THE TIME IT WAS APPLIED, THE ANGLE IT
23 WAS APPLIED, AND HOW LONG IT WAS APPLIED AND IN WHAT
24 DIRECTION. AND YOU'RE ALSO GOING TO HAVE THE INTERNAL
25 DEFECTS THAT ARE PRESENT IN ANY MATERIAL. SO ALL OF

1 THESE COMING TOGETHER TO FORM THAT FRACTURE AT THAT
2 TIME, IT'S NOT SOMETHING THAT YOU CAN REPRODUCE.
3 FRACTURE MATCHES ARE ONE OF THE POSITIVE IDENTIFICATIONS
4 THAT WE MAKE IN OUR LABORATORY TO SAY THAT TWO ITEMS
5 WERE ONCE ONE.

6 YOU CAN ACTUALLY TAKE, IF YOU SEE THOSE UTILITY
7 KNIVES THAT HAVE THE BLADES YOU CAN BREAK OFF, THEY
8 HAVE LIKE SERRATED POINTS YOU CAN BREAK, YOU COULD
9 BREAK OFF THAT WHOLE KNIFE, IT'S THE SAME MATERIAL, AND
10 YOU'RE NOT GOING TO BE ABLE TO FIT BACK THOSE BLADES TO
11 A FRACTURE THAT IT DIDN'T COME FROM BECAUSE YOU HAVE
12 ALL THESE DIFFERENCES. YOU'RE GOING TO PRESS DIFFERENTLY
13 WITH YOUR THUMB AT THAT TIME, YOU MAY HOLD IT
14 DIFFERENTLY, YOU MAY WAIT LONGER TO DO IT.

15 SO THAT'S WHY A FRACTURE MATCH IS AN
16 ABSOLUTE. A LOT OF THE OTHER STUFF WE DO IS NOT. HE'S
17 CORRECT ON THAT.

18 THE COURT: IS THERE REDIRECT?
19 MR. BARR, YOU SAT DOWN, SIR, I ASSUMED YOU HAD
20 CONCLUDED.

21 MR. BARR: I WAS JUST LETTING HER
22 FINISH WHATEVER SHE---

23 THE COURT: A LAWYER THAT ASKS A
24 QUESTION SHOULD REMAIN STANDING IN THE COURTROOM, SIR.

25 MR. BARR: THANK YOU, JUDGE.

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THE COURT: DO YOU HAVE FURTHER
QUESTIONS?

MR. BARR: YES, SIR.

THE COURT: HOW LONG WILL IT BE,
SIR?

MR. BARR: NOT TOO LONG.

THE COURT: ALL RIGHT, GO AHEAD.

BY MR. BARR:

Q NOW, OF COURSE, IF YOU WERE MAKING AN EXAMINATION OF
CERTAIN INFORMATION ABOUT TWO CARS INSTEAD OF ONE---

A TWO CARS?

Q YES, MA'AM. YOU WOULD AGREE THAT AS IT RELATES TO THE
FRACTURE MATCH THEORY, UNLESS YOU'VE GOT THE OTHER
VEHICLE, YOU CERTAINLY CAN'T MAKE A DETERMINATION OF
ANY SCIENTIFIC VALUE CONCERNING THE VEHICLE, CAN YOU,
UNLESS YOU HAVE SOMETHING FROM THE OTHER VEHICLE?

A I DID NOT DO A FRACTURE MATCH ON THE OTHER VEHICLE.

Q WELL IF YOU WERE PROVIDED WITH PAINT SCRAPINGS OR ANY
OTHER KIND OF TRACE THAT YOU COULD USE AS A STANDARD,
WOULD YOU NOT AGREE THAT YOU COULD EXAMINE WHATEVER
SAMPLE YOU WERE PROVIDED WITH AND MAKE A
DETERMINATION CONCERNING CONSISTENCY AS IT RELATES TO
THE SAMPLE YOU ARE EXAMINING?

A WHEN WE PERFORM A PAINT EXAMINATION THAT IS WHAT WE
DO. WE WILL DO A CHEMICAL AND A PHYSICAL TEST AND

1 DETERMINE IF THE TWO PAINT SAMPLES ARE CONSISTENT.

2 Q HOW IF YOU HAD BEEN PROVIDED WITH ANY KIND OF PAINT
3 SAMPLE FROM VEHICLE, AND IN THIS CASE THERE WERE TWO
4 VEHICLES INVOLVED, FROM ANOTHER ONE, YOU COULD HAVE
5 MADE AN EXAMINATION OF WHETHER THOSE PAINT SCRAPINGS
6 OR SAMPLES WERE CONSISTENT WITH THE OTHER VEHICLE,
7 COULDN'T YOU?

8 A I WAS PROVIDED WITH PAINT EVIDENCE. I DID NOT DO THAT
9 EXAMINATION SINCE I'VE EXPLAINED THAT THE FRACTURE
10 MATCH IS THE HIGHEST ASSOCIATION WE CAN MAKE, THERE
11 WAS NO NEED TO ANALYZE THE PAINT IN THIS CASE.

12 Q TELL ME WHERE IN YOUR REPORT YOU WERE PROVIDED PAINT
13 SAMPLES FROM THE OTHER VEHICLE.

14 A ITEM NUMBER 11 WAS A WHITE PAINT STANDARD TAKEN FROM
15 THE VICTIM'S VEHICLE. ITEM NUMBER 12 WAS A BLUE PAINT
16 STANDARD TAKEN FROM THE SUSPECT'S VEHICLE. 13 WAS
17 UNKNOWN BLUE PAINT FROM THE VICTIM'S VEHICLE, AND 14
18 WAS UNKNOWN WHITE PAINT FROM THE SUSPECT'S VEHICLE.

19 Q AND IF YOU WOULD, PLEASE, MA'AM, YOU WOULD AGREE WITH
20 ME AS IT RELATES TO WHERE THOSE SAMPLES WERE TAKEN,
21 THIS REPORT DOES NOT INDICATE WHERE THEY WERE TAKEN
22 FROM?

23 A NO, THE REPORT DOES NOT INDICATE THAT.

24 MR. BARR: JUDGE, I'M THROUGH.

25 THE COURT: IS THERE ANY OBJECTION

1 TO THE RELEASE OF THE WITNESS?

2 MR. MODICA: NONE.

3 THE COURT: HEARING NONE, YOU ARE
4 FREE TO LEAVE.

5 MR. MODICA: LET THE RECORD
6 REFLECT I'M RETURNING 87 BACK TO THE PAPERBAG, AS WELL
7 AS ITEM NUMBER 86. AND AT THIS POINT THE STATE WOULD
8 REST.

9 THE COURT: ALL RIGHT. STATE RESTS,
10 LADIES AND GENTLEMEN. IN EVERY CASE AT THIS POINT THE
11 COURT HAS CERTAIN MATTERS THAT I NEED TO TAKE UP,
12 MATTERS OF LAW , THAT WOULD BE DONE OUTSIDE OF YOUR
13 PRESENCE. SO I'M GOING TO GIVE YOU A BREAK AND ASK YOU
14 TO DO THIS FOR ME, LADIES AND GENTLEMEN.

15 I'M GOING TO ASK YOU TO FROM AMONG MEMBERS
16 TO CHOOSE YOUR OWN FOREPERSON. AND LET ME SUGGEST TO
17 YOU THAT THE BEST FOREPERSON, WOMAN OR MAN, IS NOT
18 SOMEONE WHO'S A DICTATOR OR CONTROLLER OF OPINION, BUT
19 SOMEBODY WHO'S A MODERATOR OR DISCUSSION FACILITATOR
20 BECAUSE ULTIMATELY YOUR VERDICT IS GOING TO HAVE TO BE
21 UNANIMOUS IN THE CASE.

22 I'M GOING TO ASK OUR ALTERNATES, THAT'S MR.
23 DESMOND AND MR. MCLELLAN, I'M GOING TO ASK YOU IF YOU
24 TWO GENTLEMEN WOULD KINDLY CO-PRESIDE OVER THIS
25 CHOICE. YOU MAY NOTE IN THE CHOICE, BUT IT SHOULD NOT BE

1 YOU ACTUALLY CHOSEN AS THE FOREPERSON BECAUSE YOU
2 MAY NOT ACTUALLY DELIBERATE WITH THE 12, THAT REMAINS
3 TO BE SEEN. BUT IF YOU WOULD ASSIST AND PRESIDE IN THE
4 CHOICE FOR YOUR COLLEAGUES, I WOULD APPRECIATE THAT.
5 LET'S EVERYONE ELSE NOW REMAIN WHERE THEY ARE WHILE
6 OUR JURY RETURNS TO THE JURY ROOM. AND WHEN YOU FINISH,
7 PLEASE KNOCK ON THE DOOR, IF YOU WOULD BE KIND ENOUGH
8 TO RIGHT THE NAME OF THE FOREPERSON, WE WILL RESPOND
9 TO YOU.

10 (AT THIS TIME THE JURY LEAVES THE COURTROOM)

11 THE COURT: ALL RIGHT, NOW AT THE
12 END OF THE STATE'S CASE, ARE THERE ANY MOTIONS FROM THE
13 DEFENSE?

14 MR. BARR: JUDGE, AT THIS POINT WE
15 WOULD MOVE FOR A DIRECTED VERDICT OF NOT GUILTY ON THE
16 OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO KILL, AS
17 WELL AS THE OFFENSE OF FAILURE TO STOP FOR A BLUE LIGHT.
18 YOUR HONOR, I'M NOT GOING TO ARGUE, BUT FOR THE RECORD,
19 I MAKE THAT MOTION.

20 THE COURT: MR. BARR, THE COURT
21 RESPECTFULLY DENIES THAT MOTION. THE ISSUE BEFORE THE
22 COURT AT THIS JUNCTURE IS WHETHER THERE IS ANY EVIDENCE
23 BEFORE THIS JURY TENDING TO PROVE THE GUILT OF THE
24 ACCUSED, AND I FIND THERE IS SUCH EVIDENCE, WHICH WOULD
25 REQUIRE THE MATTER TO BE SUBMITTED TO THE JURY ON BOTH

1 CHARGES. AND YOUR MOTION IS DENIED. ANYTHING FURTHER,
2 COUNSEL?

3 MR. BARR: YES, SIR. I WOULD REQUEST
4 AT THIS TIME THAT THE DEFENDANT BE INSTRUCTED OF HIS
5 RIGHT NOT TO TAKE THE WITNESS STAND.

6 THE COURT: LET'S DO THAT. MR.
7 COHENS, I'M GOING TO SPEAK WITH YOU, SIR, LET ME GET YOU
8 TO STAND WHERE THEY ARE.

9 Thereupon, RONALD COHENS,
10 being first duly sworn, testified as follows:

11 BY THE COURT:

12 Q MR. COHENS, GOOD MORNING. I WANT TO TALK WITH YOU NOW
13 ABOUT YOUR RIGHT TO REMAIN SILENT AS WELL AS YOUR RIGHT
14 TO TESTIFY IN THIS PROCEEDING. AS YOU HAVE HEARD, THE
15 STATE HAS RESTED, MEANING IT'S NOW TIME FOR THE DEFENSE
16 TO PUT UP THE CASE IF THE DEFENSE WISHES TO DO SO, AND
17 FURTHERMORE AS PART OF THAT CASE, IT WOULD BE TIME FOR
18 YOU TO TESTIFY, IF YOU WISH TO DO SO.

19 NOW, HAS YOUR LAWYER DISCUSSED WITH YOU THE FACT
20 THAT YOU HAVE THE RIGHT TO REMAIN SILENT IN THIS
21 COURTROOM, AS WELL AS THE FACT THAT YOU HAVE THE
22 RIGHT TO TESTIFY?

23 A YES, SIR.

24 Q AND ON YOUR RIGHT TO REMAIN SILENT, I WANT TO MAKE SURE
25 THAT YOU UNDERSTAND THAT IN THIS COURTROOM YOU'RE NOT

1 REQUIRED TO TESTIFY BECAUSE YOU HAVE NO BURDEN OF
2 PROOF. THE STATE HAS THE BURDEN OF PROOF, AND
3 THEREFORE YOU HAVE NOT REQUIRED TO TESTIFY IN THIS
4 PROCEEDING. AND YOU HAVE THE RIGHT TO REMAIN SILENT. DO
5 YOU UNDERSTAND THAT?

6 A YES, SIR.

7 Q AND IF YOU EXERCISE THAT RIGHT TO REMAIN SILENT THE
8 COURT, THAT'S ME, IN MY CHARGE TO THE JURY WILL TELL THE
9 JURY THEY CANNOT HOLD THAT AGAINST YOU. IN FACT, THEY
10 SHOULD NOT EVEN MENTION THAT IN THE JURY ROOM BECAUSE
11 YOU HAVE AN ABSOLUTE CONSTITUTIONAL RIGHT TO REMAIN
12 SILENT BECAUSE YOU HAVE NO BURDEN TO PROVE. AND DO
13 YOU UNDERSTAND THAT, SIR?

14 A YES, SIR.

15 Q SO DO YOU UNDERSTAND, THEN, THAT YOU'RE NOT REQUIRED
16 TO TESTIFY IN THIS PROCEEDING?

17 A YES, SIR.

18 Q NOW IS WHAT I JUST TOLD YOU ABOUT YOUR RIGHT TO REMAIN
19 SILENT THE SAME THING YOUR LAWYER TOLD YOU ABOUT THAT
20 RIGHT?

21 A YES, SIR.

22 Q NOW, LET'S TALK ABOUT YOUR RIGHT TO TESTIFY. BY THE
23 SAME TOKEN, IF YOU WISH TO TESTIFY YOU HAVE THE RIGHT TO
24 TAKE THE STAND UNDER OATH AND TESTIFY. DO YOU
25 UNDERSTAND THAT, MR. COHENS?

- 1 A YES, SIR.
- 2 Q AND IF YOU TAKE THE STAND AND TESTIFY, THEN YOU WOULD
3 BE SUBJECT TO DIRECT EXAMINATION BY YOUR OWN LAWYER,
4 BUT ALSO CROSS EXAMINATION BY THE PROSECUTOR; DO YOU
5 UNDERSTAND THAT?
- 6 A YES, SIR.
- 7 Q AND IF YOU HAVE ON YOUR RECORD ANY CHARGES IN YOUR
8 PAST WHICH MAY BEAR UPON YOUR CREDIBILITY OR
9 BELIEVABILITY, THAT RECORD MAY COME INTO EVIDENCE ON
10 THE BASIS OF WHETHER YOU'RE A BELIEVABLE OR CREDIBLE
11 WITNESS. DO YOU UNDERSTAND THAT, SIR?
- 12 A YES, SIR.
- 13 Q AND, OF COURSE, SUBJECT TO BOTH DIRECT AND CROSS
14 EXAMINATION, WHATEVER YOU SAY WILL BE HEARD BY THE
15 JURY AND THE JURY MAY USE THAT FOR YOU OR AGAINST YOU
16 AS THEY DETERMINE IT TO BE. DO YOU UNDERSTAND THAT,
17 SIR?
- 18 A YES, SIR.
- 19 Q NOW IS WHAT I'VE TOLD YOU ABOUT YOUR RIGHT TO TESTIFY
20 THE SAME YOUR LAWYER TOLD YOU ABOUT YOUR RIGHT TO
21 TESTIFY?
- 22 A YES, SIR.
- 23 Q HAVE YOU FULLY UNDERSTOOD MY DISCUSSION WITH YOU
24 ABOUT YOUR RIGHT TO REMAIN SILENT AND YOUR RIGHT TO
25 TESTIFY?

1 A YES, SIR.

2 Q DO YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHT TO REMAIN
3 SILENT OR YOUR RIGHT TO TESTIFY?

4 A NO, SIR.

5 Q AND TELL ME, SIR, HAVE YOU DECIDED BASED ON THIS
6 DISCUSSION WHETHER TO TESTIFY OR WHETHER TO REMAIN
7 SILENT?

8 A YES, SIR.

9 Q AND WHICH IS IT?

10 A TESTIFY.

11 THE COURT: ALL RIGHT, SO NOW
12 HAVING ADVISED US THAT THERE IS A DECISION TO TESTIFY. IS
13 THERE ANYTHING IN THE DEFENDANT'S CRIMINAL RECORD, MR.
14 MODICA THAT WOULD COME IN ON THE ISSUE OF CREDIBILITY
15 AND BELIEVABILITY?

16 MR. MODICA: NO, SIR.

17 THE COURT: ARE THERE ANY OTHER
18 ISSUES THAT THIS COURT NEEDS TO RESOLVE AT THIS TIME
19 BEFORE WE STAND DOWN FOR A MOMENT AWAITING THE JURY'S
20 SELECTION?

21 MR. MODICA: NO, SIR.

22 MR. BARR: NO, SIR, JUDGE.

23 THE COURT: TELL ME, MR. BARR, HOW
24 MANY WITNESSES DO YOU BELIEVE YOU HAVE AT THIS POINT.

25 MR. BARR: ONE.

1 THE COURT: THEN THIS COURT WILL
2 STAND DOWN AWAITING THE JURY'S NOTICE.

3 (THE COURT STANDS IN RECESS)

4 MR. BARR: JUDGE, WHEN I SAID "ONE,"
5 I WAS REFERRING TO THE DEFENDANT.

6 THE COURT: I ASSUMED THAT. AND
7 NOW, COUNSEL, DO YOU HAVE ANY CHARGES DISCUSSION THAT
8 WE NEED TO HAVE? IF SO, COME TO SIDE BAR. IF NOT, WE'LL
9 PROCEED. ALL RIGHT, COUNSEL, I AM ADVISED THAT THE JURY
10 HAS CHOSEN JOHN DEVILA AS THE FOREPERSON. AND PLEASE
11 BRING IN THE JURY AND SEAT MR. DEVILA IN THE FOREPERSON'S
12 SEAT.

13 ALL RIGHT, LADIES AND GENTLEMEN, WELCOME
14 BACK TO THE COURTROOM. AND DR. DEVILA, I SEE THAT
15 YOU'VE BEEN CHOSEN FOREPERSON, AND IN PART PROBABLY
16 BECAUSE OF YOUR COMPUTER EXPERTISE THAT YOU BRING TO
17 THE TABLE. BUT I WOULD SAY TO YOU, FIRST OF ALL,
18 CONGRATULATIONS FOR YOUR CONFIDENCE YOUR COLLEAGUES
19 ARE SHOWING IN YOU, AND SECONDLY, THANK YOU FOR YOUR
20 WILLINGNESS FOR SERVING IN THIS IMPORTANT CAPACITY. I'M
21 GOING TO TALK WITH YOU A LITTLE BIT MORE ABOUT YOUR
22 RESPONSIBILITIES IN MY CHARGE TO YOU ON THE LAW, BUT,
23 AGAIN, THANK YOU FOR SERVING IN THIS CAPACITY.

24 ALL RIGHT, LADIES AND GENTLEMEN, YOU WILL
25 REMEMBER THAT THE STATE RESTED AT THE END OF THE FIRST

1 MORNING SESSION AND NOW WE MOVE TO THE DEFENSE CASE.

2 MR. BARR, PLEASE CALL YOUR FIRST WITNESS, SIR.

3 Thereupon, RONALD COHENS,

4 being first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BARR:

6 Q STATE YOUR FULL NAME FOR THE RECORD.

7 A RONALD COHENS.

8 Q NOW, MR. COHENS, I'M GOING TO ASK YOU TO SPEAK UP SO THE
9 COURT, THE JUDGE, THE COURT REPORTER, AS WELL AS THE
10 LADIES AND GENTLEMEN OF THIS JURY CAN HEAR ALL OF YOUR
11 TESTIMONY. NOW, YOU ARE RONALD COHENS?

12 A YES, SIR, I'M RONALD COHENS.

13 Q ARE YOU AWARE OF BEING KNOWN BY ANY OTHER NAME OTHER
14 THAN RONALD COHENS?

15 A SLIM.

16 Q SLIM?

17 A YES, SIR.

18 Q THAT'S YOUR NICKNAME?

19 A YES, SIR.

20 Q TELL ME IF YOU WOULD, PLEASE, SIR, WHERE DID YOU GROW UP?

21 A BROWN'S FERRY,* GEORGETOWN.

22 Q AND HOW OLD ARE YOU NOW?

23 A 38.

24 Q WHERE DID YOU GO TO SCHOOL?

25 A (INAUDIBLE) HIGH SCHOOL.

- 1 Q AND DID YOU GRADUATE?
- 2 A NO, SIR.
- 3 Q HOW MUCH EDUCATION DO YOU HAVE?
- 4 A 11TH GRADE EDUCATION.
- 5 Q NOW, DO YOU HAVE ANY FAMILY IN GEORGETOWN?
- 6 A YES, SIR.
- 7 Q DO YOU HAVE BROTHERS AND SISTERS?
- 8 A BROTHERS AND SISTERS.
- 9 Q HOW MANY?
- 10 A I HAVE EIGHT BROTHERS AND ONE SISTER.
- 11 Q ARE YOUR PARENTS ALIVE?
- 12 A YES, SIR, BOTH OF THEM.
- 13 Q I BELIEVE YOUR MOTHER'S IN THE COURTROOM, ISN'T SHE?
- 14 A YES, SIR.
- 15 Q AND WHERE IS SHE?
- 16 A (DEFENDANT POINTS.)
- 17 Q IS THAT THE LADY IN THE WHITE?
- 18 A YES, SIR.
- 19 Q HOW MANY CHILDREN DO YOU HAVE?
- 20 A FIVE.
- 21 Q WHAT ARE THE AGES OF YOUR CHILDREN?
- 22 A 22, 20, AND 17, AND MY YOUNGEST IS 8, AND MY OTHER ONE IS
- 23 11.
- 24 Q THE TWO YOUNGEST, ARE THOSE THE TWO CHILDREN WITH
- 25 YOUR WIFE, MRS. COHENS?

1 A YES, SIR.

2 Q WHAT KIND OF WORK DO YOU DO?

3 A LOGGING. I WORK IN THE LUMBER BUSINESS.

4 Q HOW LONG HAVE YOU BEEN DOING THAT?

5 A 18 YEARS.

6 Q AND HOW OLD DID YOU SAY YOU ARE?

7 A SO YOU'VE BEEN DOING THAT ALL YOUR LIFE?

8 A YES, SIR.

9 Q AND DO YOU WORK FOR YOURSELF OR WITH SOMEBODY?

10 A WITH SOMEBODY, MY BROTHER-IN-LAW OVER THERE, JACOB.

11 Q LET ME NOW DIRECT YOUR ATTENTION TO THE EVENTS OF
12 MARCH 23 OF 2006. OF COURSE YOU'VE BEEN IN THE
13 COURTROOM, UNFORTUNATELY, THROUGHOUT ALL OF THESE
14 PROCEEDINGS. BUT AS UNFORTUNATE AS IT MIGHT BE, LET ME
15 DIRECT YOUR ATTENTION AND ASK YOU, IF YOU WOULD, TELL
16 US, FIRST OF ALL, WHAT TIME DID YOU GET UP THAT MORNING,
17 THE MORNING OF THE 23RD OF MARCH, 2006?

18 A SIX O'CLOCK.

19 Q TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT YOU DID.

20 A I GOT UP---

21 Q TELL THEM EVERYTHING YOU DID THAT DAY.

22 A I GOT UP, I WENT IN THE BATHROOM, WASHED UP, GOT IN MY
23 CAR, IT WAS KIND OF COOL THAT MORNING, LET THE CAR WARM
24 UP, THEN I LEFT HOME. AS I WAS LEAVING HOME I SEE MY EX-
25 WIFE, SHE WAS GETTING IN HER VEHICLE. SO I WENT ON DOWN

- 1 OAKLAND AND WHEN I GOT UP TO 51 I HAD TO SIT THERE TO
2 WAIT FOR SOME CARS TO GO BY. I GOT ON 51 COMING
3 TOWARDS GEORGETOWN AND WHEN I GOT DOWN TO THE
4 GEORGETOWN COUNTY DETENTION CENTER THERE WAS A CAR
5 MAKING A LEFT TURN GOING INTO THE JAILHOUSE, TWO CARS
6 COMING FROM GEORGETOWN, SO I HAD TO SLOW DOWN AND
7 WAIT TILL HE MADE HIS TURN. BY THAT TIME MY WIFE WAS
8 ALREADY BEHIND ME. SO WHEN I SEE HER SHE WAS LIKE RIGHT
9 CLOSE BEHIND ME, SO I PULL OFF---
- 10 Q LET ME STOP YOU A SECOND. DID YOU HAVE A CELL PHONE?
11 A YES, SIR.
12 Q DID YOU CALL YOUR WIFE?
13 A YES, SIR.
14 Q HOW DID YOU CALL HER?
15 A I PICKED UP MY CELL PHONE TO CALL HER AND I COULDN'T GET
16 THROUGH. THE PHONE RANG THREE TIMES AND CUT OFF. THAT
17 WAS IT, I PUT THE PHONE DOWN.
18 Q NOW, DID YOU NOT KNOW AT THE TIME THAT YOU WASN'T
19 EVEN SUPPOSED TO BE CALLING YOUR WIFE?
20 A YES, SIR.
21 Q WHY DID YOU CALL HER?
22 A TO ASK HER WHAT SHE'S TRYING TO PROVE RUNNING UP BEHIND
23 ME.
24 Q CONTINUE.
25 A SO WHEN I GOT TO FRANCIS MARION TO GET ON 701 I SEEN SHE

1 COME AROUND IN FRONT OF ME. AND I STAYED IN THE RIGHT
2 LANE, SHE GOT IN THE LEFT LANE AND SHE WENT ON AHEAD.

3 Q LET ME STOP YOU ONE MORE TIME. WHAT WERE YOU GOING TO
4 DO, OR WHAT WERE YOU DOING THAT DAY?

5 A I WAS ON MY WAY TO THE INTERNAL REVENUE OFFICE IN THE
6 GRAND STRAND BY GRAND STRAND HOSPITAL.

7 Q WHAT WERE YOU GOING THERE FOR?

8 A GOING OVER THERE BECAUSE THEY SENT ME A LETTER BECAUSE
9 I OWED \$750.00. I WAS GOING OVER THERE AND MAKE A
10 PAYMENT PLAN.

11 Q ALL RIGHT, TELL US WHAT ELSE YOU DID.

12 A AFTER WE GOT ON 701 SHE PASSED BY ME AND WENT ON. I
13 WAS IN THE RIGHT LANE. WE CAME THROUGH KINGSTON,* THE
14 LIGHT TURNED GREEN AND WE WENT ON. I WAS STILL LIKE
15 FOUR OR FIVE CARS BEHIND HER IN THE RIGHT LANE, SHE WAS IN
16 THE LEFT LANE. AS WE GOT TO WAL-MART, TRAFFIC GOT KIND
17 OF CONGESTED. SO THE LEFT LANE TRAFFIC WAS SLOWING
18 DOWN AND THE RIGHT LANE TRAFFIC WAS CONTINUING ON. SO
19 I CONTINUED ON, WENT TO THE RED LIGHT. AND THAT LIGHT
20 WAS RED AND I STOPPED, ALL TRAFFIC CAME TO A STOP.

21 AFTER THAT TIME, THE LIGHT TURNED GREEN, WE TOOK
22 OFF AGAIN. I', STILL IN THE RIGHT LANE. SHE'S LIKE STILL SO
23 MANY CARS BEHIND ME. WHEN UP, WENT THROUGH THE
24 SECOND RED LIGHT. AFTER THAT TIME WE WAS COMING UP -
25 THAT LIGHT WAS GREEN, I STILL WAS IN THE RIGHT LANE. I

1 DIDN'T NEVER SEE HER NO MORE. AND AFTER THAT TIME I
2 PROCEEDED OVER INTO THE LEFT LANE TO MAKE MY TURN ON
3 BLACK RIVER ROAD. AND BY THAT TIME I MADE MY TURN, I
4 WAS GOING DOWN BLACK RIVER ROAD AND I NEVER SEEN HER
5 NO MORE UNTIL I GOT TO THE RED LIGHT. AND I PULLED UP, THE
6 RED LIGHT WAS RED, AND WHEN I PULLED UP I STAYED IN THE
7 LEFT LANE. WHEN I SEEN HER, SHE WAS COMING BEHIND ME.
8 SO I STAYED IN THE LEFT LANE THE WHOLE TIME. WHEN WE
9 GOT UP AROUND BY THE BP STATION ON THE RIGHT, I WENT
10 AROUND THE CURVE, PROCEEDED DOWN AROUND 17. I
11 CROSSED THE FIRST BRIDGE, WHEN I CROSSED THE FIRST
12 BRIDGE I DIDN'T SEE HER NO MORE.

13 I CROSSED THE SECOND BRIDGE, THAT'S WHEN SHE
14 CAME UP BESIDE ME. WE WENT DOWN THE BRIDGE TOGETHER.
15 AT THAT TIME WE WAS APPROACHING THE FIRST CURVE ON 17.
16 BEFORE WE GOT TO THAT CURVE SHE CAME UP BESIDE AND ME
17 AND HER WAS DOING LIKE THIS AT ONE ANOTHER. NEXT THING I
18 KNOW, BAM, WE HIT. SHE TOOK OFF AND LEFT. SO I GOT BACK
19 IN THE -- SHE WAS IN THE RIGHT LANE, I WAS IN THE LEFT LANE.
20 I GOT OVER IN THE RIGHT LANE AND SHE WAS GOING, SHE WAS
21 AHEAD OF ME. AND BY THAT TIME WE WAS APPROACHING UP
22 WHERE THE RED BARN* WAS. SHE GOT OVER IN THE LEFT LANE
23 AND I STAYED IN THE RIGHT LANE.

24 SHE CONTINUED ON SPEEDING. AT THAT TIME I
25 HURRIED UP TO GET UP BESIDE HER. BEFORE WE GOT TO

1 DEBORDIEU, RIGHT BEFORE WE GOT TO DEBORDIEU COLONIES,
2 THE SIGN TO DEBORDIEU, I SEEN WHERE SHE HIT THE BRAKES
3 AND SHE DECIDED TO COME OVER. WHEN SHE STARTED TO
4 COME OVER, SHE CATCH THE FRONT OF MY VEHICLE. ME AND
5 HER WAS GOING INTO THE DITCH. I SLAMMED ON THE BRAKES.
6 WHEN I SLAMMED ON THE BRAKES SHE WENT STRAIGHT ACROSS
7 IN FRONT OF ME AND WENT IN THE DITCH. I WENT DOWN THE
8 ROAD, TURNED AROUND AND CAME BACK.

9 Q NOW, HOW FAR DID YOU GO DOWN THE ROAD BEFORE YOU
10 TURNED AROUND?

11 A ABOUT A BLOCK BECAUSE THE NEXT TURN-OFF WAS NOT THAT
12 FAR FROM DEBORDIEU ENTRANCE.

13 Q AND WHEN YOU CAME BACK, WHAT DID YOU DO?

14 A I CAME BACK, I GOT OUT OF THE CAR, I SEE HER LAYING ON THE
15 GROUND. I STARTED TO WALK OVER, AND I DON'T KNOW WHAT
16 HAPPENED. I JUMPED BACK IN THE CAR AND I LEFT.

17 Q NOW WHEN YOU LEFT, WHERE DID YOU GO?

18 A I CAME -- I WENT STRAIGHT BACK TO OAKLAND, I WAS GOING
19 TO MY MOTHER'S HOUSE.

20 Q NOW THERE CAME A TIME WHEN YOU GOT STOPPED, I BELIEVE,
21 AND THE POLICE GOT YOU.

22 A YES, SIR.

23 Q NOW DO YOU REMEMBER WHAT HAPPENED WHEN THE POLICE
24 STOPPED YOU? TELL THE LADIES AND GENTLEMEN OF THE JURY
25 ABOUT IT.

1. A THE REASON I REMEMBER IS WHEN I TURN OFF TO MY MOTHER'S
2 HOUSE I SEE THE POLICE CAR BEHIND ME AND I JUST HOLD MY
3 HAND UP. I WAS SO NERVOUS.

4 Q DO YOU REMEMBER HEARING THE SIREN OR SEEING A BLUE
5 LIGHT?

6 A NO, SIR.

7 Q NOW, MR. COHEN, YOU SAID THAT YOU TRIED TO CALL YOUR
8 WIFE.

9 A YES, SIR.

10 Q DO YOU STILL CARE ABOUT YOUR WIFE?

11 A CARE DEEPLY ABOUT HER.

12 Q DID YOU WANT TO KILL YOUR WIFE?

13 A NO, SIR, NEVER HAD ANY INTENTION. I WAS HOPING WE COULD
14 GET BACK TOGETHER FOR THE SAKE OF OUR KIDS.

15 MR. BARR: WOULD YOU ANSWER ANY
16 QUESTIONS THAT MR. MODICA HAS FOR YOU?

17 CROSS EXAMINATION BY MR. MODICA:

18 Q I WANT TO GET TO THE POINT WHERE SHE WENT OFF THE
19 ROADWAY. SHE WAS IN THE LEFT LANE?

20 A SHE WAS IN THE LEFT LANE, I WAS IN THE RIGHT LANE.

21 Q AND WHAT HAPPENED?

22 A SHE HIT THE BRAKES, AND I SEEN WHEN HER BRAKE LIGHTS
23 CAME ON AND AFTER THAT SHE STARTED COMING OVER. AND
24 WHEN SHE STARTED COMING OVER SHE CATCH THE FRONT OF
25 MY CAR, SHE CAME UP OVER, WE WAS GOING TO THE EDGE OF

1 THE ROAD AND I HIT THE BRAKES AND WHEN I HIT THE BRAKES
2 THAT'S WHEN SHE SHOT ACROSS IN FRONT OF ME AND WENT IN
3 THE DITCH.

4 Q SO WHAT PART OF YOUR CAR HIT HER CAR?

5 A WHAT PART OF MY CAR HIT HER CAR?

6 Q YES.

7 A THE FRONT OF MY CAR.

8 Q WHAT PART OF THE FRONT OF YOUR CAR?

9 A THE LEFT FENDER.

10 Q HIT WHAT PART OF HER CAR?

11 A I DON'T KNOW WHAT PART IT HIT. ONLY THING I KNOW IS
12 WHEN SHE CAME OVER WE MADE CONTACT AND WE WAS GOING
13 TO THE EDGE OF THE ROAD AND THAT'S WHEN I HIT THE
14 BRAKES AND THAT'S WHEN SHE SHOT ACROSS IN FRONT OF ME
15 AND WENT IN THE DITCH.

16 Q NOW IT'S YOUR TESTIMONY THAT - LET ME SEE, ARE YOU
17 CLAIMING THAT SHE WAS TRYING TO RUN YOU OFF THE ROAD?

18 A I DIDN'T SAY SHE WAS TRYING TO RUN ME OFF, SHE CHANGED
19 LANES.

20 Q YOU'RE TESTIFYING THAT SHE STRUCK YOUR VEHICLE AT ONE
21 POINT IN TIME, AREN'T YOU?

22 A THAT SHE STRUCK MY VEHICLE? I SAID SHE LEAVE HER LANE,
23 CAME OVER TO CHANGE LANES AND THAT'S WHEN SHE
24 SCRAPED THE FRONT OF MY VEHICLE.

25 Q NO, THAT'S NOT WHAT I'M TALKING ABOUT. YOU TOLD OUR

1 JURY THAT SHE STRUCK YOUR VEHICLE BEFORE THAT, AFTER
2 YOU'D GONE OFF THE TWO BRIDGES AND AROUND THE CURVE
3 YOU SAID SHE STRUCK YOUR VEHICLE, ISN'T THAT CORRECT?

4 A I SAID WE WAS GOING DOWN THE ROAD POINTING OUR FINGERS
5 AT ONE ANOTHER. NEXT THING I KNOW, WE COLLIDED.

6 Q THE NEXT THING YOU KNOW, YOU'RE SAYING THE NEXT THING
7 YOU KNOW THAT SHE CAME INTO YOUR LANE AND STRUCK YOU,
8 THAT'S MY QUESTION, SIR?

9 A WE COLLIDED.

10 Q DID YOU GO INTO HER LANE AND COLLIDE WITH HER?

11 A I DON'T KNOW WHO, WE WAS SIDE BY SIDE.

12 Q YOU WOULD AGREE WITH ME THERE WAS A GOOD AMOUNT OF
13 SPACE BETWEEN THE LANES, WOULDN'T YOU?

14 A YES, SIR.

15 Q MY QUESTION TO YOU, SIR, IS DID YOU COME OVER INTO HER
16 LANE AND STRIKE HER?

17 A WE BOTH CAME TOGETHER.

18 Q YOU STRUCK EACH OTHER THEN ?

19 A YES.

20 Q SO WHAT LANE DID YOU COME OVER IN?

21 A WHAT LANE DID I COME OVER? AFTER SHE LET---

22 Q ---YOU WERE IN THE LEFT LANE GOING TO THE RIGHT?

23 A I WAS IN THE LEFT LANE AND SHE WAS IN THE RIGHT LANE.

24 Q SO WHEN YOUR CARS COLLIDED YOU'RE IN THE LEFT LANE,
25 SHE'S IN THE RIGHT LANE; IS THAT CORRECT?

1 A YES. I WAS IN THE LEFT LANE, SHE WAS IN THE RIGHT LANE.

2 Q AND AFTER THAT SHE WENT SPEEDING OFF TO GET AWAY FROM
3 YOU?

4 A SHE WENT SPEEDING OFF.

5 Q AND YOU TOOK THAT -- WOULDN'T YOU AGREE WITH ME THAT
6 WHEN SHE SPED OFF YOU KIND OFF TOOK IT THAT SHE WAS
7 TRYING TO GET AWAY FROM YOU?

8 A NO, I DIDN'T TAKE IT THAT WAY. I JUST KNOW SHE---

9 Q WAIT A SECOND. YOU'RE TELLING OUR JURY THAT YOU ALL
10 STRUCK VEHICLES, YOU ALL COME TOGETHER AND THAT WAS
11 AN ACCIDENT. AND SHE SPEEDS OFF. YOU DON'T HAVE IT IN
12 YOUR HEAD -- YOU'RE TELLING OUR JURY THAT YOU DON'T
13 HAVE IT IN YOUR HEAD THAT SHE'S TRYING TO GET AWAY FROM
14 YOU?

15 A NO, SIR.

16 Q AND WHEN SHE SPED OFF YOU HAD TO SPEED UP TO GET UP TO
17 WHERE SHE WAS?

18 A BOTH OF US WAS RUNNING THE SAME SPEED, BUT WHEN SHE
19 SPEED OFF I MERGED OVER INTO THE RIGHT LANE. SHE WASN'T
20 DRIVING NOT MORE THAN ABOUT FIVE OR TEN MILES FASTER
21 THAN I WAS.

22 Q WOULD YOU AGREE WITH ME, SIR, THAT IF SHE'S DRIVING FIVE
23 OR TEN MILES FASTER THAN YOU ARE, SHE'S PULLING AWAY
24 FROM YOU?

25 A SHE WAS RIGHT BESIDE ME.

1 Q JUST YES OR NOT, THEN YOU CAN EXPLAIN.

2 A YEAH, SHE'S. . .YEAH.

3 Q OKAY. SO WHEN SHE'S PULLING AWAY FROM YOU, YOU HAVE
4 GOT TO SPEED UP TO CATCH HER; ISN'T THAT TRUE?

5 A I DIDN'T SPEED UP THAT MUCH TO CATCH HER BECAUSE SHE
6 WASN'T SPEEDING THAT MUCH.

7 Q YOU CAN SAY THAT MUCH, BUT DID YOU SPEED UP, YES OR NO?

8 A A LITTLE.

9 Q YOU SPED UP ENOUGH TO CATCH HER, DIDN'T YOU?

10 A I DIDN'T CATCH UP WITH HER, I WAS UP RIGHT BESIDE OF HER. I
11 DIDN'T---

12 Q ALL RIGHT. IF THAT'S WHAT YOU WANT TO STICK WITH, SIR.

13 A I WAS UP SIDE HER. I WAS RIGHT HERE BESIDE HER, JUST LIKE
14 THAT. AND WHEN SHE CAME OVER OUT OF THE LEFT LANE
15 INTO THE RIGHT LANE, THAT'S HOW SHE STRUCK MY VEHICLE.

16 Q AND THAT'S BECAUSE YOU SPED UP TO CATCH HER, ISN'T THAT
17 TRUE?

18 A SAY THAT AGAIN.

19 Q THE REASON YOU WERE THERE IS BECAUSE YOU SPED UP TO
20 CATCH HER.

21 A I DIDN'T SPEED UP.

22 Q THAT'S WHAT YOU WANT TO STICK WITH WITH THIS JURY? I'M
23 JUST ASKING WHETHER THAT'S WHAT YOU WANT TO STICK
24 WITH; YOU CAN ANSWER YES OR NO AND EXPLAIN IT. IS THAT
25 WHAT YOU WANT TO STICK WITH?

- 1 A STICK WITH WHAT? WHAT'S THE QUESTION.
- 2 Q MY QUESTION - I THINK IT'S THE FOURTH TIME NOW -- MY
- 3 QUESTION TO YOU IS YOU TESTIFIED THAT SHE SPED UP AFTER
- 4 YOU CAME TOGETHER IN TWO LANES.
- 5 A YEAH.
- 6 Q SPED UP, SHE WENT FIVE TO TEN MILES FASTER, THAT'S YOUR
- 7 TESTIMONY?
- 8 A YEAH.
- 9 Q MY QUESTION TO YOU IS DID YOU HAVE TO SPEED UP---
- 10 A TO GET UPSIDE HER.
- 11 Q ---TO BE NEXT TO HER.
- 12 A YEAH.
- 13 Q OKAY, SO NOW WE GOT A YES. SO NOW WE'RE AGREED ON
- 14 THAT?
- 15 A YEAH.
- 16 Q YOU COULD HAVE, SIR, CONSIDERING WHAT JUST HAPPENED,
- 17 YOU COULD HAVE BACKED OFF, YOU COULD HAVE SLOWED
- 18 DOWN, YOU COULD HAVE ENDED EVERYTHING. YOU COULD
- 19 HAVE BEEN AWAY FROM HER. IT WAS BAD ENOUGH WHAT
- 20 HAPPENED WITH THE COLLIDING CARS. BUT YOU DIDN'T DO
- 21 THAT, DID YOU?
- 22 A NO.
- 23 Q YOU KEPT ON KEEPING ON, DIDN'T YOU?
- 24 A I DIDN'T KEPT ON BECAUSE IT DIDN'T LAST---
- 25 Q ---YOU SPED UP TO CATCH UP TO HER, YOU JUST TOLD OUR

1 JURY THAT.

2 A YEAH, YES, SIR I DID.

3 Q YOU KEPT ON KEEPING ON, DIDN'T YOU?

4 A I GOT UP BESIDE HER.

5 Q NOW THE NIGHT BEFORE - FUNNY YOU SHOULDN'T HAPPEN TO
6 MENTION THIS IN YOUR DIRECT TESTIMONY - THE NIGHT BEFORE
7 YOU WERE SERVED WITH AN ORDER TO SHOW CAUSE REGARDING
8 A CONTEMPT OF COURT FOR YOUR VIOLATING THE COURT
9 ORDER TO NOT HAVE ANY CONTACT WITH HER, RIGHT?

10 A YES, SIR.

11 Q AND YOU KNEW THAT THE BASIS OF THAT CONTEMPT OF COURT
12 WAS THAT, AMONG OTHER THINGS, YOU WERE MAKING
13 HARASSING PHONE CALLS?

14 A I WASN'T MAKING NO HARASSING PHONE CALLS. THAT'S WHAT
15 SHE PREDICTED.

16 Q THAT'S FINE. WHAT I'M SAYING TO YOU IS YOU KNOW FROM
17 LOOKING AT IT THAT THAT WAS THE BASIS, THAT WAS THE
18 REASON THAT YOU HAD TO GO BACK TO FAMILY COURT, ISN'T
19 THAT TRUE?

20 A I DON'T KNOW WHETHER---

21 Q WHETHER OR NOT IT'S TRUE, YOU KNEW THAT THAT'S WHAT
22 SHE WAS SAYING, THAT'S WHAT SHE WAS ALLEGING; ISN'T
23 THAT TRUE? YOU KNEW THAT.

24 A I DIDN'T KNOW THAT BECAUSE I DIDN'T READ THE PAPERS. I
25 WAS TAKING THE PAPERS TO MR. BARR. I WAS LETTING MR.

1 BARR HANDLE THAT.

2 Q SO YOU GET THIS WHOLE STACK OF PAPERS AND YOU DON'T
3 EVEN BOTHER TO LOOK THROUGH THEM, THAT'S WHAT YOU'RE
4 TELLING OUR JURY?

5 A NO, ONLY THING I LOOKED AT IS THE FRONT SHEET SAYING
6 WHAT DATE I HAD TO GO TO COURT.

7 Q DID THAT BOTHER YOU AT ALL? DIDN'T IT BOTHER YOU?

8 A NO, IT DIDN'T BECAUSE EVERY TIME I SEE NADINE COHENS GO
9 TO FAMILY COURT---

10 Q SO YOU WERE COOL WITH THAT?

11 A IT HAPPENED SO MANY TIMES.

12 Q YOU WERE FINE WITH IT, DIDN'T BOTHER YOU AT ALL?

13 A NO.

14 Q NOW, YOU WOULD AGREE WITH ME THAT YOU KNEW THAT SHE
15 WORKED AT THE TROPICAL SANDS?

16 A YEAH, BUT I DON'T KNOW WHERE THAT LOCATED AT ON
17 MYRTLE BEACH. I KNOW SHE WORKED ON MYRTLE BEACH, BUT I
18 DON'T KNOW THE LOCATION OF IT.

19 Q THAT'S FINE, THAT'S FINE. BUT YOU KNEW THAT SHE LEFT
20 WORK AT SEVEN O'CLOCK IN THE MORNING BECAUSE SHE HAD
21 THAT JOB WHEN YOU ALL WERE TOGETHER, RIGHT?

22 A YEAH, BUT I DIDN'T KNOW THAT SHE WAS GOING TO WORK
23 THAT PARTICULAR DAY.

24 Q BUT YOU KNEW THAT HER ROUTINE WAS THAT SHE LEFT HER
25 HOUSE AT SEVEN A.M.

1 A YEAH, I KNEW THAT.

2 Q AND IT'S YOUR TESTIMONY THAT YOU GOT UP AT SIX, WASHED
3 UP, HEATED UP THE CAR AND LEFT; THAT'S YOUR TESTIMONY?

4 A YES.

5 Q NOW, YOU WERE GOING TO THE IRS TO DEAL WITH THE ISSUE---

6 A THE INTERNAL REVENUE OFFICE.

7 Q AND THAT'S LOCATED AROUND THE GRAND STRAND, MYRTLE
8 BEACH.

9 A YEAH, BY GRAND STRAND HOSPITAL.

10 Q IN MYRTLE BEACH?

11 A YEAH.

12 Q AND THE ROUTE OF TRAVEL THAT YOU TOOK, BECAUSE YOU
13 THOUGHT IT WAS THE BEST WAS TO GET THERE, WAS TO GO
14 DOWN FUZZY* DRIVE, TO 51, TO 701, TO BLACK RIVER, TO 17?

15 A YEAH, THAT'S HOW TO GET INTO GEORGETOWN AND MYRTLE
16 BEACH.

17 Q RIGHT. BECAUSE THAT'S THE WAY YA'LL GO.

18 A YES, SIR.

19 Q YOU DON'T GO UP 701 TO CONWAY AND OVER TO---

20 A NO, NO, I DON'T.

21 Q SO SAME FOR HER, YOU WOULDN'T EXPECT HER TO TAKE THAT
22 ROUTE OF TRAVEL, CORRECT?

23 A NO, NO, I DON'T KNOW, I DON'T KNOW WHICH ROAD SHE'S
24 GOING TO TAKE.

25 Q ARE YOU TELLING OUR JURY THAT WHEN YOU LIVED WITH YOUR

1 WIFE, YOU DIDN'T KNOW THAT SHE WENT DOWN TO FUZZY
2 DRIVE, TO 51, TO 701, TO BLACK RIVER, TO 17? ARE YOU
3 TELLING OUR JURY THAT YOU DIDN'T KNOW THAT YOUR WIFE
4 DID THAT?

5 A NOT THAT PARTICULAR MORNING. I DIDN'T KNOW WHERE SHE
6 WAS GOING.

7 Q BUT I'M ASKING YOU, SIR, DID YOU KNOW AS A MATTER OF
8 COURSE FROM HAVING LIVED WITH HER THAT THAT WAS THE
9 ROUTINE, THAT IF SHE WAS GOING TO WORK SHE WOULD TAKE
10 THAT ROUTE OF TRAVEL?

11 A SOMETIMES SHE USED TO TAKE 701.

12 Q 701 GOING INTO GEORGETOWN?

13 A 701 GOING INTO CONWAY.

14 Q BUT YOU WOULD AGREE WITH ME THAT THAT'S NOT THE
15 QUICKEST WAY TO GET THERE?

16 A I DON'T KNOW WHAT THE QUICKEST WAY FOR HER TO GET
17 THERE BECAUSE I DON'T KNOW EXACTLY WHERE SHE WORKED,
18 THE MOTEL SHE WORKS AT.

19 Q BUT YOU AGREE IT'S THE QUICKEST WAY FOR YOU TO GO TO
20 THE IRS LOCATED CLOSE TO THE GRANDSTRAND HOSPITAL?

21 A I GO STRAIGHT UP 17/

22 Q BUT YOU TAKE THAT ROUTE THAT I JUST WENT THROUGH;
23 FUZZY DRIVE, 51, 501 BLACK RIVER ROAD?

24 A YES, SIR.

25 Q WELL, NOW IT'S YOUR TESTIMONY TO OUR JURY THAT YOU FELT

1 THAT YOU WEREN'T DOING ANYTHING WRONG AND YOU FELT AS
2 THOUGH SHE WAS FOLLOWING YOU?

3 MR. BARR: OBJECTION.

4 THE COURT: ON WHAT BASIS?

5 MR. BARR: YOUR HONOR, HE'S
6 MISLEADING THE WITNESS IN THE QUESTION, AND IT'S A
7 COMPOUND QUESTION. HE SAYS THAT HE WASN'T DOING
8 ANYTHING WRONG.

9 THE COURT: OVERRULED, COUNSEL. OF
10 COURSE THE JURY -- WHETHER THAT MISCHARACTERIZES -- THE
11 JURY IS HERE AND WOULD BE AWARE OF THAT. HE'S ON CROSS
12 EXAMINATION , HE'S ALLOWED TO LEAD, THE COURT WILL
13 ALLOW THE QUESTION. GO AHEAD, PLEASE RESTATE IT, MR.
14 MODICA.

15 BY MR. MODICA:

16 Q MY QUESTION TO YOU, SIR, IS THAT IT'S YOUR TESTIMONY TO
17 OUR JURY THAT YOU WEREN'T DOING ANYTHING AROUND AND
18 THAT SHE WAS FOLLOWING YOU AND HARASSING YOU
19 BASICALLY?

20 A I DIDN'T SAY SHE WAS FOLLOWING AND HARASSING ME.

21 Q BECAUSE WOULDN'T YOU AGREE WITH ME, SIR, TO OUR JURY
22 THAT THAT WOULD HAVE BEEN POTENTIALLY HER ROUTE TO
23 TRAVEL TO WORK IF SHE WAS WORKING THAT DAY?

24 A AND THAT WOULD HAVE BEEN MY ROUTE TO TRAVEL TO MY
25 DESTINATION, TOO.

1 Q RIGHT. SO WHAT I'M SAYING IS; IT WASN'T A BIG DEAL THAT
2 SHE WAS DRIVING THAT DIRECTION?

3 A I WAS IN THAT DIRECTION BEFORE SHE WAS.

4 Q WE'RE UNDERSTANDING THAT COMPLETELY, YOU WERE FIRST.
5 WE GOT THAT. WE GOT THAT. MY QUESTION TO YOU IS; THE
6 FACT THAT SHE'S DRIVING THAT ROUTE, IT WASN'T ALARMING
7 TO YOU BECAUSE THAT MIGHT BE THE ROUTE THAT SHE TAKES
8 TO WORK, RIGHT?

9 A MIGHT BE.

10 Q I'M ASKING IN YOUR HEAD WHILE YOU'RE DRIVING, IT'S NOT OF
11 CONCERN TO YOU THAT SHE'S GOING THE SAME DIRECTION
12 BECAUSE YOU EXPECT THAT POTENTIALLY SHE WOULD TAKE
13 ROUTE TO WORK; YES OR NO?

14 A I DIDN'T SUSPECT, I DIDN'T KNOW WHERE SHE WAS GOING THAT
15 MORNING AT. THE ONLY THING I KNOW WHERE I WAS GOING AT.

16 Q I UNDERSTAND YOU DIDN'T KNOW WHERE SHE WAS GOING. MY
17 QUESTION TO YOU IS; IT WASN'T CONCERNING, OR UPSETTING,
18 OR ALARMING TO YOU THAT SHE WAS HAVING TO TAKE THAT
19 SAME ROUTE BECAUSE SHE WAS GOING TO WORK THAT DAY?

20 A YES, SIR, I GUESS IF THAT'S THE ROUTE SHE TAKE.

21 Q ARE YOU HAVE PROBLEMS ANSWERING MY QUESTION, SIR?

22 A NO, I'M ANSWERING YOUR QUESTION. I DON'T KNOW WHAT
23 ROUTE SHE TAKES EVERY MORNING TO GO TO WORK.

24 Q I UNDERSTAND THAT. WHAT I'M SAYING IS; DID YOU HAVE IN
25 YOUR HEAD THAT SHE COULD TAKE THAT ROUTE?

1 A I GUESS SHE COULD HAVE.

2 Q OKAY. SO KNOWING THAT SHE COULD TAKE THAT ROUTE,
3 THERE WAS NOTHING ALARMING OR UPSETTING ABOUT THE
4 FACT THAT SHE TOOK THAT ROUTE?

5 A NO.

6 Q ALL RIGHT, THAT WASN'T SO DIFFICULT. NOW WOULD
7 YOU AGREE WITH ME - BY THE WAY, YOU'RE NOT SUGGESTING
8 THAT SHE'S IN THE LEFT LANE ON 51, RIGHT?

9 A IN THE LEFT LANE?

10 Q RIGHT.

11 A SHE WAS BEHIND ME.

12 Q SHE NEVER WENT TO THE LEFT?

13 A NO.

14 Q YOU DID THOUGH?

15 A I WAS IN THE RIGHT LANE ON 51. ON 51?

16 Q YEAH. BUT AT SOME POINT IN TIME YOU GOT IN THE LEFT LANE.

17 A NO.

18 Q YOU NEVER GOT IN THE LEFT LANE ON 51?

19 A I TURNED OFF OF OAKLAND ROAD ON TO 51. 51 IS A TWO
20 LANE ROAD.

21 Q YEAH, ONE IN EACH DIRECTION, CORRECT?

22 A YEAH.

23 Q MY QUESTION TO YOU IS; DID YOU EVER GO INTO THE LEFT LANE
24 WHEN YOU WERE TRAVELING DOWN 51 TOWARDS 701?

25 A NO.

1 Q YOUR PHONE NUMBER IS BACK THEN?

2 A YES, SIR.

3 Q AND YOU'RE VERY MUCH AWARE OF WHAT HER TELEPHONE
4 NUMBER IS?

5 A YES, SIR.

6 Q AND THAT WOULD BE HER CELL PHONE NUMBER; IT WOULD
7 HAVE BEEN THEN ?

8 A YES, SIR.

9 Q AND YOU KNOW WHAT IT MEANS TO STAR 67, DON'T YOU?

10 A YES, SIR.

11 Q WHEN YOU BLOCK THE PHONE NUMBER.

12 A I DO.

13 Q NO, WHAT I'M SAYING IS YOU KNOW THAT THAT WILL BLOCK
14 THE PHONE?

15 A OH, YEAH, I KNOW THAT BLOCKS A NUMBER.

16 Q MY QUESTION TO YOU, SIR, IS ON THE MORNING WHEN YOU
17 CALLED YOUR WIFE TO TALK TO HER ABOUT THE FACT THAT
18 SHE WAS FOLLOWING YOU, EVEN THOUGH POTENTIALLY SHE
19 COULD BE ON HER WAY TO WORK, YOU STAR 67, DIDN'T YOU SO
20 SHE COULDN'T TELL IT WAS YOU CALLING?

21 A I DIALED HER NUMBER AND THE CALL NEVER WENT THROUGH.

22 Q THAT'S GREAT. MY QUESTION TO YOU IS; WHEN YOU DIALED
23 THE NUMBER YOU USED STAR 67 SO THAT YOUR PHONE NUMBER
24 WOULD HAVE BLOCKED; IS THAT TRUE, OR NOT TRUE?

25 A I DIALED

- 1 Q STAR 67?
- 2 A NO,
- 3 Q IS IT YOUR TESTIMONY, SIR, THAT YOU DID NOT STAR 67?
- 4 A ---NO, I DIDN'T.
- 5 Q LET ME FINISH---BLOCKING THE NUMBER?
- 6 A NO.
- 7 Q DIDN'T DO THAT?
- 8 A NO.
- 9 Q I TAKE IT GIVEN WHAT WAS GOING ON YOU DIDN'T EXPECT THAT
10 YOUR WIFE WOULD TAKE THE PHONE CALL FROM YOU, WOULD
11 YOU?
- 12 A I DON'T KNOW. THE PHONE RANG THREE TIMES THEN IT CUT
13 OFF, THAT'S ALL.
- 14 Q WHAT I'M ASKING YOU IS THIS; GIVEN WHAT WAS GOING ON
15 BETWEEN THE BOTH OF YOU, YOU WOULDN'T EXPECT IN YOUR
16 HEAD, YOU WOULDN'T EXPECT YOUR WIFE TO ANSWER A PHONE
17 CALL FROM YOU, WOULD YOU?
- 18 A SHE DOES.
- 19 Q SO YOU WERE KIND OF SURPRISED THAT SHE DIDN'T ANSWER
20 THAT PHONE CALL?
- 21 A WELL, THE PHONE JUST CUT OFF, I DIDN'T KNOW WHAT
22 HAPPENED.
- 23 Q NOW WOULD YOU AGREE WITH ME THAT THE TRAFFIC WAS
24 HEAVY BUT FLOWING?
- 25 A WHERE AT, ON 17, 701?

1 Q ON 701.

2 A TRAFFIC WAS FLOWING BUT IT WAS CONGESTED IN ONE LANE.
3 ONE LANE OF TRAFFIC WHEN WE GOT DOWN BY WAL-MART, THE
4 TRAFFIC WAS HEAVY IN THE LEFT LANE.

5 Q AND THAT'S PART BECAUSE THERE WAS STOP LIGHT THAT HAD
6 TURNED RED?

7 A WELL THERE WAS A LOT OF CARS IN THAT ONE LANE.

8 Q OTHER THAN GETTING STOPPED BY A RED LIGHT, THE TRAFFIC
9 WAS FLOWING ON 701 AS WELL AS ON 17?

10 A YES, SIR.

11 Q SO YOU COULD MANEUVER AROUND PEOPLE?

12 A NO.

13 Q ABSOLUTELY COULDN'T?

14 A WELL NOT IN GEORGETOWN, NOT ON 701.

15 Q WHAT ABOUT ON 17?

16 A ON 17 YOU COULD BECAUSE TRAFFIC WAS SPACED OUT.

17 Q NOW WHEN YOU GOT TO BLACK RIVER ROAD INSTEAD OF
18 TURNING YOU KEPT GOING AND SHOT THROUGH THE
19 SCOTCHMAN?

20 A NO, I MADE IT - THE LIGHT TURNED RED AND I HAD TO STOP.

21 Q YOU'RE SAYING THE LIGHT TURNED RED AT BLACK RIVER ROAD?

22 A AT THE RED LIGHT AT THE END OF THE ROAD.

23 Q MY QUESTION TO YOU IS; IT IS A FACT THAT YOU CUT THROUGH
24 THE SCOTCHMAN?

25 A NO, I MADE THE LEFT TURN WHERE YOU YIELD OFF - WHEN YOU

- 1 YIELD OFF THE FOUR LANE THEY GOT A LITTLE ROAD YOU CAN
2 YIELD IN TO MAKE YOUR LEFT TURN.
- 3 Q BUT YOU WENT TO THE SCOTCHMAN?
- 4 A I WENT INTO THE YIELD.
- 5 Q DO YOU KNOW THE SCOTCHMAN IS RIGHT THERE---
- 6 A THE SCOTCHMAN IS BEHIND THE TURN.
- 7 Q BUT WOULD YOU AGREE WITH ME IF YOU WANTED TO, A PERSON
8 COULD CUT THROUGH THE SCOTCHMAN AND GET BACK ON---
- 9 A I DIDN'T HAVE REASON TO CUT THROUGH.
- 10 Q I UNDERSTAND. HOW ABOUT YOU LET ME ASK MY QUESTION
11 AND THEN YOU CAN EXPLAIN IT. MY QUESTION IS NOT
12 WHETHER OR NOT YOU DID IT, MY QUESTION IS; A PERSON
13 COULD, IN FACT, CUT THROUGH THE SCOTCHMAN AND GET ON
14 BLACK RIVER ROAD?
- 15 A YEAH, I GUESS THEY COULD.
- 16 Q COULD A PERSON DO IT?
- 17 A I GUESS THEY COULD.
- 18 Q THAT'S THE ANSWER YOU WANT TO GIVE TO OUR JURY?
- 19 A YEAH.
- 20 Q NOW YOU'RE BEHIND HER, AND IT'S YOUR TESTIMONY THAT
21 YOU'RE BEHIND HER AS YOU'RE GOING DOWN 701, CORRECT?
- 22 A I WAS IN THE RIGHT LANE AND SHE WAS IN THE LEFT LANE.
- 23 Q AND YOU WERE BEHIND HER?
- 24 A SHE HAD LEFT - SHE WAS ABOUT FIVE CARS AHEAD OF ME.
- 25 Q AND YOU STAYED BEHIND HER?

1 A I STAYED IN THE RIGHT LANE.

2 Q BEHIND HER.

3 A I WASN'T BEHIND HER. I WAS IN THE RIGHT LANE, SHE WAS WAY
4 AHEAD OF ME.

5 Q SO, ONCE AGAIN, YOU HAD TO DO SOME KIND OF MANEUVER,
6 THE TRAFFIC FLOWED BETTER OR WHATEVER, YOU WERE ABLE
7 TO CATCH UP TO HER, CORRECT?

8 A I DIDN'T DO NO KIND OF - I STAYED IN THE RIGHT LANE. HER
9 LANE OF TRAFFIC HAD COME TO A HALT. MY LANE OF TRAFFIC
10 WAS CONTINUING GOING.

11 Q SO MY QUESTION IS; SOMEHOW YOU WERE ABLE TO GO FASTER
12 THAN HER AND GET IN FRONT OF HER?

13 A BECAUSE THE TRAFFIC IN MY LANE WAS MOVING.

14 Q SO THE ANSWER TO THAT QUESTION WOULD BE YES?

15 A YEAH, BECAUSE THE TRAFFIC IN MY LANE WAS MOVING. THE
16 TRAFFIC IN HER LANE HAD COME TO A HALT.

17 Q NOW WHEN YOU'RE ON 17, AT SOME POINT IN TIME YOU'RE
18 BEHIND HER, CORRECT? SHE GETS IN THE LEFT LANE, YOU GET
19 IN THE RIGHT LANE.

20 A I WAS IN THE LEFT LANE.

21 Q WHEN YOU TURNED ON TO 17 YOU WERE BEHIND HER, ISN'T
22 THAT TRUE?

23 A WHEN I WAS THE FIRST ONE TO TURN ON 17, YEAH.

24 Q OF COURSE, YOU'RE IN FRONT OF HER.

25 A YEAH.

- 1 Q YOU TAKE A LEFT ON TO 17.
- 2 A OFF OF BLACK RIVER ROAD, I CALL IT THE HOSPITAL ROAD.
- 3 Q YOU TAKE A LEFT TO GO 17 NORTH, SHE GETS IN FRONT OF
- 4 YOU, ISN'T THAT TRUE?
- 5 A SHE WAS IN THE RIGHT LANE AND I WAS IN THE LEFT LANE.
- 6 Q THAT'S FINE. SHE GETS IN FRONT OF YOU, ISN'T THAT TRUE?
- 7 A SHE WAS BEHIND ME.
- 8 Q AT SOME POINT IN TIME SHE GETS IN FRONT OF YOU, ISN'T THAT
- 9 TRUE?
- 10 A SHE NEVER GOT IN FRONT OF ME, NO, SHE NEVER DID. SHE WAS,
- 11 BEHIND ME THE WHOLE TIME UNTIL WE CROSSED OVER THE
- 12 BRIDGES AND THAT'S WHEN SHE CAME UPSIDE ME.
- 13 Q AND YOU SAW THE SCHOOLBUS?
- 14 A NO, THE SCHOOLBUS WAS BEHIND US.
- 15 Q SO WHERE SHE WRECKED, WHERE YOU CAUSED HER TO WRECK
- 16 BY HITTING HER---
- 17 A I DIDN'T CAUSE HER TO WRECK.
- 18 Q DIDN'T YOU HIT HER VEHICLE?
- 19 A I DIDN'T CAUSE HER TO WRECK.
- 20 Q DIDN'T YOU TELL OUR JURY THAT YOU HIT HER VEHICLE?
- 21 A WE COLLIDED BEFORE WE GOT TO DEBORDIEU. WHEN WE GOT
- 22 OFF THE SECOND BRIDGE, WE WAS GOING DOWN THE BRIDGE.
- 23 BEFORE THE FIRST CURVE SHE WAS UPSIDE ME, WE WAS SIDE BY
- 24 SIDE. SHE WAS THROWING HER PHONE UP, DOING LIKE THAT AT
- 25 ME, AND I LOOKED AT HER. AND THE NEXT THING I KNOW, WE

1 COLLIDED. SHE PULLED OFF, SO I GOT IN THE RIGHT LANE AND
2 CONTINUED ON. TRAFFIC -- SOME CARS WAS IN FRONT OF HER,
3 SOME CARS WAS IN FRONT OF HER, AND AIN'T NO CARS IN MY
4 LANE, SO THAT'S HOW I CATCH UP WITH HER. AND THEN AT
5 THAT TIME I SEE WHERE HER BRAKE LIGHTS CAME ON. WHEN
6 HER BRAKE LIGHTS CAME ON SHE CAME OVER. WHEN SHE CAME
7 OVER THAT'S WHEN SHE CAUGHT THE FRONT OF MY VEHICLE
8 AND BOTH OF US PROCEEDED TO THE EDGE OF THE ROAD.
9 WHEN I MASHED AND APPLIED MY BRAKES, THAT'S WHEN SHE
10 SHOVED IN FRONT OF ME AND WENT OVER IN THE DITCH.

11 Q SO SHE HIT YOU, YOU DIDN'T HIT HER?

12 A NO, SIR.

13 Q DO YOU THINK SHE WAS TRYING TO RUN YOU OFF THE ROAD?

14 A I KNOW SHE WAS CHANGING LANES.

15 Q ARE YOU SAYING THAT THERE WASN'T A SCHOOLBUS AROUND
16 WHERE SHE WAS?

17 A SCHOOLBUS WAS BEHIND US.

18 Q AND HOW ABOUT -- SHOW YOU STATE'S FOUR; WOULD YOU
19 AGREE WITH ME THESE MARKS HERE IS WHERE SHE WENT OFF
20 THE ROAD, WHERE I'M POINTING TO?

21 A YEAH, IT LOOKS LIKE IT.

22 Q WELL, YOU WERE THERE, WEREN'T YOU?

23 A NO, I WASN'T ON THAT SIDE.

24 Q YOU DIDN'T STAY, DID YOU?

25 A I STOPPED. I TOLD YOU, I TURNED AROUND AND CAME BACK

- 1 AND I STOPPED AND GOT OUT OF THE CAR. AND I LOOKED, SHE
2 WAS LAYING ON THE GROUND.
- 3 Q BUT YOU DIDN'T STAY THEN, DID YOU?
- 4 A NO, I LEFT BECAUSE I WAS UPSET.
- 5 Q BECAUSE YOU JUST KNOCKED HER OFF THE ROAD?
- 6 A NO, I DIDN'T. HOW COULD I KNOCK HER OFF THE ROAD?
- 7 Q WOULD YOU AGREE WITH ME THAT THIS IS WHERE SHE WENT
8 OFF THE ROAD?
- 9 A YEAH, THAT'S THE WAY IT LOOKS.
- 10 Q I WANT YOU TO SEE WHERE I'M POINTING.
- 11 A I SEE WHERE YOU'RE POINTING AT.
- 12 Q THIS IS WHERE YOU SAID SHE WENT OFF THE ROAD BECAUSE
13 YOU WERE THERE, CORRECT? RIGHT, SIR?
- 14 A IF I WAS WHERE?
- 15 Q BECAUSE YOU WERE THERE, YOU KNOW WHERE SHE WENT OFF.
- 16 A I WAS IN THE---
- 17 Q YOU JUST TOLD US. IS THAT WHERE SHE WENT OFF THE ROAD?
- 18 A IT LOOK LIKE THAT'S WHERE SHE WENT OFF THE ROAD.
- 19 Q BUT YOU WERE THERE?
- 20 A YEAH, I HAD TO HAVE BEEN THERE.
- 21 Q NOW THESE SKID MARKS YOU SEE HERE, ARE YOU CONTENDING
22 THAT THOSE ARE YOUR SKID MARKS?
- 23 A I KNOW I SLAMMED ON BRAKES, I APPLIED BRAKES.
- 24 Q ARE THOSE YOUR SKID MARKS?
- 25 A I GUESS THEY IS BECAUSE I APPLIED BRAKES.

1 Q SO AFTER - AND IT LOOKS LIKE SOMEBODY SKIDDED TO A STOP,
2 RIGHT, DOESN'T IT LOOK THAT WAY?

3 A WELL, I HAD TO STOP BECAUSE SHE WAS CARRYING ME TO THE
4 EDGE OF THE ROAD.

5 Q SOMEONE SKIDDED TO A STOP?

6 A I DIDN'T STOP. MY CAR NEVER CAME TO A COMPLETE STOP.

7 Q BUT AT SOME POINT IN TIME YOU SKIDDED?

8 A YEAH, I DID.

9 Q BECAUSE YOU MASHED THE BRAKES?

10 A I MASHED THE BRAKES, I APPLIED BRAKES. I SAID THAT.

11 Q AND THESE MARKS ARE CONSISTENT WHERE YOU MASHED YOUR
12 BRAKES AND SKIDDED; WOULD YOU AGREE WITH THAT OR
13 DISAGREE WITH THAT?

14 A I MASHED THE BRAKES. I DIDN'T KNOW IF THE CAR SKIDDED OR
15 NOT. I KNOW THAT I MASHED - BECAUSE WHEN SHE HIT ME IT
16 HAPPENED SO FAST. SO I DON'T KNOW---

17 Q ARE YOU TELLING US YOU DON'T' KNOW WHETHER OR NOT YOU
18 SKIDDED?

19 MR. BARR: YOUR HONOR, YOUR HONOR,
20 OBJECTION. JUDGE, I WOULD REQUEST THAT HE GIVE THE
21 WITNESS SOME SPACE. HE'S GOT HIS ARMS ALL AROUND HIM.
22 LET HIM BACK UP ON THE WITNESS. HE SHOULD HAVE SOME
23 SPACE.

24 THE COURT: MR. MODICA, YOU'RE NOT
25 REQUIRED TO MOVE, YOU MAY QUESTION THE WITNESS.

1 MR. MODICA: I CERTAINLY DON'T
2 WANT TO INTIMIDATE HIM.
3 BY MR. MODICA:
4 Q ARE YOU SAYING THAT YOU DON'T KNOW WHETHER OR NOT
5 YOU SKIDDED?
6 A I'M SAYING I APPLIED BRAKES.
7 Q THAT'S THE BEST YOU CAN SAY ?
8 A YES, SIR, I APPLIED BRAKES.
9 Q SAW THE VEHICLE FLIP OVER, NOT ONCE, BUT TWICE?
10 A I DIDN'T SEE THE VEHICLE FLIP OVER. I DIDN'T SEE HER WHEN
11 SHE WENT INTO THE DITCH BECAUSE I APPLIED BRAKES AND
12 WHEN I APPLIED BRAKES THAT'S WHEN SHE SHOT
13 ACROSS IN FRONT OF ME AND WENT INTO THE DITCH, AND MY
14 CAR WAS STILL IN THE ROAD.
15 Q DID YOU SEE HER COME TO A STOP?
16 A WHEN I TURNED AROUND THE VEHICLE WAS IN THE DITCH.
17 Q THAT'S NOT WHAT I ASKED YOU, SIR. DID YOU SEE HER VEHICLE
18 COME TO A STOP?
19 A NO, I DID NOT.
20 Q SO YOU DIDN'T EVEN STICK AROUND LONG ENOUGH OR MASH
21 YOUR BRAKES HARD ENOUGH TO SEE WHAT HAD HAPPENED TO
22 YOUR WIFE'S VEHICLE?
23 A SOME VEHICLES WERE BEHIND ME, I HAD TO GO DOWN THE
24 ROAD AND TURN AROUND AND COME BACK. I CAME BACK AND
25 STOPPED.

1 Q NOW YOU COULD HAVE PULLED TO THE RIGHT.

2 A I CAME BACK AND STOPPED.

3 Q MY QUESTION TO YOU IS---

4 A I COULD HAVE.

5 Q YOU DIDN'T.

6 A I PULLED TO THE RIGHT, I MEAN, I WENT AND TURNED AROUND
7 CAME BACK AND STOPPED AND GOT OUT. I WAS CURIOUS---

8 Q ONE PERSON THAT YOU SPOKE TO AT THAT ACCIDENT SCENE,
9 NAME ONE.

10 A NONE.

11 Q NONE. YOU DIDN'T SPEAK TO A SOUL.

12 A NO, I DID NOT.

13 Q AND YOU TOOK OFF RUNNING.

14 A I DIDN'T TOOK OFF RUNNING. I DID NOT TOOK OFF RUNNING. I
15 STAYED THERE UNTIL THEY GOT HER OUT OF THE VEHICLE AND I
16 SEED SHE WAS LAYING ON THE GROUND, SHE WAS MOVING
17 AROUND.

18 Q AND THAT WAS ENOUGH FOR YOU TO LEAVE.

19 A I WAS UPSET, I WAS UPSET.

20 Q ONE LOOK AT THE MOTHER TO YOUR CHILDREN, THAT WAS
21 ENOUGH, THAT'S WHAT YOU'RE TELLING OUR JURY?

22 A I WAS UPSET.

23 Q UPSET ABOUT WHAT YOU'D JUST DONE TO HER.

24 A I AIN'T DO NOTHING TO HER.

25 Q WHY DIDN'T YOU STAY?

1 A I DIDN'T DO NOTHING TO HER.

2 Q YOU DIDN'T STAY.

3 A IF I DIDN'T APPLY BRAKES I WOULD HAVE BEEN IN THE DITCH.

4 Q YOU DIDN'T KNOW HOW BADLY INJURED SHE WAS. YOU KNOW
5 SHE WAS BLEEDING, RIGHT, BLEEDING GOOD FROM THE HEAD.
6 DIDN'T YOU SEE THAT?

7 A I DIDN'T SEE THAT BECAUSE I WAS TOO FAR FROM HER TO SEE
8 HER FACE. SHE WAS LAYING DOWN ON THE GROUND, I
9 COULDN'T SEE HER. ONLY THING I COULD SEE WAS HER
10 MOVING, THAT'S IT.

11 Q SO YOU DIDN'T EVEN GET CLOSE ENOUGH TO SEE WHAT
12 CONDITION SHE WAS IN BEFORE YOU TOOK OFF?

13 A NO, SIR.

14 Q YOU ALSO WANT OUR JURY TO BELIEVE THAT AS YOU'RE
15 TRAVELING DOWN 51 YOU DIDN'T SEE ANY BLUE LIGHTS, YOU
16 DIDN'T HEAR ANY SIREN, AND YOU WENT MILES AND MILES
17 WITHOUT SEEING A BLUE LIGHT OR HEARING A SIREN, THE
18 YELLING OVER THE P.A.—

19 MR. BARR: YOUR HONOR, OBJECTION.
20 THERE IS NO EVIDENCE THAT HE WENT MILES AND MILES.

21 THE COURT: OVERRULED, COUNSEL.
22 YOU'LL HAVE REDIRECT. AGAIN, THE JURY HAS SEEN ALL THIS
23 EVIDENCE AND IS AWARE OF WHETHER OR NOT THAT'S
24 PROBATIVE. GO AHEAD.

25 BY MR. MODICA:

- 1 Q YOU KNOW YOU WENT MILES.
- 2 A I DIDN'T WENT MILES.
- 3 Q YOU DIDN'T GO OVER A MILE?
- 4 A IT MIGHT HAVE BEEN OVER A MILE.
- 5 Q MIGHT HAVE BEEN?
- 6 A I DON'T KNOW HOW FAR IT WAS.
- 7 Q WERE YOU SPEEDING ON 51?
- 8 A NO, I WAS NOT, I WAS DRIVING MY NORMAL SPEED.
- 9 Q IS YOUR NORMAL SPEED IS 70?
- 10 A I WASN'T DRIVING 70. HE MIGHT HAVE BEEN DRIVING 70, BUT I
- 11 WASN'T.
- 12 Q AND IT'S YOUR TESTIMONY THAT DURING THE COURSE THAT
- 13 THAT VIDEO IS PLAYING---
- 14 A I DIDN'T SEE THE VIDEO.
- 15 Q DURING THE COURSE THAT THE POLICE OFFICER IS FOLLOWING
- 16 YOU DOWN THE ROAD, YOU DIDN'T HEAR OR SEE---
- 17 A I WAS UPSET FROM WHAT HAD HAPPENED.
- 18 Q FROM WHAT YOU DID.
- 19 A NOT WHAT I DID, WHAT HAD HAPPENED.
- 20 Q DO UPSET THAT YOU RAN AWAY, ISN'T THAT TRUE?
- 21 A NO, I DIDN'T RUN AWAY.
- 22 Q DROVE AWAY FAST.
- 23 A I DIDN'T DROVE AWAY FAST, EITHER.
- 24 Q AND YOU WOULD AGREE WITH ME THAT WHEN YOU TAKE A
- 25 RIGHTHAND TURN ONTO OAKLAND ROAD YOU HAD TO SLOW

1 DOWN CONSIDERABLY?

2 A BECAUSE I WASN'T DRIVING THAT FAST. I HAD TO SLOW DOWN,
3 THE ONLY WAY TO MAKE A TURN, YOU GOT TO SLOW DOWN TO
4 MAKE A TURN.

5 Q PROBABLY WOULD YOU AGREE WITH ME, 10 TO 15 MILES PER
6 HOUR?

7 A TO MAKE A TURN, YEAH, BECAUSE ALL YOU DO IS YOU JUST
8 LIKE YIELD RIGHT IN.

9 Q AND THEN WHEN YOU DID THAT YOU DIDN'T SEE OR HEAR THE
10 SIREN?

11 A I HEARD THE SIREN JUST BEFORE I GOT TO MY MOTHER'S LANE.
12 AND WHEN I TURNED OFF THAT'S WHEN I SEE HIM TURN IN
13 BEHIND ME, BECAUSE I REALLY DIDN'T TURN TOO FAR OFF OF
14 THE ROAD INTO THE DRIVEWAY BECAUSE THAT'S WHEN I
15 NOTICED. I WAS SO UPSET AND I JUST CAME TO A COMPLETE
16 STOP.

17 Q YOU DIDN'T HEAR HIM ON THE P.A. TELLING YOU TO PULL OVER?

18 A NO, I DID NOT.

19 Q WHEN YOU WERE ARRESTED THERE WAS A WHITE POLICE
20 OFFICER THERE AND AN AFRICAN/AMERICAN DEPUTY SHERIFF
21 THERE?

22 A YEAH, AND A LADY HIGHWAY PATROLMAN.

23 Q AND THE AFRICAN/AMERICAN DEPUTY SHERIFF IS THE ONE WHO
24 PLACED HANDCUFFS ON YOU?

25 A YEAH.

1 Q AND AT SOME POINT IN TIME, HE ASKED YOU, WHY'D YOU RUN
2 THE LADY OFF THE ROAD, AND YOU SAID, "I DIDN'T RUN
3 NOBODY OFF THE ROAD?"

4 A YES, I DID.

5 Q YOU DENIED BEING THERE, DIDN'T YOU?

6 A DENIED BEING THERE?

7 Q DENIED BEING THERE TO THE POLICE?

8 A NO, I DIDN'T.

9 Q YOU DIDN'T SAY, NO, SHE TURNED IN FRONT OF ME. YOU DIDN'T
10 SAY THAT, DID YOU?

11 A I DIDN'T SAY NOTHING TO HIM AT THAT TIME BECAUSE HE
12 DIDN'T ASK ME. ONLY THING HE ASKED ME, HE SAID WHY'D YOU
13 RUN THE LADY OFF THE ROAD AND I SAID THAT I DID NOT RUN
14 NOBODY OFF THE ROAD.

15 Q RIGHT, BUT YOU DIDN'T SAY THAT SHE PULLED IN FRONT OF
16 YOU, YOU DIDN'T SAY ANYTHING---

17 A I DIDN'T GIVE HIM NO STATEMENT.

18 Q ---WAIT A SECOND. YOU DIDN'T SAY ANYTHING LIKE WHAT
19 YOU'VE TESTIFIED TO OUR JURY TO THAT POLICE OFFICER THERE
20 AT THE SCENE WHEN YOU GOT ARRESTED. YOU DIDN'T SAY
21 THAT, DID YOU?

22 A ONLY THING I TOLD HIM THAT I DID NOT---

23 Q JUST YES OR NO AND THEN YOU CAN EXPLAIN.

24 A NO, ONLY THING I SAID, I DID NOT RUN HER OFF THE ROAD.
25 AND I DIDN'T SAY NOTHING ELSE.

1

MR. MODICA: THANK YOU.

2

THE COURT: IS THERE REDIRECT?

3

MR. BARR: NO, SIR.

4

THE COURT: ALL RIGHT, SIR, YOU MAY
STEP DOWN. AND COUNSEL, PLEASE CALL YOUR NEXT WITNESS.

6

MR. BARR: THAT'S THE DEFENDANT'S
CASE, JUDGE.

8

THE COURT: DEFENSE RESTS. IS THERE
REPLY EVIDENCE?

10

MR. MODICA: NO, SIR.

11

THE COURT: ALL RIGHT. LADIES AND
GENTLEMEN, THE TESTIMONY PHASE OF THE CASE IS
COMPLETED. WE ARE GOING TO TAKE OUR MORNING BREAK AT
THIS TIME. WE'LL LET COUNSEL PREPARE FOR CLOSING
ARGUMENTS DURING THAT TIME.

15

16

(AT THIS TIME THE COURT RECESSED FOR A BREAK)

17

THE COURT: ALL RIGHT, AGAIN,
WELCOME BACK, LADIES AND GENTLEMEN, TO THE COURTROOM,
I TRUST YOU HAD A NICE BREAK. WE'RE NOW AT THE POINT IN
THE CASE, AS I TOLD YOU WHEN WE BEGAN THIS CASE THAT AT
THE END THE LAWYERS WOULD COME BEFORE YOU IN CLOSING
AND THEN I WOULD GIVE YOU THE CHARGE ON THE LAW. THIS
IS WHERE WE FIND OURSELVES NOW.

23

24

I WANT TO REMIND YOU AGAIN THAT WHAT THE
LAWYERS SAY TO YOU IN CLOSING IS NOT EVIDENCE IN THE

25

1 CASE. YOU'VE HEARD THE EVIDENCE AND YOU ULTIMATELY
2 WILL DETERMINE WHAT THE FACTS OF THE CASE ARE. PLEASE
3 UNDERSTAND THAT WHAT THE LAWYERS SAY IS THEIR POSITION
4 ON WHAT THE EVIDENCE SHOWS OR DOES NOT SHOW. NOW,
5 WITH THAT UNDERSTANDING I'LL TELL YOU THAT THE
6 DEFENDANT WILL ARGUE FIRST TO YOU, AND THEN THE STATE.
7 THE STATE IS GIVEN THE PRIVILEGE OF FINAL CLOSING
8 ARGUMENT BECAUSE THE STATE HAS THE BURDEN OF PROOF.
9 AND THE STATE NOW RECOGNIZES MR. BARR FOR CLOSING.

10 MR. BARR: THANK YOU, JUDGE, MR.
11 MODICA. MR. FOREMAN, LADIES AND GENTLEMEN; LET ME JUST
12 FIRST OF ALL TAKE THIS OPPORTUNITY TO THANK YOU FOR
13 YOUR SPLENDID ATTENTION THAT YOU HAVE GIVEN DURING THE
14 COURSE OF THIS TRIAL AND CERTAINLY AY THAT EACH AND
15 EVERYONE OF YOU, YOU'VE GIVEN THIS CASE YOUR UNDIVIDED
16 ATTENTION. AND FOR THAT NOT ONLY MR. COHENS
17 APPRECIATES IT, THE LAWYERS APPRECIATE IT, ALL THE COURT
18 PERSONNEL APPRECIATE IT. THE SYSTEM JUST COULDN'T WORK
19 AND WOULDN'T WORK IF YOU ALL WEREN'T WILLING TO
20 PARTICIPATE, SO WE APPRECIATE IT.

21 NOW, YOU KNOW I THOUGHT ABOUT THIS CASE A
22 LITTLE BIT LAST NIGHT, AND OF COURSE QUITE FRANKLY MY
23 MIND WENT BACK TO THE COMMENT MR. MODICA MADE AT THE
24 VERY BEGINNING OF THE TRIAL WHEN HE LOOKED AT THE
25 OFFENSES THAT THE DEFENDANT IS CHARGED WITH, AND AS HIS

1 HONOR'S ALREADY INDICATED TO YOU, THE INDICTMENT FOR
2 WHICH HE COMES TO COURT. OF COURSE, AN INDICTMENT IS
3 NOTHING MORE THAN A CHARGE ON PAPER, THAT'S ALL AN
4 INDICTMENT IS. YOU'LL HAVE THE INDICTMENT WHEN YOU GO
5 TO YOUR JURY ROOM. BUT ALL THE INDICTMENT IS - IT HAS NO
6 EVIDENTIARY VALUE, IT'S A PROCESS IN PAPER, IT'S A PAPER BY
7 WHICH THIS ISSUE COMES TO YOU.

8 AND AS I THOUGHT ABOUT THIS LAST NIGHT, MY
9 MIND WENT BACK TO WHAT MATTHEW SAID ABOUT ONLY BY
10 THE GRACE OF GOD THAT MRS. COHENS WAS NOT KILLED. AND
11 YOU KNOW, I THOUGHT ABOUT ALSO WHEN WE COME TO
12 COURT, THE FIRST THING WE DO, IF YOU ARE A WITNESS, IS
13 THAT WE HAVE THE WITNESS PUT THEIR HANDS ON THE BIBLE
14 AND THEY SWEAR TO TELL THE TRUTH. AND THERE'S A
15 STRANGE IRONY ABOUT IT BECAUSE SO OFTEN THE SOLUTIONS
16 TO OUR PROBLEMS ARE NOT SOLVED BY PUTTING OUR HANDS
17 ON THE BIBLE, BUT SOLVED BY SIMPLY HOLDING THE BOOK AND
18 READING IT.

19 BECAUSE A LOT OF THINGS THAT WE'RE
20 CONFRONTED WITH, WE'RE CONFRONTED WITH NOT BECAUSE OF
21 SOME DIRECT INTERVENTION BY THE ALMIGHTY BECAUSE WE
22 ALL HAVE CHOICES, BUT BECAUSE WE DO THE WRONG THING,
23 AND WHEN WE DO THE WRONG THING THERE ARE
24 CONSEQUENCES. NOW GRANTED THERE IS WHEN THE SITUATION
25 IS A PROBLEM, AND CERTAINLY FOR THOSE WHO BELIEVE, THAT

1 BY AND LARGE SOMEHOW WE CREATE OUR OWN SITUATION.
2 AND, LADIES AND GENTLEMEN, I CAN SUBMIT TO YOU WHEN
3 THESE PARTIES MARRIAGE BROKE DOWN AS IT HAD BROKEN
4 DOWN, AND I DON'T THINK IT'S TOO LATE FOR THEM QUITE
5 FRANKLY, BECAUSE I THINK MR. COHENS STILL LOVES HIS WIFE,
6 NOTWITHSTANDING THAT THEY'VE BEEN SEPARATED FOUR
7 TIMES AND EACH TIME GOTTEN BACK TOGETHER.

8 NOW I CERTAINLY HOPE FOR THE CHILDREN'S SAKE
9 THAT THEY WOULD DO BETTER THAN WHAT THEY'VE DONE SO
10 FAR. BUT I WOULD SUBMIT TO YOU SO FAR THINGS HAVE
11 GOTTEN KIND OF OUT OF HAND. AND I'M JUST NOT SURE WHAT
12 THE APPROPRIATE ANSWER IS FOR THEM. I'LL CONTINUE TO
13 PRAY FOR THEM.

14 NOW IN TERMS OF THE MATTERS AT HAND, THE
15 OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO KILL,
16 THAT'S WHAT IT CAME DOWN TO; A FAMILY BEING BROKEN TO
17 THE POINT WHERE THE HUSBAND HAS ALLEGEDLY TRIED TO KILL
18 HIS WIFE. AND WE'RE IN COURTROOM. NOW THE OFFENSE OF
19 ASSAULT AND BATTER WITH INTENT TO KILL, HIS HONOR WILL
20 GIVE YOU THE LEGAL DEFINITION OF THAT DEFENSE. AND I'M
21 NOT GOING TO SPEND A WHOLE LOT OF TIME TALKING ABOUT
22 WHAT THE ELEMENTS OF THE OFFENSE OF ASSAULT AND
23 BATTER WITH INTENT TO KILL ARE. BECAUSE, SEE, ANY
24 CRIMINAL OFFENSE, WHETHER OR NOT IT'S A STATUTORY
25 OFFENSE OR COMMON LAW OFFENSE, ANY CRIMINAL OFFENSE

1 IS COMPOSED OF WHAT WE CALL ELEMENTS. AND THE
2 ELEMENTS ARE THE COMPONENT PARTS THAT MAKE UP THE
3 OFFENSE.

4 IF YOU TAKE AN OFFENSE LIKE MURDER, MURDER IS
5 THE UNLAWFUL KILLING OF A PERSON WITH MALICE
6 AFORETHOUGHT. THERE HAS TO BE MALICE AND
7 FORETHOUGHT. IN OTHER WORDS, THE MALICE HAS TO EXIST
8 EVEN IN CONJUNCTION WITH OR CLOSE TO THE TIME THAT THE
9 ACT IS DONE WHICH CAUSES THE KILLING. THAT'S WHAT THAT
10 IS. ASSAULT AND BATTERY WITH INTENT TO KILL IS NO
11 DIFFERENT. THERE MUST BE AN ASSAULT, THERE MUST ALSO BE
12 A BATTERY, AND IT MUST BE WITH THE INTENT TO KILL.

13 NOW, LADIES AND GENTLEMEN, I WILL TELL YOU
14 THAT HIS HONOR WILL INSTRUCT YOU ON WHAT THE DEFINITION
15 OF ASSAULT AND BATTERY WITH INTENT TO KILL IS. AND HE'S
16 GOING TO TELL YOU WHAT THE ASSAULT IS, WHAT THE
17 BATTERY IS, AND WHAT INTENT TO KILL MEANS. IN ANY
18 CRIMINAL OFFENSE, ANY CRIMINAL OFFENSE IN SOUTH CAROLINA
19 THERE MUST BE A GENUINE INTENT IN ORDER TO MAKE UP THE
20 OFFENSE. AND HIS HONOR WILL INSTRUCT YOU THAT AS TO
21 THESE ELEMENTS OF THE OFFENSE, IN ORDER TO PROVE THE
22 DEFENDANT'S GUILTY, THE PROSECUTION HAS TO PROVE HIS
23 GUILT BEYOND A REASONABLE DOUBT AS TO EACH AND EVERY
24 ELEMENT OF THE OFFENSE.

25 NOW, WHAT DO WE HAVE IN THIS SITUATION? IF

1 YOU LOOK AT IF FROM THE VERY BEGINNING - AND I'M NOT
2 TRYING TO CHANGE YOUR MINDS ABOUT HOW YOU OUGHT TO
3 GO ABOUT THE BUSINESS OF DISCHARGING YOUR
4 RESPONSIBILITIES AS JURORS, THAT IS HOW YOU ALL MAKE UP
5 YOUR MINDS REGARDING THE ISSUES OF FACT. AS I INDICATED
6 EARLIER, THAT'S YOUR PROVINCE. BUT AS A DEFENSE LAWYER,
7 MY JOB IS MERELY TO POINT OUT SOME THINGS TO YOU, AND
8 CERTAINLY, HOPEFULLY, THOSE THINGS THAT I WOULD
9 CONSIDER FAVORABLE TO MY CLIENT.

10 BECAUSE, LADIES AND GENTLEMEN, SEE, AS I
11 INDICATED EARLIER AT THE VERY BEGINNING OF THE TRIAL,
12 EVEN RIGHT NOW AS WE SIT HERE - AND IF YOU REMEMBER, I
13 TALKED ABOUT OBEDIENCE. BECAUSE EVEN THOUGH WE MAY
14 OR MAY NOT LIKE IT OR MAY OR MAY NOT AGREE, RONALD
15 COHENS RIGHT NOW IS NOT GUILTY. HE'S NOT GUILTY. NOW
16 THAT'S WHAT THE LAW SAYS, BECAUSE HE'S PRESUMED
17 INNOCENT.

18 NOW IF YOU CAN'T RECEIVE THAT RIGHT NOW, THEN,
19 SEE, THERE'S A PROBLEM. THERE'S A PROBLEM WITH
20 OBEDIENCE. BECAUSE HE PRESUMED INNOCENT AND HIS HONOR
21 WILL INSTRUCT YOU THAT HE IS NOT GUILTY UNTIL SUCH TIME
22 AS IN YOUR COLLECTIVE WISDOM, EACH AND EVERY ONE OF YOU
23 GO TO THE JURY ROOM AND DELIBERATE AND YOU COME BACK
24 AND CONCLUDE THAT THE DEFENDANT IS GUILTY, AND YOU
25 COME BACK WITH A VERDICT WITH 12 PEOPLE THAT SAYS, WE

1 FIND HIM GUILTY. NOW, LADIES AND GENTLEMEN, THAT GUILT
2 MUST BE BEYOND A REASONABLE DOUBT. HE HAS NO BURDEN
3 OF PROVING ANYTHING TO YOU. IN FACT, HE'S PRESUMED
4 INNOCENT. HE DOESN'T HAVE TO PRESENT ANY EVIDENCE, AND
5 DIDN'T HAVE TO PRESENT ANY EVIDENCE.

6 IT IS THE PROSECUTION'S RESPONSIBILITY UNDER OUR
7 LAWS TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT.
8 AND YESTERDAY I SAID, OR DAY BEFORE - IN OTHER WORDS, IF
9 AFTER YOUR HONOR INSTRUCTS YOU ON THE LAW, THAT IS AS
10 APPLIES WITH ASSAULT AND BATTERY WITH INTENT TO KILL,
11 AND HE'S GOING TO TELL YOU THAT THERE'S A LESSER
12 INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND
13 AGGRAVATED NATURE.

14 AND EVEN AS TO THE BLUE LIGHT, THERE ARE
15 ELEMENTS OF THAT OFFENSE. A PERSON MUST REFUSE TO OBEY
16 A BLUE LIGHT AND SIREN. AND THAT'S WHAT IT MEANS TO
17 VIOLATE THAT OFFENSE. NOW I'M GOING TO TALK ABOUT THE
18 BLUE LIGHT AND THE SIREN FIRST. YOU KNOW, IT'S WONDERFUL
19 WHEN YOU CAN CAPTURE A SET OF CIRCUMSTANCES ON VIDEO
20 AND BRING THEM TO COURT AND JUST SHOW PEOPLE WHAT
21 HAPPENED, AND THAT'S WHAT YOU GOT YESTERDAY. THAT'S
22 WHAT YOU GOT YESTERDAY.

23 NOW, IF YOU RECALL AS YOU LOOKED AT THAT
24 VIDEO, THE POLICE OFFICER WAS BEHIND THE VEHICLE. I DON'T
25 KNOW WHAT DISTANCE THEY TRAVELED. IT APPEARS TO ME TO

1 BE PROBABLY LESS THAN A MILE. I DON'T KNOW WHAT IT
2 APPEARED TO YOU TO BE. THEY TURNED ON A ROAD WHERE
3 THE DEFENDANT'S MOTHER LIVED AND HE PULLS IN THE
4 DRIVEWAY. NOW I ASKED THE OFFICER, WAS HIS WINDOWS
5 WOUND UP? YEAH. THE OFFICER TOLD ME THAT, THAT HIS
6 WINDOWS WERE WOUND UP, AND NEEDLESS TO SAY, WE KNOW
7 WHAT HE WAS JUST INVOLVED IN.

8 NOW IS IT REASONABLE UNDER THE
9 CIRCUMSTANCES TO NOT HEAR? THAT'S A DECISION THAT
10 YOU'LL HAVE TO MAKE. I EVEN ASKED THE OFFICER ABOUT HIS
11 SPEED; I SAID, DID HE INCREASE HIS SPEED? AND THEN I FOUND
12 OUT THAT THE OFFICER REALLY DIDN'T HAVE A WHOLE LOT OF
13 EXPERIENCE. IN FACT, HE SAID THIS IS HIS FIRST PROSECUTION.
14 AND I KNEW HE DIDN'T HAVE ANY EXPERIENCE WHEN I ASKED
15 HIM ABOUT SPEED AND HE SAID NO, HE DIDN'T THINK SPEED
16 HAD ANYTHING TO DO WITH IT.

17 HIS HONOR IS GOING TO INSTRUCT YOU THAT SPEED
18 IS PRIMA FACIA EVIDENCE OF TRYING TO EVADE THE POLICE, OR
19 SPEED IS THE PRIMA FACIA EVIDENCE OF FAILURE TO STOP FOR
20 A BLUE LIGHT. HE SAID IT HAD NOTHING TO DO WITH IT. BUT I
21 MEAN HE'S YOUNG, I CAN UNDERSTAND THAT.

22 BUT, LADIES AND GENTLEMEN, THAT'S A CALL THAT
23 YOU'LL HAVE TO MAKE UNDER THE CIRCUMSTANCES BASED ON
24 WHAT YOU SAW, THAT THE DEFENDANT JUST KNOWINGLY
25 REFUSED TO STOP, OR WHETHER OR NOT HE STOPPED WITHIN A

1 REASONABLE TIME. BUT YOU'LL HAVE TO MAKE THAT CALL.

2 NOW ASSAULT AND BATTERY WITH INTENT TO KILL.
3 DID MR. COHEN RUN HIS WIFE OFF THE ROAD AND TRY TO KILL
4 HER? I THINK THAT, FIRST OF ALL, WHEN WE LOOK AT THE
5 EVIDENCE THAT THE PROSECUTION HAS PRESENTED, WE HAVE
6 TO LOOK AT CREDIBILITY AS I INDICATED TO YOU ON THE FIRST
7 DAY OF THIS TRIAL, BECAUSE YOU HAVE MRS. COHENS SAYING
8 ONE THING, MR. COHENS SAYING SOMETHING SOMEWHAT
9 DIFFERENT. YOU'VE EVEN GOT TWO WITNESSES THAT SAY THEY
10 SAW WHAT HAPPENED SAYING SOMETHING SOMEWHAT
11 DIFFERENT.

12 AND I TELL YOU WHAT, I WAS SOMEWHAT AMAZED
13 YESTERDAY WHEN MR. KINLOCH CAME ALONG AND ADDED EVEN
14 ANOTHER TWIST TO THIS THING BECAUSE HE SAID MRS. COHENS
15 WAS GOING OFF THE ROAD OVER TO THE RIGHT AT THE TIME
16 THAT MR. COHENS STRUCK HER WITH HIS VEHICLE. NOW,
17 ACCORDING TO MR. LEWIS, THE PARTIES WERE BUMPING EACH
18 OTHER AND THIS BUMPING TOOK PLACE IN THE LEFT LANE. AND
19 IF YOU REMEMBER, I ASKED HIM ABOUT THE BUMPING AND THE
20 PUSHING BECAUSE HE SAID THE PUSH TOOK PLACE IN THE LEFT
21 LANE, AND THAT MR. COHENS PUSHED MRS. COHENS OFF THE
22 ROAD.

23 WELL, HIS HONOR INDICATED TO YOU IN THE VERY
24 FIRST PHASE OF THIS TRIAL THAT WHEN YOU JUDGE THE
25 CREDIBILITY OF A WITNESS, SOMETIMES YOU HAVE TO LOOK AT

1 HOW A WITNESSES ABILITY IS TO OBSERVE THINGS. AND, YOU
2 KNOW, LADIES AND GENTLEMEN, I DON'T KNOW HOW MANY OF
3 YOU DRIVE, BUT IMAGINE IF YOU WILL IF YOU'RE DRIVING - AND
4 ACCORDING TO MR. KINLOCH, HE WAS AT LEAST 50 YARDS
5 BEHIND THE SCHOOL BUS. NOW ALL THE PARTIES AGREED THAT
6 WHATEVER TOOK PLACE TOOK PLACE IN FRONT OF THE SCHOOL
7 BUS.

8 NOW HOW IN THE WORLD CAN MR. LEWIS OR MR.
9 KINLOCH SEE AROUND THE SCHOOL BUS? ACCORDING TO MR.
10 COHENS THEY NEVER EVEN GOT - THE SCHOOL BUS WAS IN
11 FRONT OF THEM. LET ME TELL YOU SOMETHING; SOMETIMES
12 PEOPLE IN THE EXCITEMENT OF THINGS HAPPENING AND
13 WANTING TO BE INVOLVED, WHETHER AS WITNESSES OR
14 WHATEVER, THEY SEE WHAT THEY WANT TO SEE. AND
15 SOMETIMES THEY DON'T SEE EXACTLY WHAT THEY OUGHT TO
16 SEE IN TERMS OF SEEING THINGS CORRECTLY.

17 BECAUSE CLEARLY, THE WITNESSES MR. LEWIS AND
18 MR. KINLOCH, THEIR TESTIMONY WAS DIFFERENT. AND HIS
19 HONOR WILL INSTRUCT YOU THAT YOU CAN BELIEVE ALL OF
20 WHAT A WITNESS SAYS, OR NONE OF WHAT A WITNESS SAYS.
21 BUT, LADIES AND GENTLEMEN, THE QUESTION BECOMES; DID MR.
22 COHENS BASED ON THE EVIDENCE PRESENTED, AND HAS THE
23 PROSECUTION PROVEN TO YOU THAT HE TRIED TO KILL HIS
24 WIFE? NOW HIS HONOR WILL TRY TO INSTRUCT YOU THAT
25 ASSAULT AND BATTER WITH INTENT TO KILL, YOU WILL HAVE

1 TO HAVE NOT SPECIFIC INTENT, BUT THERE MUST BE GENERAL
2 INTENT TO KILL. THAT IS ASSUMING IF MR. COHENS HAD HIT HIS
3 WIFE WITH HIS VEHICLE, DID HE INTEND TO KILL HER? I - NOW,
4 MR. COHENS LOVES HIS WIFE, I BELIEVE HE DOES. I THINK HE
5 WANTS HIS FAMILY BACK TOGETHER. I THINK THEY HAVE SOME
6 ISSUES. BUT I THINK HE STILL LOVES HIS WIFE.

7 NOW, MRS. COHENS, IF YOU REMEMBER - AND I'M
8 GOING TO TELL YOU NOW WHEN YOU TALK ABOUT DOUBT AND
9 WHETHER OR NOT THAT DOUBT IS REAL - LET ME JUST SUGGEST
10 A COUPLE THINGS TO YOU AND THEN I'M GOING TO SIT DOWN.
11 IF YOU REMEMBER THE VERY FIRST THING WHEN MRS. COHENS
12 GOT ON THE TELEPHONE WITH THE 911 OPERATOR SHE SAID
13 I'VE GOT AN ORDER OF PROTECTION. THAT'S WHAT SHE SAID.
14 NOW COULD YOU IMAGINE IF SOMEBODY'S BUMPING YOU WITH A
15 VEHICLE OR YOU'RE BEING CRASHED INTO - I GOT AN ORDER OF
16 PROTECTION. NOW THE ORDER OF PROTECTION GOES BACK TO
17 THE PHONE CALLS. THAT'S WHY SHE'S GOT THE ORDER OF
18 PROTECTION, SHE DOESN'T WANT TO HEAR FROM HER
19 HUSBAND. SHE DOESN'T WANT TO HEAR FROM HIM NOW,
20 UNFORTUNATELY, AND HE STILL WANTS TO CALL HER. SHE
21 TURNED THE PHONE OFF. HER ORDER OF PROTECTION IS TO
22 PROTECT HER AGAINST WHAT SHE CONSIDERS TO BE HARASSING
23 PHONE CALLS. AND THAT'S HOW IT STARTED, WHEN HE
24 CALLED HER ON THE PHONE.

25 NOW ACCORDING TO HER, AND IF YOU LOOK AT THE

1 TESTIMONY, ACCORDING TO BOTH PARTIES, MR. COHENS
2 WAS LEADING MOST OF THE TIME. HE WAS THE FIRST PERSON
3 TO GET OUT ON OAKLAND ROAD, HE WAS THE FIRST PERSON TO
4 TURN ON 701. NOW SHE SAYS THAT HE CAME ACROSS THE
5 SCOTCHMAN - I DON'T KNOW IF YA'LL ARE FAMILIAR WITH
6 THAT, EVERYBODY LIVES HERE IN GEORGETOWN - BUT SHE SAID
7 THAT HE CUT THROUGH THE SCOTCHMAN -- BUT BLACK RIVER
8 ROAD, YOU'VE GOT A GROUP OF DOCTORS, MY DENTIST LIVES
9 ON THAT ROAD, YOU COME THROUGH THERE TO THE EXXON
10 STATION, TAKE A LEFT. MR. COHENS IS STILL IN FRONT.

11 HE WASN'T TRYING TO KILL HIS WIFE. HIS MIND WAS
12 ON SOMETHING ELSE. NOW IF YOU LOOK AT EXHIBIT NUMBER
13 FOUR WHEN YOU GO TO THE JURY ROOM -- AND WHAT I'M
14 TRYING TO POINT OUT TO YOU IS SOME REASON HERE THAT I
15 BELIEVE NOT ONLY IS THERE A DOUBT, BUT THERE'S A DOUBT
16 AS TO WHETHER OR NOT THE DEFENDANT IS GUILTY, AND THAT
17 DOUBT SHOULD BE CERTAINLY ENOUGH TO EXONERATE HIM.

18 LOOK AT EXHIBIT NUMBER FOUR. AND, YOU KNOW,
19 I'M NOT SUGGESTING THAT DOCTORS HAVE MORE WEIGHT WITH
20 HANDLING THIS TESTIMONY, BUT I'M GLAD YOU HAVE THE
21 DOCTORS ON THE JURY BECAUSE MRS. STONER - YOU KNOW,
22 YOU CAN ANALYZE - IF YOU CAN TAKE A SATELLITE NOW AND
23 LOOK AT A RABBIT IN MY YARD, NOW, YOU CAN TAKE THE
24 RUBBER SAMPLES FROM THE SKID MARKS IN EXHIBIT NUMBER
25 FOUR AND YOU CAN ANALYZE AND DETERMINE WHETHER OR

1 NOT THEY'RE CONSISTENT.

2 MR. MODICA: OBJECTION.

3 THE COURT: ON WHAT BASIS?

4 MR. MODICA: COUNSEL'S TESTIFYING.

5 HE'S SAYING THAT THERE'S NO EVIDENCE TO THAT EFFECT.

6 THE COURT: ALL RIGHT. RATHER
7 THAN SUSTAIN THE OBJECTION, I'M SIMPLY GOING TO TELL THE
8 JURY THIS. ARGUMENTS ARE ALLOWED AS TO WHAT IS AN
9 APPROPRIATE INFERENCE FROM THE EVIDENCE, AS WELL AS
10 WHAT MAY BE APPROPRIATE GENERAL KNOWLEDGE. IT'S UP TO
11 YOU, THE JURY, TO GIVE CREDENCE TO COUNSEL'S ARGUMENT.
12 AND ON THAT BASIS, YOU MAY PROCEED.

13 MR. BARR: JUDGE, I THINK THE
14 WITNESS -- AND LADIES AND GENTLEMEN IF I MISQUOTE A
15 WITNESS, PLEASE. . . MY RECOLLECTION OF HER TESTIMONY, AT
16 LEAST, SHE ADMITTED THAT BASED ON DETERMINING
17 CONSISTENCY, YOU COULD AT LEAST TELL WHETHER OR NOT
18 THAT SAMPLE THAT YOU HAD WAS CONSISTENT WITH THE FOUR
19 TIRES. MY RECOLLECTION IS THAT SHE DID ADMIT THAT.

20 NOW OF COURSE IN THIS CASE THE QUESTION BECOMES -
21 AND THE PROBLEM IS THE INVESTIGATOR HIMSELF SAID, WELL
22 I'VE NEVER FOUND NOT ONE TRANSFER MATERIAL, THAT'S
23 WHAT HE DESCRIBED IT AS, TRANSFER MATERIAL, WHETHER IT
24 WAS PAINT, WHATEVER, I NEVER FOUND ANYTHING ON MR.
25 COHENS BUMPER NOR ON THE REAR OF MRS. COHENS VEHICLE

1 THAT I COULD COMPARE, THAT I COULD EVEN SEND TO SLED.
2 SO NOW WHAT WAS ALL THIS BUMPING LEAVING BEHIND?

3 LADIES AND GENTLEMEN, WHEN YOU GO TO YOUR JURY
4 ROOM TO LOOK AT THE EVIDENCE - AND OF COURSE MRS.
5 COHENS ADMITTED THAT MR. COHENS VEHICLE HAD GOTTEN
6 TORN UP - BUT YOU WILL SEE WHERE ALL THE DAMAGE IS. THE
7 DAMAGE IS ON THE RIGHT CORNER OF THE FRONT. NOW HOW IN
8 THE WORLD DO YOU GET ALL OF THIS BUMPING AND GRINDING
9 AND BUMPING AND BUMPING AND NOT LEAVE A SHRED OF
10 EVIDENCE BEHIND, NOTHING? AND I TELL YOU, I KNOW THIS
11 OFFICER LOOKED OVER IT WITH A FINE TOOTHED-COMB BUT HE
12 COULDN'T FIND ANYTHING.

13 NOW, YOU KNOW, THIS BUSINESS OF WHETHER OR NOT --
14 WE CAN SEE THAT HE AS AT THE ACCIDENT. AND IF YOU LOOK
15 AT THE ACCIDENT, ACCORDING TO THE WITNESSES. AND IF YOU
16 LOOK AT THE PHOTOGRAPHS, YOU WON'T FIND ONE PIECE OF
17 DEBRIS LEFT ON THAT SIDE OF THE HIGHWAY. ALL THE DEBRIS,
18 WHICH WE AGREE CAME FROM MR. COHENS VEHICLE, IS EITHER
19 ON THE RIGHT LANE OR OFF ON THE SHOULDER. NOW HOW IN
20 THE WORLD DID DEBRIS, IF HE BANGED THE WOMAN BACK THERE
21 ON THE INSIDE LANE, HOW IS THE DEBRIS GOING TO GET ON THE
22 SHOULDER OF THE ROAD ON THE RIGHT SIDE?

23 AND, LADIES AND GENTLEMEN, YOU LOOK AT THOSE SKID
24 MARKS AND LOOK AT HOW THE VEHICLE WENT OFF THE ROAD.
25 BUT THAT IS THE THING THAT YOU WILL HAVE TO ASK

1 YOURSELVES AND ASK YOURSELVES USING YOUR GOOD
2 COMMON SENSE WHETHER OR NOT IT IS REASONABLE UNDER
3 THE CIRCUMSTANCES TO BELIEVE THAT. NOW, YOU KNOW, MRS.
4 COHENS, OF ALL THE PEOPLE THAT TOOK THE WITNESS STAND
5 IN THIS TRIAL, SHE WAS THE ONLY ONE WITH A BAD MEMORY
6 WHEN IT CAME TO SOMETHING. AND, YOU KNOW, SOMETIMES
7 WHAT WE DO IS WE ASK WITNESSES THINGS THAT WE KNOW
8 THEY KNOW, THAT WE KNOW THEY KNOW, AND WE KNOW
9 THEY CAN TELL YOU.

10 BECAUSE, YOU SEE, WHEN I ASKED ABOUT GOING TO
11 MYRTLE BEACH BY WAY OF 701, I KNOW THAT A THIRTY-YEAR
12 OLD WOMAN, AT SOME POINT, SHE WOULD HAVE HAD TO HAVE
13 BEEN IN ANOTHER WORLD NOT TO HAVE GONE THAT WAY, AND
14 SHE DENIED THAT. AND THAT'S INCONSISTENT WITH WHAT SHE
15 WANTS YOU TO BELIEVE.

16 SO WHAT YOU DO SOMETIMES, YOU CAN'T PREVENT
17 PEOPLE FROM SAYING WHAT THEY WANT TO SAY, BUT
18 SOMETIMES YOU CAN ASK SOMETHING THAT AT LEAST LETS
19 YOU SEE THAT THEY ARE INCLINED NOT TO TELL YOU WHAT
20 THEY OUGHT TO TELL WHEN IT COMES TO TELLING THE TRUTH
21 SOMETIMES. YOU SEE, THAT WAS WHAT THAT WAS MEANT
22 FOR. HER MEMORY GOT BAD, SHE COULDN'T REMEMBER HOW
23 MR. COHENS WAS NEGOTIATING THROUGH ALL OF THIS HEAVY
24 TRAFFIC; NOW SHE SAID IT WAS HEAVY AND BUSY, BUT
25 SOMEHOW HE DID MANAGE TO POP ALL THE WAY UP FROM

1 THAT BP STATION ALL THE WAY UP TO THE LEFT BRIDGE, NOT
2 WITHSTANDING ALL THE HEAVY TRAFFIC THAT WE KNOW AND
3 SHE ADMITTED BETWEEN SEVEN AND EIGHT O'CLOCK IN THE
4 MORNING. REASONABLE DOUBT TO THAT?

5 NOW, LADIES AND GENTLEMEN, AS I GO TO MY SEAT I
6 WANT YOU - AND YOU HAD AN OPPORTUNITY -- NOW MR.
7 COHENS IS NOT A TREMENDOUSLY EDUCATED MAN, YOU COULD
8 SEE THAT FROM THE WITNESS STAND. HE SAID, ACCORDING TO
9 HIM, QUITE FRANKLY THE ONLY JOB HE'S EVER HAD IS A
10 LOGGER. I MEAN HE SPENT MOST OF HIS TIME IN THE LOGGING
11 WOODS WORKING HARD. EVEN WITH ALL THE SCREAMING AND
12 WHATEVER ELSE MR. MODICA DID, I THINK HE STOOD ON THE
13 WITNESS STAND AND TOLD HOW IT HAPPENED.

14 NOW I DON'T KNOW THAT ANY OF YOU WILL EVER SERVE
15 ON ANOTHER JURY, AND SOME OF YOU PROBABLY DON'T EVEN
16 WANT TO. BUT NOW THIS DAY IN MR. COHENS LIFE IS A VERY
17 IMPORTANT DAY. IT GOES WITHOUT SAYING. AND WE ALL
18 KNOW WHAT THE CONSEQUENCES ARE AND WHAT THEY COULD
19 VERY WELL BE. BUT NOW THE ISSUE, LADIES AND GENTLEMEN,
20 AS UNFORTUNATE AS THIS MARRIAGE SITUATION HAS BEEN,
21 AND NOT WITHSTANDING THE FACT THAT MR. COHENS HAS
22 ALWAYS BEEN ABLE TO PUT IT BACK TOGETHER BY GETTING
23 BACK WITH HIS WIFE, EVEN AFTER FOUR TIMES, IT APPEARS
24 THAT SHE WAS KIND OF UPSET ABOUT THAT.

25 NOW, ASSAULT AND BATTERY WITH INTENT TO KILL, IF

1 YOU'RE NOT CONVINCED BY THE EVIDENCE THAT'S BEEN
2 PRESENTED, AND I THINK THE PROSECUTION HAS PUT THEIR
3 BEST FOOT FORWARD, UNFORTUNATELY THE PROSECUTION WILL
4 TRY TO CONVINCING YOU OR TRY TO SUGGEST TO YOU THAT
5 SOMEHOW - AND QUITE FRANKLY, I DON'T KNOW WHAT ALL OF
6 THE PICTURES, EVEN THE ITEMS, THE OTHER EXHIBITS, YOU'LL
7 HAVE ALL THOSE WHEN YOU GO TO THE JURY ROOM, BUT I
8 THINK IN TERMS OF MATERIALITY AND I THINK IN TERMS OF THE
9 THINGS THAT YOU WILL NEED TO ASSIST YOU IN MAKING THIS
10 DECISION, I WANT YOU TO SPEND SOME TIME ON EXHIBIT
11 NUMBER FOUR. AND I ALSO WANT YOU TO SPEND SOME TIME
12 LOOKING AT THE DEBRIS IN THIS CASE AND IMAGINE, IF YOU
13 WILL, HOW IT'S GOING TO GET OUT OF THE HIGHWAY ON THE
14 LEFT SIDE, WHICH IS WHERE, ACCORDING TO SOMEBODY, THE
15 COLLISION TOOK PLACE.

16 NOW WHEN YOU LOOK AT MR. COHENS VEHICLE AND
17 SEE THE DAMAGE ON THAT VEHICLE, NOW YOU'RE GOING TO SEE
18 THE STRING ON THE FRONT WHERE HE'S GOT THE HOOD TIED UP
19 AND IT'S ALL RUSTY AND OLD AND EVERYTHING, BUT NOW
20 WHEN YOU LOOK AT THE DAMAGE TO HIS VEHICLE, CLEARLY
21 YOU'RE GOING TO SEE THAT IT'S CONFINED TO THE LEFT
22 CORNER ON THE DRIVER'S SIDE. AND I BELIEVE THAT IN TERMS
23 OF CONSISTENCY YOU'LL ALSO FIND THAT THAT'S GOING TO BE
24 CONSISTENT WITH HOW HE TESTIFIED AND TOLD YOU AS TO
25 HOW HIS WIFE WOUND UP LEAVING THE ROAD AND BECOMING

1 INJURED.

2 NOW I DON'T KNOW, AND I HOPE HER INJURIES, I
3 HOPE SHE RECOVERS FROM HER INJURIES. ACCORDING TO MRS.
4 COHENS SHE GOT OUT OF THE HOSPITAL AND SHE'S STILL
5 SEEING THE DOCTOR, SHE'S NOT TALKED TO ANYBODY ABOUT A
6 PERSONAL INJURY CLAIM, SOMEHOW THAT SUBJECT NEVER
7 CAME UP, AT LEAST ACCORDING TO HER. SHE SAID SHE'S STILL
8 SEEING THE DOCTOR AND SHE'S JUST KIND OF WAITING. BUT
9 IT'S REMARKABLE AND IT'S WONDERFUL THAT SHE WAS NOT
10 HURT. BUT THAT'S NOT THE ISSUE. THE ISSUE IS WHETHER OR
11 NOT HER HUSBAND TRIED TO KILL HER. AND LADIES AND
12 GENTLEMEN, I DON'T BELIEVE THAT THE PROSECUTION HAS
13 PROVEN THAT.

14 AND BECAUSE OF JUST A COUPLE OF THINGS THAT
15 I'VE MENTIONED TO YOU, I HOPE IN THIS CASE THAT YOU'LL FIND
16 THAT NOT ONLY IS THERE A DOUBT, BUT THAT DOUBT IS
17 REASONABLE AS TO WHAT THE PROSECUTION HAS PROVEN TO
18 YOU; THAT BEYOND A REASONABLE DOUBT THAT THE
19 DEFENDANT IS GUILTY OF WHAT HE'S CHARGED WITH. THANK
20 YOU.

21 THE COURT: AND MR. MODICA?

22 MR. MODICA: I, TOO, WOULD LIKE TO
23 THANK YOU FOR YOUR SERVICE. YA'LL HAVE BEEN GREAT,
24 YOU'VE BEEN PATIENT, ATTENTIVE, AND THE DOCTOR'S CASE
25 HELPFUL DURING THE COURSE OF THIS TRIAL. I APPRECIATE IT,

1 WE'RE NOT LONG FROM THE END AND I WANT TO EXPRESS
2 MY GRATITUDE.

3 I WANT TO TALK ABOUT FOR A MOMENT, REASONABLE
4 DOUBT, BECAUSE THE JUDGE WILL GIVE YOU THE INSTRUCTION
5 AND SOMETIMES, AND IN FACT MR. BARR SAID IT, THE KIND OF
6 DOUBT THAT CAUSES YOU TO HESITATE TO ACT. WELL, YOU
7 KNOW, SOMETIMES IF YOU TAKE WORDS LITERALLY AND YOU
8 ARGUABLY IF YOU TAKE THE DEFINITION OF REASONABLE DOUBT
9 LITERALLY, YOU CAN'T CONVICT ANYBODY. NOW OBVIOUSLY
10 THAT DOESN'T HAPPEN ACROSS THE COURTS IN THE UNITED
11 STATES. PEOPLE ARE FOUND GUILTY.

12 SO, FOR EXAMPLE, YOU SAY HESITATE TO ACT, YOU
13 SHOULD HESITATE TO ACT. WE TALKED ABOUT PRESUMPTION
14 OF INNOCENCE, SO YOU HAVE TO HESITATE TO ACT,
15 OBVIOUSLY. AND IF WE HESITATE TO ACT IN ALL THE THINGS
16 THAT WE DO IN THE COURSE OF OUR DAY, MAYBE WHAT KIND
17 OF CLOTHES THAT YOU WORE TODAY OR WHETHER OR NOT TO
18 HAVE THAT SECOND CUP OF COFFEE LITERALLY DOESN'T MEAN
19 THAT.

20 THE JUDGE IS GOING TO TELL YOU THAT WHETHER IT IS
21 EVIDENCE THAT LEAVES YOU FIRMLY CONVINCED. AND I THINK
22 THAT YOU ARE FIRMLY CONVINCED, OR AFTER THE JUDGE GIVES
23 YOU THE INSTRUCTIONS YOU'LL BE FIRMLY CONVINCED.

24 NOW I DO RECALL AT THE BEGINNING OF THIS CASE THAT
25 I SLIPPED AND CALLED IT AN ACCIDENT, I DID ONCE OR TWICE.

1 BUT, YOU KNOW, IN REGARD TO THIS WRECK, THINK FOR
2 YOURSELVES; WAS THIS A CHANCE MEETING, WAS THIS ROAD
3 RAGE WITH A STRANGER? NO, IT WASN'T THOSE THINGS. YOU
4 KNOW WHAT HE DID? HE CAUSED HER TO WRECK, DIDN'T
5 BRAKE, KEPT ON GOING, AND LEFT HER FOR DEAD.

6 AND EVEN IF YOU BELIEVE, WHICH I DON'T THINK YOU DO,
7 BUT EVEN IF YOU BELIEVE HE CAME BACK, HE DIDN'T EVEN GET
8 CLOSE ENOUGH TO SEE WHETHER OR NOT SHE WAS BLEEDING.
9 AND THEN HE DIDN'T STICK AROUND TO CHECK ON THE MOTHER
10 OF HIS CHILDREN, AND THE WOMAN THAT HE PROFESSED FROM
11 THE WITNESS STAND THAT HE STILL LOVES. IF THAT JUST
12 DOESN'T SOUND RIGHT, OR RING TRUE, OR MAKE ANY SENSE TO
13 YOU, WELL, HOLD HIM ACCOUNTABLE.

14 I WOULD AGREE WITH THE DEFENSE THAT WHEN YOU DO
15 THINGS WRONG THERE ARE CONSEQUENCES AND IN THIS CASE
16 HE DID WRONG AND THERE ARE CONSEQUENCES. THINGS DIDN'T
17 GET OUT OF HAND. THINGS GET OUT OF HAND WHEN TWO
18 PEOPLE ARE RESPONSIBLE FOR THINGS THAT GO ON. THEY
19 DIDN'T GET OUT OF HAND. HE CAUSED THOSE THINGS.

20 WHEN YOU THINK ABOUT ASSAULT AND BATTERY WITH
21 INTENT TO KILL YOU'RE GOING TO THINK ABOUT THE
22 DEFENDANT'S STATE OF MIND. THE JUDGE IS GOING TO TELL
23 YOU TO THINK ABOUT THE DEFENDANT'S STATE OF MIND. AND
24 MALICE AFORETHOUGHT, THE JUDGE IS GOING TO TELL YOU IS
25 MALICE, HATRED, ILL WILL, HOSTILITY, INTENT IN DOING A

1 WRONGFUL ACT AGAINST ANOTHER INDIVIDUAL. AND WHEN
2 YOU THINK ABOUT THIS CASE YOU KNOW FROM THE BEGINNING
3 HE GOT SERVED WITH THE PAPERS ON THE NIGHT BEFORE
4 ABOUT NINE O'CLOCK. AND, COME ON, LADIES AND
5 GENTLEMEN, IN TERMS OF CREDIBILITY DO YOU THINK FOR A
6 MOMENT THAT HE DIDN'T LOOK THROUGH THOSE PAPERS AND
7 IT DIDN'T BOTHER HIM AT ALL? USE YOUR COMMON SENSE.

8 AND ALTHOUGH HE DIDN'T REALLY WANT TO ADMIT IT, HE
9 KNEW HIS WIFE'S ROUTINE ABOUT GETTING UP AT SEVEN
10 O'CLOCK IN THE MORNING, HE KNEW THAT. AND THEN HE
11 TESTIFIES THAT HE GOT UP AT SIX, WASHED UP, WARMED UP HIS
12 CAR AND LEFT. WELL, I MEAN, YOU GET UP AT SIX O'CLOCK IN
13 THE MORNING, YOU WASH UP, YOU WARM UP THE CAR, YOU
14 WOULDN'T BE DOWN THE STREET AT HER HOUSE AT SEVEN P.M.
15 THAT'S JUST NOT TRUE, THAT'S JUST NOT REASONABLE,
16 THAT'S JUST NOT RATIONAL. SO HE KNEW HER ROUTINE.

17 JUST SO HAPPENS TO DRIVE BY WHEN SHE'S GETTING IN
18 HER CAR. SO WHAT DOES HE DO? HE WAITS FOR HER IN THE
19 PARKING LOT OF THE CHURCH, LETS HIMSELF BE SEEN, AND
20 MESSES WITH HER, CALLS HER ON THE PHONE. AND, AGAIN, IN
21 TERMS OF THE DEFENDANT'S CREDIBILITY HE SAYS HE DIDN'T
22 DIAL STAR 67. WE NOW KNOW FROM INVESTIGATIVE FACT
23 WHETHER OR THAT'S TRUE. WHY LIE ABOUT THAT?

24 HE KNEW HE WASN'T SUPPOSED TO CALL HER. HE WAS
25 MESSING WITH HER. SHE JUMPS ON 51, HE GETS BEHIND HER,

1 PASSES HER, GETS RIGHT IN FRONT OF HER, MESSING WITH HER
2 HEAD. GETS ON 701, LETS HER PASS, GETS BEHIND HER, FEIGNS
3 NOT BEING INVOLVED ANYMORE. SHOOTS THROUGH THE
4 SCOTCHMAN, GETS IN FRONT OF HER, MESSES WITH HER SOME
5 MORE. GETS ON 17, ALLOWS HER TO PASS, STAYS BACK,
6 MESSES WITH HER BY CATCHING UP TO HER QUICKLY.

7 THIS IS HIS STATE OF MIND. THIS IS WHAT HE'S DOING,
8 THIS IS WHAT'S GOING ON. THINK ABOUT WHAT HE SAID; HE
9 SAID HE GOT UP TO GO TO THE IRS BECAUSE HE HAD A TAX BILL
10 THAT NEEDED TO BE PAID. WHO'S DRIVING THERE AT SEVEN
11 O'CLOCK IN THE MORNING WHEN THE IRS ISN'T EVEN OPEN?
12 DOES THAT MAKE SENSE? IS THAT LOGICAL? DOES THAT RING
13 TRUE? AND IF HE THOUGHT HIS WIFE WAS MESSING WITH HIM,
14 ALL HE HAD TO DO WAS PULL OVER FOR A COUPLE OF MINUTES,
15 LET HER GO ON HER WAY AND BE DONE WITH IT.

16 WE KNOW THAT IS NOT TRUE. HE IS LYING IN WAIT AT
17 THE CHURCH, HE CALLS ON THE PHONE HARASSING HER LIKE HE
18 HAD BEEN DOING, FOLLOWS HER, PASSES HER, KEEPS MESSING
19 WITH HER. THE VICTIM IS NOT FOLLOWING THE DEFENDANT,
20 SHE'S NOT MESSING WITH THE DEFENDANT, SHE'S GOING TO
21 WORK. THE DEFENDANT HIMSELF AGREED GOING UP 701 NORTH
22 WOULD NOT BE THE PROPER ROUTE TO TRAVEL, THAT'S NOT
23 THE WAY HE WOULD GO TO GRAND STRAND HOSPITAL OR NEAR
24 IT. YET SOMEHOW THE DEFENSE ATTORNEY WANTS YOU TO
25 BELIEVE THE VICTIM'S LYING ABOUT NEVER GOING UP 701. IS

1 THAT THE BEST HE CAN DO TO HURT HER CREDIBILITY, THAT
2 AND THE AMOUNT OF TRAFFIC?

3 THAT 911 CALL - BONE-CHILLING, ABSOLUTELY,
4 POSITIVELY BONE-CHILLING. YOU CAN IMAGINE HOW MANY
5 TIMES I'VE LISTENED TO IT. AND I HAVE WATCHED YOU AS YOU
6 WERE LISTENING TO IT, AND I CAN FEEL THE CREEPING UP YOUR
7 SPINE. CAN YOU IMAGINE BEING THE PERSON IN THAT CAR?
8 CAN YOU ONLY IMAGINE THE HORROR, THE TERROR?

9 BESIDES THE VICTIM YOU HAVE TWO INDEPENDENT
10 WITNESSES. THERE ISN'T ONE SINGLE BIT OF EVIDENCE TO
11 SUGGESTS THAT THESE INDIVIDUALS KNEW THESE PEOPLE,
12 PICKING SIDES, ABSOLUTELY, POSITIVELY NOT. AND WHILE I
13 RECOGNIZE THAT THERE WAS SOME DIFFERENCES BETWEEN MR.
14 LEWIS'S TESTIMONY AND MR. KINLOCH'S TESTIMONY, YOU
15 WOULD EXPECT THAT. WE ARE NOT COMPUTERS, WE ARE
16 HUMAN BEINGS. TWO PEOPLE CAN OBSERVE THE SAME ACT,
17 TALK ABOUT IT DIFFERENTLY AND SEE A SLIGHTLY DIFFERENT
18 POINT OF VIEW.

19 YET WHAT DID THEY SAY, WHAT DID ALL THREE OF THEM
20 SAY? THE ACCIDENT OCCURRED IN THE LEFT LANE. THE
21 DEFENDANT WAS HITTING HER AND KEPT HITTING HER, DID NOT
22 BRAKE, DID NOT STOP. NOW THERE'S AN ISSUE ABOUT
23 WHETHER OR NOT SHE WAS MOVING TO THE RIGHT LANE.
24 MAYBE SHE WAS MOVING TO THE RIGHT LANE. BUT THAT
25 DOESN'T PREVENT THE TESTIMONY THAT HE STRUCK HER FROM

1 BEHIND. EVEN IF SHE WAS MOVING THERE, HIS ACTIONS DID
2 WHAT? CAUSED THE INJURIES. HE CAUSED HER TO RUN OFF
3 THE ROAD, HE CAUSED THE WRECK. THERE ISN'T ONE BIT OF
4 EVIDENCE FROM THE DEFENDANT TO SUGGEST OTHERWISE.

5 AND THE DEBRIS ISSUE AND THE SKID MARK ISSUES, I
6 THINK IF YOU LOOK AT FOUR AND YOU'LL SEE THE SKID MARKS
7 ARE RIGHT THERE, THEY COULDN'T BE - JUST USING YOUR
8 COMMON SENSE - THE SKID MARKS CAN'T BE IN RELATION TO
9 THE ACCIDENT. IT HAS TO BE SOMETHING ELSE ALREADY
10 THERE, THE BUS OR OTHER PEOPLE, HAS TO BE. IT'S NOT THE
11 DEFENDANT BECAUSE IF THE DEFENDANT HAD BRAKED THERE
12 AND THE ACCIDENT OCCURRED THERE, YOU WOULD EXPECT
13 GOUGE MARKS IN THE HIGHWAY, ALL THESE THINGS TO HAVE
14 HAPPENED RIGHT THERE.

15 NOW AS FAR AS THE DEBRIS BEING OFF TO THE RIGHT
16 SIDE, MAYBE MR. KINLOCH IS CORRECT THAT SHE WAS MOVING
17 TO THE RIGHT AND HE FOLLOWED HER AND PUSHED HER OFF.
18 AND SO WHEN THE FORCE IS GOING TO THE RIGHT, THE ITEMS
19 ASSOCIATED WITH THE ACCIDENT WOULD LOGICALLY MOVE TO
20 THE RIGHT. ACCIDENTS AREN'T A PERFECT SCIENCE. IN FACT,
21 MEDICINE IS NOT A PERFECT SCIENCE BECAUSE WHAT DO THEY
22 SAY ABOUT PHYSICIANS? THEY ARE PRACTICING MEDICINE.
23 THEY'RE NOT PERFECT. ACCIDENTS DON'T HAPPEN IN A
24 VACUUM, THINGS DON'T GO MAYBE THE WAY YOU WOULD
25 EXPECT.

1 I WASN'T THERE, I CAN'T EXPLAIN WHY. BUT I THINK
2 THAT LOGICALLY YOU CAN SEE WHY THINGS ARE TO THE LEFT.
3 IT DOESN'T MEAN THAT IT DIDN'T OCCUR. IT CERTAINLY
4 DOESN'T MEAN IT DIDN'T OCCUR THE WAY THE WITNESSES
5 TESTIFIED TO IT. REMEMBER, ONCE AGAIN, THESE TWO
6 WITNESSES HAVE NO STAKE IN THIS MATTER, NONE. NOW YOU
7 MIGHT SAY THAT MRS. COHENS DOES BECAUSE SHE DOES HAVE
8 A STAKE IN THE OUTCOME, CLEARLY, BUT NOT THOSE PEOPLE.

9 I DON'T KNOW WHAT COULD BE GREATER MALICE THAN
10 THIS. MAYBE SHOOTING HER, OR STABBING HER, OR CLUBBING
11 HER TO DEATH MAYBE WOULD BE LESS TERRIFYING AND LESS
12 PAINFUL POTENTIALLY TO WHAT COULD HAVE HAPPENED TO
13 HER. BUT ABSENT THAT, CAN YOU THINK OF ANYTHING THAT IS
14 MORE MORE MALICIOUS THAN THIS? LYING IN WAIT AS I'VE
15 DESCRIBED TO YOU, AND FOLLOWING HER FROM MILES BACK
16 AND MESSING WITH HER, STRIKING HER ON THE BRIDGE, AS WE
17 HEAR IN THE 911 TAPE. I CAN'T THINK OF MUCH THAT IS
18 WORSE.

19 AND I REFERRED TO IT AS BEING A MIRACLE THAT SHE
20 WASN'T HURT AND IF I OFFENDED ANYONE'S SENSE OF
21 RELIGION, I APOLOGIZE. BUT I THINK THAT WHEN A CHILD IS
22 BORN, THAT THAT'S A MIRACLE. AND WHEN PEOPLE ARE
23 SOMEHOW MIRACULOUSLY SAVED FROM ACCIDENTS AND OTHER
24 THINGS, I THINK THOSE ARE MIRACLES. MAYBE THEY'RE NOT
25 GREAT MIRACLES LIKE WALKING ON WATER, BUT THEY ARE

1 CERTAINLY MIRACLES, SMALL MIRACLES. AND WHETHER YOU'RE
2 RELIGIOUS OR NOT, CALL IT LUCKY, CALL IT KARMA, CALL IT
3 KISMET, CALL IT WHATEVER YOU WANT, BUT YOU KNOW THAT
4 THIS WAS A HORRIFIC WRECK SUCH THAT THE PEOPLE RUNNING
5 OFF TO THAT WRECK THOUGHT THERE WAS NO SURVIVORS AS
6 YOU HEARD TESTIMONY TO.

7 AND THE FACT THAT SHE'S NOT SIGNIFICANTLY INJURED
8 DOES NOT DOWNPLAY THE INTENT OF THE DEFENDANT. YOU
9 DON'T NEED - ALTHOUGH THE JUDGE WILL TALK ABOUT
10 SERIOUS PHYSICAL INJURY - YOU DON'T NEED TO HAVE CAUSED
11 PHYSICAL INJURY TO BE CONVICTED OF ASSAULT AND BATTERY
12 WITH INTENT TO KILL.

13 I JUST WANT TO TALK A MOMENT ABOUT THE
14 DEFENDANT'S TESTIMONY. THE JUDGE WILL GIVE YOU
15 INSTRUCTIONS ABOUT CREDIBILITY AND HE WILL TELL YOU
16 THAT YOU'RE TO LOOK AT THE PERSON'S DEMEANOR, AND BY
17 THE WAY, THERE IS NOT PERSON IN THIS COURTROOM THAT HAS
18 A GREATER STAKE IN THE OUTCOME THAN THE DEFENDANT. IF
19 YOU BELIEVE HIM, HE WALKS. AND IF YOU DON'T, HE GETS
20 CONVICTED. YOU CAN'T THINK OF A PERSON WHO HAS A
21 GREATER MOTIVE NOT TO TELL THE TRUTH THAN THE
22 DEFENDANT, THAT'S CLEAR. AND YOU SHOULD FACTOR THAT
23 IN. AND YOU SHOULD FACTOR IN WHAT I - I STARTED OUT JUST
24 ASKING THE EASY QUESTIONS; IF SHE SPED UP AND WENT FIVE
25 OR TEN MILES FASTER, DIDN'T YOU NEED TO SPEED UP TO

1 CATCH UP WITH HER? AND USING A DENTIST'S REFERENCE, I HAD
2 TO PULL TEETH IN ORDER TO GET HIM TO ADMIT THAT. AND
3 THAT WAS JUST RIDICULOUS. AND THEN IT JUST GOT
4 COMPOUNDED FROM THERE. I'M NOT GOING TO BEAT A DEAD
5 HORSE, BUT I MEAN, I'M NOT LOOKING AT THE PAPERS, I'M BEING
6 FOLLOWED BY HER? YOU KNOW, I MEAN, REALLY DOES THAT
7 MAKE SENSE IN TERMS OF COMMON SENSE? ALTHOUGH
8 COMMON SENSE - IT IS MOST IMPORTANT THAT YOU USE YOUR
9 COMMON SENSE, THAT'S ABSOLUTELY NECESSARY. AND WHEN
10 YOU USE YOUR COMMON SENSE YOU'RE GOING TO SEE WHAT
11 THE DEFENDANT STATES IS JUST NOT SO.

12 I WOULD SUBMIT THAT IF HE DID COME BACK TO
13 CHECK ON HER HE WAS HOPING AND SEEING IF SHE WAS DEAD.
14 AND INTERESTINGLY ENOUGH WHEN I WAS CROSS EXAMINING
15 HIM ABOUT THAT, AT ONE POINT IN TIME HE SAID - TO USE HIS
16 WORDS - HE WAS CURIOUS. WHAT A HORRIBLE CHOICE OF
17 WORDS TO USE IN THAT CIRCUMSTANCE.

18 NOW THERE'S A LESSER INCLUDED OFFENSE OF
19 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE,
20 AND OBVIOUSLY BY SAYING IT'S A LESSER INCLUDED OFFENSE,
21 IT IS OBVIOUSLY NOT AS CRITICAL AS ASSAULT AND BATTERY
22 WITH INTENT TO KILL. AND I RECALL THAT MR. BARR SAID IN
23 HIS OPENING IT WASN'T A MATTER OF THAT, AND I GUESS YOU
24 SHOULD STAND PAT ON THAT, BUT JUST IN CASE THE JUDGE
25 WILL GIVE YOU THAT DEFINITION, SO SPEND A MOMENT ON IT.

1 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
2 NATURE IS LIKE ASSAULT AND BATTERY WITH INTENT TO KILL
3 EXCEPT FOR ONE ELEMENT. THERE IS NO MALICE
4 AFORETHOUGHT. SO REMEMBER WHEN I TOLD YOU TO LISTEN
5 CLOSELY TO THE WAY THINGS HAPPENED AND TO TRY AND GET
6 IN THESE PEOPLE'S MINDS? THAT'S WHY I WAS TRYING TO CLUE
7 YOU IN TO THAT. BECAUSE YOU'RE GOING TO HAVE TO
8 DETERMINE WHAT THE STATE OF MIND OF THE DEFENDANT
9 WAS.

10 AND I THINK I HAVE PROVIDED ENOUGH AMMUNITION FOR
11 YOU TO FIND THERE IS NOT OTHER WAY TO DESCRIBE THE
12 ACCIDENT THAN JUST MALICE, ILL WILL, HATRED, THE DOING OF
13 AN UNLAWFUL ACT TO ANOTHER WITHOUT JUST CAUSE.
14 THERE'S JUST NO OTHER WAY TO DESCRIBE THAT. AND I DON'T
15 UNDERSTAND, MAYBE THE DEFENSE IS THAT HEY, I DIDN'T DO IT,
16 BUT JUST IN CASE I DIDN'T DO IT, LET ME OFF THE HOOK AND
17 FIND ME GUILTY OF ASSAULT AND BATTERY OF A HIGH AND
18 AGGRAVATED NATURE. WELL, I WOULD SUBMIT TO YOU THAT
19 THAT IS A COMPROMISE.

20 AND LET ME SAY THIS ABOUT A COMPROMISE. IF THE
21 DEFENDANT DIDN'T DO IT, HE DOESN'T NEED YOU TO
22 COMPROMISE. AND IF HE DID DO IT, HE CERTAINLY DOESN'T
23 DESERVE IT. GIVE THE DEFENDANT WHAT HE DESERVES FOR
24 WHAT HE DID.

25 (THEREUPON THE 911 TAPE WAS PLAYED FOR THE JURY)

1 MR. MODICA: YOU'RE GOING TO HEAR A
2 SCREAM AND THE PHONE CUTS OFF. THANK YOU, YOUR HONOR.

3 THE COURT: ALL RIGHT, LADIES AND
4 GENTLEMEN, LET ME ASK YOU TO GIVE ME YOUR ATTENTION
5 NOW FOR A FEW MOMENTS WHILE I GIVE YOU THE CHARGE ON
6 THE LAW. I WANT TO MAKE SURE, FIRST OF ALL, ARE YOU
7 ABLE TO HEAR ME IN THE BACK OF THE JURY BOX? IS
8 EVERYONE ABLE TO HEAR ME? IF FOR SOME REASON YOU
9 CANNOT HEAR ME DURING THIS CHARGE, PLEASE RAISE YOUR
10 HAND AND I'LL BE GLAD TO AMPLIFY.

11 AS YOU ALL ARE AWARE, WE ARE NOW AT THE END OF
12 THE TRIAL WHERE THE COURT GIVE YOU THE CHARGE ON THE
13 LAW. BEFORE I SPEAK TO YOU ABOUT THE SPECIFICS OF THE
14 LAW IN THIS CASE I WANT TO SAY THIS TO YOU; THIS CASE, OF
15 COURSE, HAS LASTED BEYOND DAY, WE'RE INTO SOME DAYS OF
16 TRIAL, AND AS YOU ARE AWARE, AS I SAID TO YOU WHEN WE
17 BEGAN, THIS ENTIRE WEEK AS YOU'VE SERVED ON JURY DUTY
18 YOU'VE SET ASIDE YOUR BUSY LIVES, WHETHER THAT BE
19 PROFESSIONAL, PERSONAL, SOCIAL, FAMILY, WHATEVER IT MAY
20 BE, AND YOU'VE COME IN AND SERVED AS JURORS. I KNOW YOU
21 HAD MANY PRESSURES ON YOU OUTSIDE OF THIS COURTROOM.

22 EVERY TIME THAT I'VE LOOKED BEYOND THE WITNESS,
23 WHICH I SIT WHERE I CAN, OR BEYOND COUNSEL AND LOOKED
24 AT THE JURY, I'VE NOTED THAT YOU'VE SAT THERE WITH CLOSE
25 FOCUS AND RAPT ATTENTION, SETTING ASIDE WHATEVER IT IS

1 YOU'VE BROUGHT WITH YOU TO THE COURTROOM FOR THIS
2 WEEK. AND I APPRECIATE THE LEVEL OF FOCUS AND
3 COMMITMENT YOU'VE GIVEN IN THIS CASE BECAUSE I KNOW
4 WHEN YOU RETIRE TO DELIBERATE YOU'RE GOING TO BE IN AN
5 EXCELLENT POSITION DO TO THAT AND DECIDE THE FACTS
6 BECAUSE YOU HAVE FOCUSED, YOU HAVE LISTENED. I THANK
7 YOU FOR THAT LEVEL OF COMMITMENT AND WHAT IT MEANS TO
8 OUR JUSTICE SYSTEM HERE IN GEORGETOWN COUNTY AND THE
9 STATE OF SOUTH CAROLINA.

10 NOW AS YOU ARE AWARE, THE STATE SEATED
11 CLOSEST TO YOU HAS CHARGED THE DEFENDANT, SEATED AT
12 THE TABLE FURTHEST FROM YOU WITH TWO CHARGES, WHICH
13 ARE ASSAULT AND BATTERY WITH INTENT TO KILL AND FAILURE
14 TO STOP FOR A BLUE LIGHT. YOU'LL HAVE THE INDICTMENTS IN
15 THE JURY ROOM WITH YOU WHEN YOU RETIRE TO DELIBERATE.

16 NOW AS I SAID TO YOU WHEN WE BEGAN, THE
17 INDICTMENTS ARE A SET OF ACCUSATIONS OF MERELY A PIECE
18 OF PAPER BY WHICH A PROSECUTION IS COMMENCED AGAINST
19 AN INDIVIDUAL. AND THE DEFENDANT, YOU HEARD IT HERE IN
20 OPEN COURT, HAS PLED NOT GUILTY TO THESE CHARGES
21 MEANING THAT THE DEFENDANT DENIES THE ALLEGATIONS
22 CONTAINED IN THE INDICTMENT.

23 AND, AS I SAY AGAIN, THE INDICTMENT AS A SET OF
24 ACCUSATIONS IS NOT TO BE ACCEPTED AS EVIDENCE IN THE
25 CASE BECAUSE IT'S NOT. BECAUSE THE EVIDENCE IN THE CASE

1 YOU'VE NOW HEARD; WHICH WAS THE TESTIMONY OF THE
2 WITNESSES WHO TESTIFIED RIGHT HERE IN THIS CHAIR, AS WELL
3 AS THE EXHIBITS WHICH HAVE BEEN PLACED INTO EVIDENCE
4 THAT YOU WILL HAVE BACK WITH YOU IN THE JURY ROOM WHEN
5 YOU RETIRE TO DELIBERATE. THE DEFENDANT COMES INTO THIS
6 COURTROOM CLOTHES WITH THE PRESUMPTION OF INNOCENCE,
7 AND THAT PRESUMPTION CONTINUES WITH THE DEFENDANT
8 AND ENTITLES THE DEFENDANT TO A VERDICT OF NOT GUILTY
9 UNLESS AND UNTIL IT IS DISPELLED BY EVIDENCE WHICH
10 SATISFIED YOU THE JURY BEYOND A REASONABLE DOUBT,
11 THAT'S THE STANDARD, THAT THE DEFENDANT IS NOT GUILTY
12 OF THE CHARGES. AND THEREFORE THE DEFENDANT WOULD BE
13 ENTITLED TO A VERDICT OF NOT GUILTY IF THERE IS NOT PROOF
14 BEYOND A REASONABLE DOUBT OF THE CHARGES BEFORE YOU.

15 NOW AS I SAID WHEN WE BEGAN THIS CASE, YOU'RE THE
16 JUDGES OF THE FACTS, YOU ARE THE FINDERS OF THE FACTS.
17 AND YOU APPLY THOSE TO THE LAW THAT I GIVE YOU NOW IN
18 THIS PROCEEDING. AND I DISCUSSED WITH YOU WHEN WE
19 BEGAN SOME CRITERIA YOU MAY USE TO DETERMINE CREDIBILITY
20 AND BELIEVABILITY AND I WILL NOT BE DUPLICATIVE AND GO
21 OVER THAT AGAIN. I'LL SIMPLY SAY TO YOU; YOU CHOOSE
22 WHAT CRITERIA YOU BELIEVE ARE MOST APPROPRIATE IN YOUR
23 COMMON SENSE AND LIFE EXPERIENCES THAT INDICATE
24 CREDIBILITY AND BELIEVABILITY. I WILL TELL YOU THAT IN
25 DECIDING THE FACTS OF THE CASE YOU MAY BELIEVE AS MUCH

1 OR AS LITTLE OF ANY WITNESS'S TESTIMONY YOU THINK
2 PROPER. YOU CAN BELIEVE ONE WITNESS AGAINST A WHOLE
3 GROUP OR YOU MAY DO JUST THE OPPOSITE; YOU MAY BELIEVE
4 PART OF WHAT A WITNESS SAYS AND COMPLETELY DISBELIEVE
5 THE REST.

6 I WOULD FURTHER SAY TO YOU THE FACT THAT
7 CERTAIN TESTIMONY MAY NOT BE DIRECTLY CONTROVERTED
8 DOESN'T MEAN YOU HAVE TO ACCEPT IT AS TRUE AND
9 UNDISPUTED. YOU MUST FIRST GAUGE THE BELIEVABILITY AND
10 CREDIBILITY OF THE WITNESS THROUGH WHICH IT COMES. KEEP
11 IN MIND THROUGHOUT THIS PROCESS YOU HAVE ONE OBJECTIVE
12 AND THAT IS TO SEARCH FOR AND FIND THE TRUTH
13 REGARDLESS FROM WHICH WITNESS OR FROM WHICH SIDE OF
14 THE CASE THAT TRUTH MAY COME.

15 NOW THERE ARE TWO TYPES OF EVIDENCE IN CASES
16 SUCH AS THESE AND I WANT TO DISCUSS THAT WITH YOU. THE
17 FIRST IS DIRECT AND CIRCUMSTANTIAL; ONE IS DIRECT, THE
18 OTHER IS CIRCUMSTANTIAL. LET'S TALK ABOUT DIRECT FIRST.
19 DIRECT EVIDENCE IS TESTIMONY OF A PERSON WHO ASSERTS OR
20 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN
21 EYE WITNESS. CIRCUMSTANTIAL EVIDENCE, ON THE OTHER
22 HAND, IS PROOF OF A SET OR CHAIN OF FACTS WHICH THEN
23 INDICATE THE EXISTENCE OF YET ANOTHER FACT. THAT IS
24 INDIRECT EVIDENCE. I WILL TELL YOU THAT THE LAW MAKES NO
25 DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN

1 EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, AND NOR IS A
2 GREATER DEGREE OF CERTAINTY REQUIRED ON ONE THAN THE
3 OTHER.

4 YOU SHOULD CONSIDER ALL THE EVIDENCE IN THE
5 CASE, YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE, AND
6 AFTER WEIGHING ALL THE EVIDENCE IF YOU'RE NOT CONVINCED
7 OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
8 DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.

9 NOW I JUST DISCUSSED WITH YOU WEIGHING THE
10 EVIDENCE. AND I'VE BEEN BACK IN YOUR JURY ROOM, OF
11 COURSE NOT WHILE YOU'VE BEEN BACK THERE, BUT I'VE BEEN
12 BACK THERE BEFORE. AND THERE'S NOT SOME SET OF SCALES
13 TO GO BACK THERE AND WEIGH THE EVIDENCE. OBVIOUSLY
14 THIS IS A MENTAL PROCESS. AND I WOULD SAY TO YOU THAT
15 EVIDENCE WHICH WEIGHS WITH YOU IS THAT WHICH CONVINCES
16 YOU OF HIS TRUTH, AGAIN, REGARDLESS FROM WHICH WITNESS
17 OR FROM WHICH SIDE OF THE CASE IT MAY COME.

18 NOW THE SAME CONSTITUTION WHICH MAKES YOU
19 THE JUDGES OF THE FACTS MAKES ME THE JUDGE OF THE LAW
20 IN THIS COURTROOM. PLEASE, ACCEPT THE LAW AS I GIVE IT TO
21 YOU IN THIS CHARGE RIGHT NOW, APPLY IT TO THE FACTS AS
22 YOU FIND THEM, AND REACH A VERDICT WHICH IS JUST AND
23 TRUE. I ASK YOU NOT TO APPLY WHAT YOU THOUGHT THE LAW
24 MAY BE, WHAT YOU BELIEVE MAY BE A BETTER IDEA, OR WHAT
25 YOU MAY HAVE HEARD ON THE STREET THE LAW WITH REGARD

1 TO THESE CIRCUMSTANCES IS. PLEASE, ACCEPT THE LAW AS I
2 GIVE IT TO YOU IN THIS PROCEEDING.

3 NOW IN A CRIMINAL PROSECUTION OF THIS TYPE, AS
4 ALREADY STATED TO YOU, THE STATE HAS THE BURDEN OF
5 PROOF, AND THE DEFENSE HAS NO BURDEN OF PROOF AND IS
6 PRESUMED INNOCENT, AND OVER AND ABOVE THAT HAS PLED
7 NOT GUILTY TO THESE CHARGES. AND I SAY TO YOU, I CHARGE
8 YOU, IN THIS STATE ACCORDING TO OUR CONSTITUTION, THE
9 PROSECUTION MUST PROVE ITS CASE TO THE STANDARD WE
10 CALL BEYOND A REASONABLE DOUBT BEFORE A FINDING OF
11 GUILTY MAY OCCUR.

12 IF THE STATE FAILS TO MEET THIS HIGH BURDEN, AND
13 IT IS A HIGH BURDEN, THE DEFENDANT IS ENTITLED TO
14 ACQUITTAL. SO THEN YOU SAY, ALL RIGHT, WELL, WHAT IS A
15 REASONABLE DOUBT. AND I'M GOING TO START BY TELLING
16 YOU WHAT IT'S NOT. IT IS NOT AN IMAGINARY OR A FANCIFUL
17 DOUBT. IT IS NOT A WEAK DOUBT. IT'S A SUBSTANTIAL
18 DOUBT, IT IS A DOUBT WHICH THE WORDS IMPLY, A DOUBT FOR
19 WHICH YOU CAN GIVE OR ASSIGN A REASON BASED ON THE
20 TESTIMONY AND EVIDENCE IN THE CASE.

21 A REASONABLE DOUBT IS NOT ANY SORT OF A
22 DOUBT. YOU AND I KNOW FROM EVERYDAY LIFE EXPERIENCES
23 WE MAY HAVE ANY SORT OF A DOUBT ABOUT ANY MATTER, NO
24 MATTER HOW TRIVIAL IT MAY BE, SUCH AS WHAT HAT TO WEAR
25 TO SOME EVENT, OR WHAT PAIR OF SHOES TO WEAR. THAT IS

1 NOT A REASONABLE DOUBT. A REASONABLE DOUBT IS A
2 DOUBT THAT MAKES AN HONEST, SINCERE CONSCIENTIOUS
3 JUROR IN SEARCH OF THE TRUTH HESITATE TO ACT. PROOF
4 BEYOND A REASONABLE DOUBT IS PROOF WHICH LEAVE YOU
5 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

6 IF YOU HAVE A DOUBT FOR WHICH YOU CAN GIVE OR
7 ASSIGN A REASON AS TO THE GUILT OF THE DEFENDANT, THEN
8 HE IS ENTITLED TO A VERDICT OF NOT GUILTY ON THAT
9 PARTICULAR CHARGE. I CHARGE YOU THAT REASONABLE DOUBT
10 MAY ARISE FROM EVIDENCE WHICH IS IN THE CASE, OR FROM THE
11 LACK OR ABSENCE OF EVIDENCE IN THE CASE. YOU THE JURY
12 MUST MAKE THE DETERMINATION OF WHETHER OR NOT
13 REASONABLE DOUBT EXISTS AS TO THE GUILT OF THE
14 DEFENDANT WITH REGARD TO THESE TWO CHARGES,

15 I WILL TELL YOU, THOUGH, THE VERY FACT THAT THE
16 JURY GOES BACK INTO THE JURY ROOM AND ENGAGES IN A
17 FULL AND FREE DISCUSSION ON THE ISSUE OF GUILT OR NON-
18 GUILT IN THESE CHARGES WITH A CONVERSATIONAL EBB AND
19 FLOW ON THOSE ISSUES DOES NOT AUTOMATICALLY MEAN
20 THAT REASONABLE DOUBT EXISTS IN THIS CASE OR IN ANY
21 OTHER CASE, FOR THAT MATTER.

22 I ALSO CHARGE YOU THAT CRIMINAL INTENT IS A
23 NECESSARY ELEMENT OF EACH CRIME THAT MUST BE PROVED
24 BY THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL
25 INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED

1 BY THE JURY FROM THE CIRCUMSTANCES THAT SURROUND A
2 SITUATION. THERE'S NO WAY TO PROVE INTENT TO SOME
3 MATHEMATICAL CERTAINTY. YOU AND I KNOW THAT MEDICAL
4 SCIENCE WILL NOT ALLOW ONE TO JUST DISSECT A PERSON'S
5 BRAIN AND LOOK IN AND DETERMINE WHAT THAT PERSON HAD
6 IN MIND AT A PARTICULAR TIME, SO THE LAW STATES THAT
7 CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES
8 SHOWN TO HAVE EXISTED BOTH BEFORE AND AFTER THE FACT.
9 THIS IS HOW YOU THE JURY MAKE A DETERMINATION OF
10 WHETHER OR NOT THE ELEMENT REQUIRED, A CRIMINAL INTENT,
11 IS PRESENT.

12 CRIMINAL INTENT IS A STATE OF MIND THAT
13 OPERATES JOINTLY WITH AN ACT OR AN OMISSION IN THE
14 COMMISSION OF A CRIME. CRIMINAL INTENT IS A MENTAL STATE
15 OF CONSCIOUS WRONG-DOING. SO IT'S UP TO YOU THE JURY TO
16 DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON
17 THE CIRCUMSTANCES SHOWN THAT EXISTED. I TELL YOU THE
18 STATE MUST PROVE CRIMINAL INTENT BEYOND REASONABLE
19 DOUBT, JUST AS THE STATE MUST PROVE EVERY ELEMENT
20 BEYOND A REASONABLE DOUBT AS I HAVE PREVIOUSLY
21 EXPLAINED TO YOU.

22 NOW, DURING THE COURSE OF THIS TRIAL THE
23 DEFENDANT TESTIFIED. AS YOU ARE AWARE, HE TOOK THE
24 STAND AND TESTIFIED RIGHT HERE IN THE COURTROOM IN YOUR
25 PRESENCE AND MADE CERTAIN EXPLANATIONS. BUT I CHARGE

1 YOU THAT IT IS NOT INCUMBENT UPON THE DEFENDANT TO
2 PROVE HIS EXPLANATIONS, OR ANYTHING ELSE FOR THAT
3 MATTER. THE DEFENDANT'S PLEA OF NOT GUILTY PLACED THE
4 BURDEN UPON THE STATE TO PROVE HIS GUILT BEYOND A
5 REASONABLE DOUBT WITH REGARD TO THESE CHARGES BEFORE
6 HE CAN BE FOUND GUILTY. YOU MUST GAUGE THE CREDIBILITY
7 AND THE BELIEVABILITY OF THE DEFENDANT AS YOU WOULD
8 ANY OTHER WITNESS.

9 I FURTHER CHARGE YOU THAT MERE PRESENCE AT
10 THE SCENE IS INSUFFICIENT TO PROVE SOMEONE GUILTY OF A
11 PARTICULAR CRIME. THE BURDEN IS ON THE STATE TO PROVE
12 EVERY ELEMENT OF A CRIME CHARGES. IF YOU FIND AFTER
13 REVIEWING ALL THE EVIDENCE THAT THE STATE HAS PROVED
14 THAT THE DEFENDANT WAS ONLY PRESENT AT THE SCENE OF
15 AN INCIDENT OR AT THE SCENE OF A CRIME, AND THAT THEY'VE
16 NOT PROVED BEYOND A REASONABLE DOUBT ANY OTHER
17 PARTICIPATION IN A CRIME, THEN YOU MUST FIND THE
18 DEFENDANT NOT GUILTY. THE LAW IS THAT PROOF OF MERE
19 PRESENCE AT THE SCENE OF A CRIME IS NOT SUFFICIENT TO FIND
20 SOMEONE GUILTY OF THAT CRIME.

21 I NOW WISH TO DEFINE FOR YOU THE CHARGE OF
22 ASSAULT AND BATTERY WITH INTENT TO KILL. THE
23 DEFENDANT, AS YOU ARE AWARE, IS CHARGED WITH THAT. IN
24 ORDER TO PROVE ASSAULT AND BATTERY WITH INTENT TO KILL
25 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT

1 THE DEFENDANT COMMITTED AN UNLAWFUL ACT OF VIOLENT
2 NATURE TO THE PERSON OF ANOTHER WITH MALICE
3 AFORETHOUGHT. AN ASSAULT OCCURS WHEN A PERSON
4 UNLAWFULLY ATTEMPTS OR OFFERS TO COMMIT A VIOLENT
5 INJURY UPON ANOTHER PERSON AND HAS THE PRESENT ABILITY
6 TO COMPETE THAT INJURY. AN ASSAULT IS THE INTENTIONAL
7 CREATION OF A REASONABLE FEAR OF IMMEDIATE BODILY HARM,
8 IT'S NOT NECESSARY THAT THE ATTEMPTED INJURY OR HARM
9 ACTUALLY TAKE PLACE.

10 FOR EXAMPLE, IF I WALK UP TO A PERSON AND
11 WHEN I'M WITHIN ARM'S REACH IF I DRAW BACK TO HIT THAT
12 PERSON, THAT IS AN ASSAULT. A BATTERY IS THE UNLAWFUL
13 TOUCHING OF ANOTHER PERSON WHO HAS COMMITTED THE
14 ASSAULT. AN UNLAWFUL TOUCHING CAN BE CAUSED BY PART
15 OF THE ACCUSED BODY OR BY ANY OBJECT THE ACCUSED PUTS
16 IN MOTION. A BATTER IS THE COMPLETION OF AN ASSAULT BY
17 USING OR APPLYING FORCE TO ANOTHER PERSON IN A RUDE,
18 ANGRY, OR RESENTFUL MANNER WITHOUT LEGAL JUSTIFICATION
19 FOR DOING SO.

20 USING MY EARLIER EXAMPLE, IF I CARRIED THROUGH
21 THE ASSAULT BY HITTING THAT PERSON, THEN THAT IS THE
22 BATTERY OF ASSAULT AND BATTERY. MALICE IS HATRED, ILL
23 WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE
24 INTENTIONAL DOING OF A WRONG ACT WITHOUT JUST CAUSE
25 OR EXCUSE AND WITH AN INTENT TO INFLECT AN INJURY OR

1 UNDER CIRCUMSTANCES THAT THE LAW WOULD INFER AN EVIL
2 INTENT. I WILL TELL YOU THAT MALICE AFORETHOUGHT DOES
3 NOT REQUIRE THAT THE MALICE EXIST FOR ANY PARTICULAR
4 TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST
5 IN THE MIND OF THE DEFENDANT JUST BEFORE THE ACT AND AT
6 THE TIME THAT THE ACT IS COMMITTED.

7 THEREFORE, THERE MUST BE A COMBINATION OF
8 PREVIOUS EVIL INTENT AND THE ACT ITSELF. MALICE
9 AFORETHOUGHT MAY BE EXPRESSED, OR IT MAY BE INFERRED.
10 THESE TERMS EXPRESSED AND INFERRED DO NOT MEAN
11 DIFFERENT KINDS OF MALICE, BUT MERELY THE MANNER IN
12 WHICH MALICE MAY BE SHOWN TO EXIST; THAT IS EITHER BY
13 DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND
14 CIRCUMSTANCES THAT ARE PROVED.

15 EXPRESSED MALICE IS SHOWN WHEN A PERSON
16 SPEAKS WORDS OR EXPRESSES HATRED OR ILL WILL FOR
17 ANOTHER, OR WHEN THE PERSON PREPARES BEFOREHAND TO
18 DO THE ACT WHICH IS LATER ACCOMPLISHED, FOR EXAMPLE BY
19 LYING IN WAIT FOR A PERSON, OR ANY OTHER ACT OF
20 PREPARATION THAT GOES TO SHOW THAT THE DEED WAS
21 WITHIN THE DEFENDANT'S MIND AT THE PARTICULAR TIME
22 WOULD BE EXPRESSED MALICE.

23 MALICE MAY BE INFERRED FROM CONDUCT SHOWING
24 A TOTAL DISREGARD FOR HUMAN LIFE. INFERRED MALICE MAY
25 ALSO ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON.

1 A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR
2 SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT
3 BODILY HARM. WHETHER AN INSTRUMENT IS USED AS A DEADLY
4 WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF
5 EACH CASE. I WILL TELL YOU THAT A GUN MAY BE A DEADLY
6 EVEN IF IT IS NOT OPERATING.

7 IF FACTS ARE PROVED BEYOND A REASONABLE
8 DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR
9 SATISFACTION, THIS INFERENCE WOULD SIMPLY BE AN
10 EVIDENTIARY FACT TO BE CONSIDERED BY YOU ALONG WITH THE
11 OTHER EVIDENCE IN THE CASE, AND YOU MAY GIVE IT THE
12 WEIGHT YOU DECIDE IT SHOULD RECEIVE.

13 I CHARGE YOU THAT A SPECIFIC INTENT TO KILL IS
14 NOT AN ELEMENT OF ASSAULT AND BATTERY WITH INTENT TO
15 KILL. I SAY THAT AGAIN; A SPECIFIC INTENT TO KILL IS NOT AN
16 ELEMENT OF ASSAULT AND BATTERY WITH INTENT TO KILL, BUT
17 THERE MUST BE A GENERAL INTENT TO COMMIT SERIOUS BODILY
18 INJURY. INTENT MEANS INTENDING THE RESULT WHICH
19 ACTUALLY OCCURS, NOT ACCIDENTALLY OR INVOLUNTARILY.
20 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
21 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU
22 MAY NATURALLY AND REASONABLY INFER INTENT; EVIDENCE
23 OF THE CHARACTER OF THE ASSAULT, THE CHARACTER OF THE
24 INSTRUMENT USED, THE MANNER IN WHICH IT WAS USED, THE
25 PURPOSE TO BE ACCOMPLISHED, AND THE RESULTING WOUNDS

1 OR INJURIES MAY BE CONSIDERED IN DETERMINING THE INTENT
2 WITH WHICH AN ASSAULT IS COMMITTED. INTENT MAY BE
3 INFERRED WHEN IT IS DEMONSTRATED THAT THE DEFENDANT
4 VOLUNTARILY AND WILLFULLY COMMITS AN ACT, THE NATURAL
5 TENDENCY OF WHICH IS TO DESTROY ANOTHER'S LIFE.

6 NOW, UNDER OUR LAW ANY GREATER OFFENSE ALSO
7 INCLUDES LESSER OFFENSES. AND I KNOW THAT SOUNDS
8 COMPLICATED, BUT WHAT IT SIMPLY MEANS IN THIS CASE IS
9 THAT THE CHARGE OF ASSAULT AND BATTERY WITH INTENT TO
10 KILL INCLUDES ALL OF THE ELEMENTS OF THE LESSER OFFENSE
11 OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
12 NATURE. EVEN THOUGH THIS LESSER CRIME IS NOT CHARGED IN
13 THE INDICTMENT, YOU MAY CONSIDER IT IF YOU FIND THAT THE
14 FACTS FIT THOSE CHARGES RATHER THAN THE GREATER
15 CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL.

16 IN OTHER WORDS, A DEFENDANT INDICTED WITH
17 ASSAULT AND BATTERY WITH INTENT TO KILL MAY BE
18 CONVICTED OF ASSAULT AND BATTERY OF A HIGH AND
19 AGGRAVATED NATURE IF THE EVIDENCE WARRANTS IT. IF YOU
20 FIND THAT THE STATE HAS FAILED TO PROVE THE GREATER
21 OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO KILL, YOU
22 MUST THEN CONSIDER WHETHER OR NOT THE STATE HAS
23 PROVEN BEYOND A REASONABLE DOUBT THE LESSER INCLUDED
24 OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND
25 AGGRAVATED NATURE, WHICH INCLUDES ALL THE ELEMENTS OF

1 ASSAULT AND BATTERY WITH INTENT TO KILL, BUT DOES NOT
2 INCLUDE MALICE AFORETHOUGHT. THERE'S THE DIFFERENCE;
3 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE
4 DOES NOT INCLUDE THE ELEMENT OF MALICE AFORETHOUGHT.

5 IN ADDITION, THE STATE MUST PROVE BEYOND A
6 REASONABLE DOUBT AN AGGRAVATING CIRCUMSTANCE OR
7 CIRCUMSTANCES FOR ASSAULT AND BATTERY OF A HIGH AND
8 AGGRAVATED NATURE. I CHARGE YOU THAT CIRCUMSTANCES
9 OF AGGRAVATION INCLUDE THE USE OF A DEADLY WEAPON, THE
10 INTENT TO COMMIT A FELONY, THE INFLICTION OF SERIOUS
11 BODILY INJURY, A GREAT DISPARITY BETWEEN THE AGES OR THE
12 PHYSICAL CONDITIONS OF THE PARTIES, A DIFFERENCE IN THE
13 GENDERS OF THE PARTIES, A PURPOSEFUL INFLICTION OF SHAME
14 AND DISGRACE, AND A RESISTANCE TO LAWFUL AUTHORITY.
15 THESE ARE ONLY EXAMPLES OF CIRCUMSTANCES OF
16 AGGRAVATION.

17 NOW I ALSO WANT TO DEFINE FOR YOU THE CHARGE
18 OF FAILURE TO STOP FOR A BLUE LIGHT, THE DEFENDANT IS
19 ALSO CHARGED WITH THAT. IN ORDER TO PROVE THIS CRIME
20 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT
21 THE DEFENDANT WAS DRIVING A MOTOR VEHICLE, THAT THE
22 DEFENDANT WAS DRIVING THIS MOTOR VEHICLE ON A ROAD,
23 STREET, OR HIGHWAY OF THE STATE, THAT THE DEFENDANT
24 WAS SIGNALLED TO STOP BY A LAW ENFORCEMENT VEHICLE.
25 BY MEANS OF A SIREN OR FLASHING LIGHT, AND THAT THE

1 DEFENDANT DID NOT STOP.

2 IN DETERMINING WHETHER OR NOT THERE ARE
3 MITIGATING CIRCUMSTANCES WHICH WOULD JUSTIFY THE
4 DEFENDANT'S FAILURE TO STOP FOR THE BLUE LIGHT YOU MAY
5 CONSIDER ACTUAL ROAD CONDITIONS, ACTUAL ROADSIDE
6 CONDITIONS, OTHER CONDITIONS SUCH AS LIGHTING AND
7 WEATHER, OFFICER OR DRIVER SAFETY, AND ANY OTHER
8 CIRCUMSTANCES YOU BELIEVE TO REASONABLY MITIGATE THE
9 ALLEGED VIOLATION.

10 AN OFFICIAL'S SIGNAL REQUIRING A MOTORIST TO
11 STOP MAY BE A SIREN OR A FLASHING LIGHT, BUT BOTH ARE
12 NOT REQUIRED. AN ATTEMPT TO INCREASE THE SPEED OF A
13 VEHICLE OR IN SOME OTHER MANNER TO AVOID THE PURSUING
14 LAW ENFORCEMENT VEHICLE WHEN SIGNED BY A SIREN OR
15 FLASHING LIGHT MAY BE CONSIDERED AS EVIDENCE OF A
16 FAILURE TO STOP FOR A BLUE LIGHT. HOWEVER, IT IS MERELY
17 AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY
18 YOU ALONG WITH ALL THE OTHER EVIDENCE IN THE CASE AND
19 TO BE GIVEN THE WEIGHT THAT YOU DECIDE IT SHOULD RECEIVE.

20 AND FINALLY I TELL YOU, AS YOU HAVE HEARD IN
21 THIS CASE, THE DEFENDANT HAS TWO SEPARATE CHARGES,
22 AND I CHARGE YOU THAT THESE INDICTMENTS ARE SEPARATE
23 AND DISTINCT AND YOUR VERDICT ON ONE DOES NOT CONTROL
24 YOUR VERDICT ON THE OTHER, NECESSARILY, AND THESE MUST
25 BE CONSIDERED INDIVIDUALLY.

1 ALL RIGHT, NOW. LADIES AND GENTLEMEN, IN
2 CONCLUSION LET ME JUST SIMPLY SAY THIS TO YOU; IN JUST A
3 MOMENT YOU'RE GOING TO RETIRE TO BEGIN YOUR
4 DELIBERATIONS AND I WANT TO EXPRESS TO YOU THE HOPE,
5 AND I KNOW THAT YOU ARE CONFIDENT OF THIS AND AWARE OF
6 THIS, THAT YOU BE MINDFUL OF THE IMPORTANCE OF YOUR
7 RESPONSIBILITY.

8 YOU'RE NOT CALLED UPON OFTEN TO SERVE AS
9 JURORS. IN FACT, YOU MAY RECALL WE DISCUSSED ON
10 MONDAY, OR JUDGE BREEDEN DID, THE FACT THAT YOU CANNOT
11 BE REQUIRED TO SERVE MORE THAN ONCE IN A THREE YEAR
12 PERIOD IN THE SAME COURT. THERE'S A REASON FOR THAT.
13 IT'S BECAUSE IT'S A DIFFICULT TASK. AND IT REQUIRES YOU TO
14 REACH THE HEIGHT OF FREEING YOUR MIND FROM ALL OUTSIDE
15 AND IMPROPER INFLUENCES. BECAUSE YOU AND I ARE ACTING
16 FOR THE COMMUNITY IN SEEING TO IT THAT EVERY TRIAL HERE IS
17 FAIR, AND EVERY VERDICT IS JUST.

18 NOW YOU HAVE PROBABLY OBSERVED THAT THE
19 PRESIDING OFFICER IN THIS COURTROOM, WHICH IS ME, IS
20 REFERRED TO AS "YOUR HONOR." NOW I KNOW YOU KNOW
21 THAT THAT'S NOT SOME TITLE THAT'S GIVEN TO ME
22 INDIVIDUALLY. IT'S A TITLE THAT'S ASSIGNED TO THE POSITION
23 THAT I AM PRIVILEGED TO HOLD. AND THAT IS BECAUSE THIS
24 COURT IS CHARGED WITH THE HONOR OF THIS COUNTY,
25 COMMUNITY, STATE, AND INDEED THIS NATION IN SEEING TO IT

1 THAT EVERY PERSON TRIED HERE RECEIVES FAIR AND IMPARTIAL
2 JUSTICE.

3 NOW WHEN I TELL YOU THAT, LADIES AND
4 GENTLEMEN, I DON'T WANT YOU TO THINK THAT I'M TRYING TO
5 TELL YOU HOW YOU SHOULD DECIDE THIS CASE ONE WAY OR
6 ANOTHER. I'M SIMPLY SAYING THIS; WHATEVER VERDICT YOU
7 REACH, IT IS OF VITAL IMPORTANCE TO ME AS PRESIDING
8 OFFICER THAT YOU REACH THAT VERDICT BY GOING BACK INTO
9 THE JURY ROOM, CONFINING YOUR CONSIDERATIONS TO THE
10 EVIDENCE PUT FORTH IN THIS COURTROOM AND WEIGHING IT
11 FAIRLY, WEIGHING IT IMPARTIALLY, APPLYING IT TO THE LAW
12 THAT I'M GIVING YOU RIGHT NOW IN THIS PROCEEDING IN
13 REACHING A VERDICT THAT IS JUST AND TRUE. AND I HAVE
14 EVERY CONFIDENCE THAT THAT IS WHAT YOU WILL DO.

15 I SAY TO YOU, LADIES AND GENTLEMEN, THAT
16 EVERYONE IN THIS CASE IS ENTITLED TO JUSTICE, NOTHING
17 MORE AND NOTHING LESS. WE OWE NO SUPPORT TO ANY
18 PARTY, WE OWE NO SYMPATHY TO ANY PARTY. AND, AGAIN, I
19 AM OF THE CONFIRMED OPINION THAT YOUR VERDICT WILL
20 REPRESENT TRUTH AND JUSTICE FOR THE PARTIES BEFORE THIS
21 CASE.

22 NOW, MR. FOREMAN I WANT TO SPEAK TO YOU AND
23 YOUR COLLEAGUES HERE IN THE PRESENCE OF YOUR
24 COLLEAGUES AND SAY THIS TO YOU; I HAVE IN MY HAND THE
25 VERDICT FORM. YOU'RE GOING TO HAVE IT WITH YOU AND IT

1 HAS THREE QUESTIONS TO IT. THE REASON IT HAS THREE
2 QUESTIONS IS THE FIRST CHARGE, WHICH IS ASSAULT AND
3 BATTERY WITH INTENT TO KILL, HAS A LESSER INCLUDED
4 OFFENSE WHICH REQUIRES THE SECOND QUESTION.

5 THE FIRST QUESTION SIMPLY SAYS THIS, AND I'M
6 GOING TO PUBLISH THIS TO YOU BRIEFLY WITHOUT READING THE
7 ENTIRE THING; IT ASKS YOU WHETHER OR NOT AS TO THE
8 INDICTMENT NUMBER 06-354, ASSAULT AND BATTERY WITH
9 INTENT TO KILL; WE THE JURY UNANIMOUSLY FIND THE
10 DEFENDANT, RONALD COHENS, , , AND THEN YOU HAVE TWO
11 CHOICES. ON EACH OF THESE QUESTIONS YOU HAVE TWO
12 CHOICES. AND WHEN I HAVE TWO CHOICES TO GIVE YOU,
13 LADIES AND GENTLEMEN, I CAN'T GIVE THEM BOTH TO YOU AT
14 THE SAME TIME. BUT THERE'S NO PREFERENCE, THERE'S NO
15 PRIORITY. SIMPLY YOUR FIRST CHOICE IS NOT GUILTY AND THE
16 SECOND CHOICE IS GUILTY. WHICHEVER THE UNANIMOUS
17 VERDICT OF THE JURY IS, YOU MARK THAT AND THEN FOLLOW
18 THE INSTRUCTIONS BECAUSE ITS SELF-DIRECTING. IF YOU FIND
19 THE DEFENDANT NOT GUILTY OF QUESTION ONE, YOU MUST GO
20 TO QUESTION TWO AND CONSIDER THE LESSER INCLUDED
21 OFFENSE. IF YOU FIND THE DEFENDANT GUILTY OF THE GREATER
22 CHARGE, THEN YOU SKIP QUESTION TWO, WHICH IS NOTED RIGHT
23 THERE AND YOU PROCEED TO QUESTION THREE, WHICH ASKS
24 ABOUT THE FAILURE TO STOP FOR A BLUE LIGHT.

25 NOW PLEASE REMEMBER, MR. FOREMAN, YOUR

1 VERDICT MUST BE UNANIMOUS. AND HERE ON THE BOTTOM OF
2 THIS FORM THE LAST THING IT SAYS IS "I CERTIFY THAT THIS IS
3 THE UNANIMOUS DECISION OF THE JURY." WHEN YOU SIGN HERE
4 YOU'RE CERTIFYING TO THE COURT THAT THIS IS INDEED AND IN
5 FACT A UNANIMOUS JURY.

6 NOW, LADIES AND GENTLEMEN, I'M GOING TO ASK
7 YOU TO DO ONE OF TWO THINGS HERE IN YOUR DELIBERATIONS;
8 PLEASE, WHEN YOU GO BACK TO THE JURY ROOM AND IN A
9 MOMENT BEGIN YOUR DELIBERATIONS, I WANT TO MAKE SURE
10 THAT IF YOU NEED TO TAKE A BREAK OR SOMEONE WISHES TO
11 STEP OUT OF THE ROOM, AND IF AT ANY POINT YOU NEED THE
12 ASSISTANCE OF THE COURT, IF YOU'LL KNOCK ON THE DOOR
13 WE'LL RESPOND TO YOU.

14 BUT IF YOU DO TAKE A BREAK AND SEPARATE FOR
15 ANY REASON DURING YOUR DELIBERATIONS INTO DIFFERENT
16 GROUPS, PLEASE CEASE YOUR DISCUSSIONS UNTIL YOU'RE ALL
17 BACK TOGETHER. IT'S CONCEIVABLE GROUPS AT DIFFERENT
18 PLACES COULD REACH DIFFERENT RESULTS AT THE SAME TIME,
19 AND THAT WOULD NOT BE APPROPRIATE. SO PLEASE DO NOT
20 CONTINUE TO DEBATE OR DELIBERATE WHILE YOU'RE APART.

21 NOW, THERE'S ONE OTHER THING I WANT TO DO IN
22 THE PRESENCE OF ALL 14, I WANT TO THANK OUR TWO
23 ALTERNATE JURORS, WHICH ARE MR. NESBITT AND MR.
24 MCCLLELAN. THE WAY OUR PROCESS WORKS HERE IS THAT
25 ONLY THE 12 DELIBERATE. AND I BELIEVE THIS 12 ARE GOING

1 TO HOLD THEIR HEALTH HERE FOR THE TWO OR THREE MINUTES
2 UNTIL THAT PROCESS BEGINS. BUT I WANT TO SAY THIS TO
3 YOU; SOMETIMES ALTERNATE JURORS WHO GET TO THE END OF
4 THE CASE SAY, WELL MY GOODNESS, I HAVE WASTED MY TIME
5 BECAUSE I'M NOT GOING TO DELIBERATE. BUT I WANT YOU TO
6 UNDERSTAND THAT UNDER OUR PROCESS WE MUST HAVE 12
7 JURORS. IF FOR SOME REASON ONE OF OUR 12 EVEN NOW HAD
8 TO LEAVE, EMERGENCY, FELL ILL, OR WHATEVER, AND THERE
9 WAS NO ALTERNATE, WE WOULD HAVE TO DECLARE A MISTRIAL
10 AND THIS CASE WOULD HAVE TO BE RETRIED. YOUR PRESENCE
11 HERE HAS PREVENTED THAT IN THE EVENT IT SHOULD HAPPEN.
12 AND IT HASN'T HAPPENED AS YET, IT DOESN'T APPEAR THAT IT
13 WILL. BUT I WANT TO THANK YOU IN THE PRESENCE OF YOUR
14 COLLEAGUES FOR YOUR SERVICE, YOUR STELLAR SERVICE AND
15 YOUR CLOSE FOCUS AND ATTENTION.

16 NOW I'M GOING TO LET YOU GO BACK WITH YOUR 12
17 COLLEAGUES AND SAY YOUR GOOD-BYES TO THEM IN JUST A
18 MOMENT BECAUSE I'M GOING TO ASK OUR JURY PLEASE DO NOT
19 BEGIN YOUR DELIBERATIONS UNTIL I SEND INTO YOU THE
20 EVIDENCE ALONG WITH ALL THE EXHIBITS, THE VERDICT FORM,
21 THE INDICTMENTS, OTHER THINGS WE HAVE TO HAVE TOGETHER
22 FOR YOU. JUST TAKE WHATEVER BREAK YOU NEED BUT DO NOT
23 BEGIN YOUR DELIBERATIONS. THEN WHEN I SEND THAT
24 INFORMATION IN YOU MAY BEGIN, AND I'D ASK OUR TWO
25 ALTERNATES TO COME OUT AT THAT TIME AND I'LL SPEAK TO

1 YOU HERE AGAIN IN THE COURTROOM.

2 ALL RIGHT, WITH THAT UNDERSTANDING, LADIES
3 AND GENTLEMEN, LET'S EVERYONE REMAIN WHERE THEY ARE
4 WHILE OUR JURY DEPARTS TO THE COURTROOM. GOOD LUCK,
5 LADIES AND GENTLEMEN.

6 (AT THIS TIME THE JURY LEAVES THE COURTROOM)

7 THE COURT: ALL RIGHT, NOW THE
8 JURY HAS DEPARTED THE COURTROOM, ARE THERE EXCEPTIONS
9 OR OBJECTIONS TO THE CHARGES GIVEN BY THE COURT, FIRST
10 FROM THE STATE?

11 MR. MODICA: NO, YOUR HONOR.

12 THE COURT: AND DEFENSE?

13 MR. BARR: NO, JUDGE.

14 THE COURT: ALL RIGHT, COUNSEL,
15 PLEASE COME FORWARD AND LOOK AT THE EXHIBITS. COURT,
16 LET'S REMAIN IN SESSION BECAUSE I'M GOING TO BRING THE
17 ALTERNATES BACK OUT IN JUST A MOMENT AND ONCE THAT
18 DECISION'S MADE THEN WE'LL SEND IN THE EVIDENCE TO THE
19 JURY.

20 (TWO JURORS RE-ENTER THE COURTROOM)

21 THE COURT: ALL RIGHT, HERE COME
22 OUR JURORS. GENTLEMEN, PLEASE COME STAND RIGHT HERE IN
23 FRONT OF ME, IF YOU WILL. AND, AGAIN, I WANT TO THANK
24 YOU FOR YOUR SERVICE. THE GOOD NEWS IS THAT I'M GOING TO
25 RELEASE YOU AT THIS TIME. AND YOU ARE FREE AND WELCOME

1 TO REMAIN WITH US. THE COURT HAS OTHER BUSINESS AND
2 WE'RE GOING TO AWAIT THE JURY VERDICT, BUT THEN AGAIN
3 YOU MAY BE READY TO BE ABOUT YOUR OWN BUSINESS AND
4 WE'LL BE GLAD TO GIVE YOU A TELEPHONE NUMBER THAT YOU
5 CAN CALL AT THE CLERK'S OFFICE TO DETERMINE WHAT
6 HAPPENED IN THE CASE IF YOU HAVE AN INTEREST IN THE
7 ULTIMATE JURY VERDICT. BUT REGARDLESS OF THAT I WILL
8 TELL YOU THAT YOU 'RE GOING TO GET A CHECK FROM THE
9 COUNTY WHICH IS NOT GOING TO BE ENOUGH TO RETIRE ON,
10 BUT IT'S GOING TO BE THE COUNTY'S EXPRESSION OF
11 GRATITUDE. BUT I'M GOING TO COME AROUND AND GIVE YOU MY
12 EXPRESSION OF GRATITUDE BY SHAKING YOUR HAND FOR A JOB
13 WELL DONE. (THE JUDGE DOES SO)

14 ALL RIGHT. NOW I'M GOING TO SPEAK TO MR.
15 COHENS, THE DEFENDANT, AS WELL AS MRS. COHENS. MA'AM,
16 AND SIR, THIS CASE IS NOW IN THE HANDS OF THE JURY.
17 THAT'S THE STRENGTH OF OUR SYSTEM. IT'S THEIR
18 DETERMINATION. I APPRECIATE THE WAY YOU HAVE
19 CONDUCTED YOURSELVES THROUGHOUT THIS TRIAL AND THE
20 PROFESSIONALISM AND RESTRAINT SHOWN BY YOU, YOUR
21 FAMILIES, I KNOW THERE'S A LOT OF PERSONAL INVOLVEMENT
22 HERE ON EVERYONE'S SIDE. BUT I APPRECIATE THE WAY YOU'VE
23 CONDUCTED YOURSELVES, AND THANK YOU FOR THE WAY YOUR
24 ATTORNEYS CONDUCTED THE TRIAL AS WELL.

25 MR. COHENS, WE'RE GOING TO TAKE YOU INTO

1 CUSTODY NOW AWAITING THE JURY VERDICT. AND WE WILL
2 SEND FOR YOU WHEN WE HAVE A JURY VERDICT, SIR.

3 (THE PROCEEDINGS CONCLUDED AWAITING THE VERDICT.)

4 THE COURT: WE HAVE A NOTE FROM
5 THE JURY WHICH SAYS, "COULD WE PLEASE HAVE THE 91.1
6 RECORDING?" IT IS AN EXHIBIT. AND THE COURT HAS
7 DISCUSSED THIS WITH COUNSEL, THE PROSECUTION IS PREPARED
8 TO SEND THE COMPUTER IN. I WILL STATE AGAIN FOR THE
9 RECORD THAT OUR JURY FOREPERSON SOLVED A COMPUTER
10 PROBLEM THAT WE HAD YESTERDAY WITH GETTING THE
11 PICTURES TO SHOW, SO CLEARLY HE IS PROFICIENT WITH
12 COMPUTER USE.

13 THE DEFENSE DOES NOT WANT THE COMPUTER TO
14 GO BACK TO THE JURY. AND, COUNSEL, I'LL LET YOU STATE
15 WHY YOU FEEL THAT WAY, MR. BARR. WHY DO YOU OBJECT TO
16 THE COMPUTER GOING BACK TO THE JURY?

17 MR. BARR: WELL, FIRST OF ALL, JUDGE,
18 WE BELIEVE - FIRST OF ALL, THE COMPUTER'S NOT IN EVIDENCE.
19 AND IT WOULD BE OUR POSITION THAT THE JURY SHOULDN'T BE
20 ALLOWED TO CONSIDER IT. OF COURSE ONCE THE COMPUTER
21 GOES BACK THERE, OF COURSE, I WOULD THINK THAT
22 DEPENDING UPON HOW IT'S ACTUALLY USED THERE WOULD BE A
23 NUMBER OF OTHER USES THAT THAT COMPUTER COULD
24 ACTUALLY BE PUT TO WHEREBY THEY MIGHT EXPOSE THINGS
25 THAT, AGAIN, ARE NOT IN EVIDENCE. FOR THOSE TWO PRIMARY

1 REASONS IT'D BE OUR POSITION THAT THE COMPUTER
2 SHOULDN'T GO.

3 THE COURT: ALL RIGHT, THE COURT IS
4 GOING TO ALLOW THE COMPUTER TO GO BACK, MR. MODICA,
5 HOWEVER, FOR THE JURY FOREPERSON TO BE INSTRUCTED THAT
6 THE COMPUTER IS TO BE USED ONLY FOR THE PURPOSE OF
7 PLAYING THE CD WHICH CONTAINS THE 911 CALL. I WILL ASK
8 THE FOREPERSON WHEN THEY COME BACK OUT, AT WHATEVER
9 POINT THEY DO, WHETHER THE COMPUTER WAS USED FOR ANY
10 OTHER PURPOSE.

11 LET'S LET THE RECORD REFLECT THAT IT'S NOW
12 3:20 ON A FRIDAY AFTERNOON. I HAVE A COURTROOM,
13 ALTHOUGH NOT FULL, MANY PEOPLE HERE, MULTIPLE PEOPLE
14 WAITING FOR THEIR CASES TO BE HEARD EITHER BY PLEA OR
15 PERHAPS PROBATION. THIS CASE HAS TAKEN LONGER TO TRY
16 THAN EXPECTED, THEREFORE I'M TRYING TO CLEAR THE DOCKET
17 AS BEST I CAN AND THE COURT JUST SIMPLY DECIDES NOT TO
18 STOP THIS PROCEEDING AND BRING THE JURY BACK OUT SIMPLY
19 TO PLAY THE 911 TAPE. AND FOR THESE REASONS, MR.
20 MODICA, YOU MAY PROCEED AND HAVE THE COMPUTER SENT IN,
21 PLEASE. LET'S HAVE SOMEONE OTHER THAN COUNSEL TO TAKE
22 IN THE COMPUTER. AND MRS. KNOX,* IF IT'S YOU, PLEASE TELL
23 OUR FOREPERSON THAT THE COMPUTER SHOULD ONLY BE USED
24 FOR THE PURPOSE OF PLAYING THE 911 DISC AND NO OTHER
25 PURPOSE. THANK YOU.

1 (THE PROCEEDINGS WERE RECESSED WHILE AWAITING
2 THE JURY VERDICT.)

3 THE COURT: PLEASE COME TO ORDER.
4 I'M ADVISED THAT WE HAVE A VERDICT. WE'RE JUST DOING
5 WHAT WE NEED TO GET THE COURTROOM READY AND
6 PERSONNEL READY FOR THE VERDICT TO BE RETURNED, SO
7 PLEASE COME TO ORDER.

8 (THE JURY ENTERS THE COURTROOM)

9 THE COURT: ALL RIGHT, LADIES AND
10 GENTLEMEN, WELCOME BACK TO THE COURTROOM. DR.
11 DEVILLA, I'M ADVISED THAT THE JURY HAS A VERDICT; IS THAT
12 CORRECT, SIR?

13 THE FOREPERSON: THAT'S CORRECT.

14 THE COURT: WOULD YOU PLEASE GIVE
15 YOUR VERDICT FORM TO MRS. KNOX? IF YOU WOULD PLEASE
16 HAND THAT TO ME, THANK YOU. LET'S LET THE RECORD
17 REFLECT THAT THE VERDICT FORM IS APPROPRIATELY FILLED
18 OUT, IT IS SIGNED BY THE FOREPERSON AND THE CLERK WILL
19 PUBLISH THE VERDICT. DEFENDANT PLEASE RISE.

20 THE CLERK; AS TO INDICTMENT
21 #2006-GS-22-354, ASSAULT AND BATTERY WITH INTENT TO
22 KILL, WE THE JURY FIND UNANIMOUSLY THE DEFENDANT
23 RONALD COHENS GUILTY. AS TO INDICTMENT 2006-GS-22-355,
24 FAILURE TO STOP FOR A BLUE LIGHT, WE THE JURY
25 UNANIMOUSLY FIND THE DEFENDANT, RONALD COHENS GUILTY.

1 LADIES AND GENTLEMEN OF THE JURY, IF THESE ARE YOUR
2 VERDICTS, PLEASE RAISE YOUR RIGHT HAND. THANK YOU.

3 THE COURT: LET THE RECORD REFLECT
4 THAT EACH OF THE JURORS RAISED THEIR RIGHT HAND IN
5 RESPONSE TO THE CLERK'S QUESTION. YOU MAY BE SEATED,
6 MR. COHENS. AND NOW MR. BARR, WHILE WE ARE IN THE
7 PRESENCE OF THE JURY ARE THERE ANY MOTIONS FOR WHICH A
8 JURY RESPONSE WILL BE NECESSARY AT THIS TIME? IF SO,
9 PLEASE GO AHEAD, SIR.

10 MR. BARR: WE DON'T HAVE ANY
11 MOTIONS FOR THE JURY.

12 THE COURT: THEN, LADIES AND
13 GENTLEMEN, BECAUSE THERE ARE NO JURY MOTIONS, THEN
14 THAT CONCLUDES YOUR INVOLVEMENT IN THIS CASE. LET ME
15 SUGGEST THIS TO YOU. THE COURT IS NOW GOING TO HAVE A
16 SENTENCING PROCEEDING, BUT RATHER THAN HAVE THIS
17 PROCEEDING WITH YOU IN THE JURY BOX, BECAUSE YOU'RE NOT
18 ABLE TO GO OR COME DURING THAT PROCEEDING, I'M GOING TO
19 RELEASE THE JURY NOW AND I'M GOING TO ASK THAT IF YOU'RE
20 INTERESTED IN REMAINING FOR THE SENTENCING THEN PERHAPS
21 YOU MIGHT BE SEATED IN THE BACK OF THE COURTROOM WHICH
22 WOULD ALLOW YOU TO DEPART IF FOR SOME REASON YOU
23 NEED TO LEAVE AT ANY POINT IN THE PROCEEDING. I DON'T
24 THINK IT WILL TAKE MORE THAN 10 OR 15 MINUTES, BUT I'LL
25 GIVE YOU THAT OPTION. OF COURSE, IF YOU WISH TO LEAVE,

1 YOU'RE ABSOLUTELY FREE TO LEAVE BECAUSE YOU'VE SPENT
2 CONSIDERABLE TIME HERE.

3 AS I SAID EARLIER, I KNOW THAT YOU ALL HAVE
4 BUSY WORK LIVES AS WELL AS PERSONAL LIVES. I THANK YOU
5 FOR YOUR SERVICE, FOR YOUR VERDICT, WHICH IS JUST AND
6 TRUE AS YOU DETERMINE JUSTICE TO BE.

7 NOW IN A FEW DAYS, AND IT'S NOT GOING TO BE
8 ENOUGH TO RETIRE ON, THE COUNTY IS GOING TO MAIL YOU A
9 CHECK FOR YOUR PER DIEM FOR YOUR SERVICE, AND THAT'S THE
10 COUNTY'S EXPRESSION OF GRATITUDE. BUT I'M GOING TO COME
11 DOWN NOW AND GIVE YOU MY EXPRESSION OF GRATITUDE,
12 WHICH WILL BE MY HANDSHAKE AND MY HEARTFELT
13 GRATITUDE FOR YOUR SERVICE THIS WEEK DURING THIS TERM OF
14 COURT. (JUDGE DOES SO)

15 ALL RIGHT, COUNSEL, AT THIS TIME, AND WE CAN
16 JUST REMAIN WHERE WE ARE, IF MRS. COHENS WISHES TO SPEAK
17 AS PART OF THIS PROCESS I WILL GIVE HER THAT OPPORTUNITY.
18 OF COURSE, SHE'S TESTIFIED AND MAY NOT WISH TO HAVE
19 ANYTHING FURTHER TO SAY. BUT, MR. MODICA, I'LL GIVE YOU
20 AN OPPORTUNITY TO SPEAK WITH HER ABOUT THAT NOW.

21 MR. MODICA: THANK YOU. I'M AWARE
22 THAT SHE DOES NOT WISH TO SPEAK, THAT SHE'S ALLOWING
23 ME TO SPEAK FOR HER.

24 THE COURT: AND IF YOU HAVE
25 SOMETHING YOU WISH TO SAY WITH REGARD TO SENTENCING

1 THE COURT WILL BE GLAD TO HEAR FROM YOU AT THIS TIME.

2 MR. MODICA: YOUR HONOR, I'LL NOT
3 BELABOR ANY LONGER WHAT HAS BEEN A LONG TRIAL AND A
4 LONG OBVIOUSLY DECISION PROCESS BY THE JURY. I WOULD
5 JUST BRING TO YOUR ATTENTION JUST A FEW THINGS; ONE, AS
6 YOU HEARD FROM THE WITNESSES, WHEN THEY APPROACHED
7 THAT SCENE THEY EXPECTED TO FIND NO SURVIVORS. AND
8 TWO; THE VICTIM HERSELF WHEN SHE TESTIFIED THOUGHT THAT
9 WHEN SHE INITIALLY HEARD VOICES COMING OUT OF BEING
10 BLACKED-OUT THAT SHE THOUGHT HER HUSBAND WAS BACK
11 TO FINISH HER OFF.

12 SHE IS DEEPLY AFRAID OF THE DEFENDANT. HE HAS
13 BEEN EMOTIONALLY, PHYSICALLY, AND PSYCHOLOGICALLY
14 ABUSIVE FOR A LONG PERIOD OF TIME. AND SHE TRIED TO MAKE
15 IT A GO WITH HER HUSBAND NOT ONLY FOR THE MARRIAGE, BUT
16 ALSO FOR THE CHILDREN. SHE HAS EXPRESSED TO ME ON
17 NUMEROUS OCCASIONS THAT SHE THOUGHT IF HE GOT OUT OF
18 JAIL THAT HE WOULD COME BACK AND KILL HER. SHE FEARS
19 FOR HER SAFETY, OBVIOUSLY. THIS IS OBVIOUSLY A SITUATION
20 WHERE THE JURY HAS SPOKEN. I THINK IN A MOMENT THE
21 COURT WILL INDICATE THAT IT AGREES WITH THE DECISION OF
22 THE JURY, THERE WAS CLEAR AND CONVINCING EVIDENCE AS TO
23 THAT. AND I WOULD ASK YOU TO SENTENCE THE DEFENDANT
24 APPROPRIATELY.

25 THE COURT: MR. BARR, DOES MR.

1 COHENS WISH TO BE HEARD, SIR, OR DO YOU WISH TO SPEAK ON
2 HIS BEHALF?

3 MR. BARR: YES, SIR. WE WOULD FIRST,
4 JUDGE, WE WOULD RESPECTFULLY MOVE FOR A - BASED ON THE
5 OBJECTIONS THAT WERE MADE DURING THE COURSE OF THE
6 TRIAL AS WELL AS THE MOTIONS THAT WERE MADE AT THE END
7 OF THE STATE'S CASE AND AT THE END OF THE TRIAL, WE
8 WOULD MOVE FOR A JUDGMENT, NOTWITHSTANDING THE
9 VERDICT, OR IN THE ALTERNATIVE A NEW TRIAL.

10 THE COURT: AND, COUNSEL, FOR THE
11 SAME REASON THAT THE COURT DENIED THESE MOTIONS
12 DURING THE TERM OF THE TRIAL, THE COURT FINDS THERE WAS
13 SUFFICIENT, APPROPRIATE, AND REALLY OVERWHELMING
14 EVIDENCE OF THE DEFENDANT'S GUILT, CERTAINLY CONSTRUING
15 IT IN THE LIGHT MOST FAVORABLE TO THE STATE AND FINDS
16 THAT THE VERDICT IS JUST AND APPROPRIATE UNDER THOSE
17 FACTS. THEREFORE, I DENY YOUR MOTION, SIR.

18 MR. BARR: BY WAY OF MITIGATION?

19 THE COURT: GO AHEAD, SIR.

20 MR. BARR: YES, SIR, JUDGE, THIS
21 SITUATION IS A VERY UNFORTUNATE SITUATION AS YOU
22 ALREADY KNOW. I'M NOT GOING TO SPEAK AGAINST THE JURY'S
23 VERDICT. I'M A DEFENSE LAWYER, AND OF COURSE BY NATURE
24 WE NATURALLY SEE THINGS SOMETIMES IN A DIFFERENT
25 PERSPECTIVE FROM PEOPLE ON THE OTHER SIDE OF THE FENCE.

1 NONETHELESS, INASMUCH AS THE JURY HAS SPOKEN, I WOULD
2 SIMPLY ASK THE COURT AT THIS TIME AS IT RELATES TO
3 SENTENCING TO FIRST OF ALL CONSIDER THAT THIS MAN IS A
4 FAIRLY YOUNG MAN AND HE STILL HAS A VERY YOUTHFUL LIFE.

5 AND, JUDGE, I DON'T KNOW IF YOU'VE EVER BEEN
6 MARRIED BUT I HAVE BEEN, AND IT DIDN'T LAST. BUT IT DIDN'T
7 LAST BECAUSE OF DISAGREEMENTS. AND PEOPLE SEE THINGS
8 DIFFERENTLY. AND IT'S UNFORTUNATE THAT THIS SITUATION
9 HAS COME TO WHAT IT HAS OBVIOUSLY COME TO. BUT, YOUR
10 HONOR, I WOULD JUST SIMPLY SAY THAT MR. COHENS IS A
11 HARD WORKING MAN WHO HAS WORKED HARD ALL HIS LIFE. AS
12 HE INDICATED DURING THE COURSE OF HIS TESTIMONY, HE'S
13 WORKED IN PULPWOOD ALL HIS LIFE. HE HAS NO CRIMINAL
14 RECORD.

15 AND I THINK THAT SPEAKS WELL OF THE KIND OF
16 PERSON THAT HE IS. IT'S UNFORTUNATE THAT AT THIS TIME
17 GIVEN THE - AND I CAN'T HELP BUT BELIEVE THAT THE
18 CLIMATE, OF COURSE WE DIDN'T MOVE FOR A CHANGE OF
19 VENUE OR ANYTHING, BUT I CAN'T HELP BUT BELIEVE THAT THIS
20 OVERWHELMING PERVASIVE CLIMATE THAT WE HAVE NOT JUST
21 IN GEORGETOWN COUNTY NOW BUT THROUGHOUT THIS
22 COUNTRY AS RELATES TO THIS ISSUE OF ALLEGED CDV, THERE'S
23 NO QUESTION IN MY MIND, AS I SAID, FROM A DEFENSE LAWYER
24 TRYING THESE KINDS OF CASES EVERY DAY THAT THERE IS
25 SENTIMENT HERE NOW. BUT NOTWITHSTANDING THAT, JUDGE,

1 AS I SAID, THIS YOUNG MAN HAS DEMONSTRATED THAT NOT
2 ONLY HAS HE MADE A VERY, VERY POSITIVE CONTRIBUTION TO
3 HIS FAMILY AND NOT JUST TO THIS FAMILY BUT TO HIS
4 EXTENDED FAMILY AS WELL AS THE FAMILY THAT HE CAME
5 FROM - YOU'RE LOOKING AT HIS MOTHER AND HIS BROTHERS,
6 ALL OF WHOM ARE PEOPLE THAT HAVE ESTABLISHED
7 THEMSELVES AS REMARKABLE AND HONORABLE PEOPLE.

8 HE DOESN'T COME FROM A FAMILY, JUDGE, THAT
9 DOESN'T KNOW AND DOESN'T APPRECIATE KNOWING HOW TO
10 LIVE. AS I SAID, IT'S UNFORTUNATE THAT IN HIS DOMESTIC
11 SITUATION HE FINDS HIMSELF IN THE SITUATION THAT HE IS IN
12 TODAY. BUT, JUDGE, I HOPE THAT WITH THE DISCRETION THAT
13 YOU HAVE AS THE SENTENCING JUDGE THAT YOU CAN FIND IT
14 NOT JUST ONLY IN YOUR HEART, BUT THAT YOU COULD FIND IT
15 APPROPRIATE TO TAKE INTO CONSIDERATION ALL OF THOSE
16 THINGS THAT YOU ORDINARILY WOULD IN SENTENCING THE
17 DEFENDANT AND THAT YOU'D BE AS LENIENT AS POSSIBLE WITH
18 RESPECT TO THE SENTENCE TO IMPOSE UPON THIS DEFENDANT.

19 THANK YOU,

20 THE COURT: TELL ME, HOW MUCH TIME
21 - WELL, HAS MR. COHENS BEEN IN JAIL EVER SINCE THIS
22 INCIDENT?

23 MR. MODICA: YES.

24 THE COURT: SINCE MARCH 23RD, 2005?

25 MR. MODICA: 2006. YOUR HONOR,

1 WOULD BRING TO THE COURT'S ATTENTION THE DEFENDANT
2 WAS SENTENCED BY FAMILY COURT CONTEMPT OF COURT TO A
3 SIX MONTH SENTENCE, AND I BELIEVE IF I'M NOT MISTAKEN
4 THAT THE COURT IN ITS DECISION INDICATED THAT IT WAS NOT
5 TO RUN CONCURRENT TO ANY OTHER SENTENCE.

6 MR. BARR: OBJECTION. I WAS IN
7 THOSE PROCEEDINGS WITH MR. COHENS. THAT WAS NOT MY
8 UNDERSTANDING OF WHAT THE JUDGE ORDERED. IN FACT, THE
9 JUDGE ACTUALLY FOUND HIM TO BE IN CONTEMPT OF COURT
10 FOR THIS VERY INCIDENT.

11 THE COURT: ALL RIGHT, MR. COHENS,
12 SIR, I WANT YOU TO UNDERSTAND THAT THIS IS CLASSIFIED AS
13 A MOST SERIOUS CHARGE UNDER SOUTH CAROLINA LAW WE
14 HAVE A TWO MOST SERIOUS AND YOUR SECOND IS A LIFE
15 WITHOUT PAROLE SENTENCE REGARDLESS OF WHAT THE
16 ACTUAL SENTENCE WOULD BE. SO PLEASE UNDERSTAND THIS
17 IS ONE SUBSTANTIAL STRIKE AGAINST YOU TODAY.

18 I WILL ALSO TELL YOU THAT IF YOU TAKE SOME
19 EXCEPTION TO THE OUTCOME OF THIS TRIAL AND THE SENTENCE
20 IMPOSED BY THE COURT, YOU HAVE THE RIGHT TO APPEAL THIS
21 PROCEEDING AND YOU MUST DO SO WITHIN 10 DAYS OF
22 TODAY'S DATE IF YOU INTEND TO DO SO. DO YOU UNDERSTAND
23 THAT, SIR?

24 THE DEFENDANT: YES, SIR.

25 THE COURT: MR. COHENS, THIS IS

1 VERY UNFORTUNATE BECAUSE WHAT I SEE HERE ARE TWO
2 REALLY GOOD FAMILIES THAT APPEAR TO BE FINE AND
3 UPSTANDING PEOPLE. YOU HAVE A LOT OF SUPPORT HERE FOR
4 YOU, AS DOES MRS. COHENS. IT'S VERY SAD THAT ALL THESE
5 PEOPLE WHO OTHERWISE COULD BE PRODUCTIVE AND COULD BE
6 ABOUT THEIR OWN BUSINESS HAVE BROUGHT IN ALL THIS WEEK
7 AND FOR MANY YEARS, PROBABLY, AS ALL THIS HAS GONE
8 BACK AND FORTH, TO BECOME ENGAGED IN WHAT HAS
9 DEFINITELY BEEN IN GREAT PART YOUR FAULT AND
10 RESPONSIBILITY, SIR.

11 I SAY THAT BECAUSE I HAVE TO CONCLUDE THAT
12 BASED ON WHAT HAPPENED OUT THERE ON THE HIGHWAY. AND
13 I'M VERY CONCERNED THAT WHAT I SEE IS A GENTLEMAN WHO,
14 OR A MAN WHO DECIDED TO, IN FACT, AS CHARACTERIZED BY
15 MR. MODICA, LIE IN WAIT FOR HIS WIFE AND THEN PURSUE HER
16 AS YOU DID THROUGH TRAFFIC AND MILES OF ROADS AND THEN
17 ONCE YOU GOT INTO COMING OVER THE BRIDGES AND COMING
18 NORTH ON 17, ACTUALLY INTENTIONALLY COMMITTED AN ACT
19 THAT WOULD TAKE HER LIFE, SIR, IN AN INSTANT. BUT NOT
20 ONLY THAT, AT SEVEN-THIRTY ON A SCHOOL MORNING WITH A
21 SCHOOL BUS RIGHT THERE WITH YOU, THERE IS NO TELLING HOW
22 MANY CHILDREN COULD HAVE BEEN KILLED IN THIS INCIDENT,
23 OTHER PASSERS-BY, PEDESTRIANS, OR ANYONE THERE, NOT TO
24 MENTION YOU YOURSELF, SIR. AND ANYONE WHO HAS THAT
25 TYPE OF RAGE WHO WOULD MAKE THE TYPE OF DECISION THAT

1 WOULD COMMENCE THAT SORT OF CATASTROPHIC EVENT, IT IS
2 FRIGHTENING. AND I CAN UNDERSTAND HOW MRS. COHENS
3 WOULD BE AFRAID FOR HER SAFETY, FOR HER SECURITY.

4 YOU'VE LET A LOT OF PEOPLE DOWN, SIR, NOT
5 ONLY YOURSELF AND THOSE BEHIND YOU, BUT YOUR CHILDREN
6 AND THOSE WHO DEPEND UPON YOU. BASED UPON ALL THAT I
7 HAVE IN FRONT OF ME, I FIND IT APPROPRIATE TO SENTENCE
8 YOU TO THREE YEARS IN THE DEPARTMENT OF CORRECTIONS
9 FOR THE FAILURE TO STOP FOR A BLUE LIGHT. AND I WILL
10 CREDIT YOU FOR TIME SINCE MARCH 12TH, 2006.

11 THAT IS CONCURRENT TO THE ASSAULT AND
12 BATTERY WITH INTENT TO KILL. I SENTENCE YOU TO 12 YEARS
13 IN THE DEPARTMENT OF CORRECTIONS FOR THAT CHARGE AND
14 WILL GIVE YOU TIME CREDITED SINCE MARCH THE 12TH OF '06.
15 AND THAT IS THE DECISION OF THE COURT, SIR. I'M GOING TO
16 REMAND YOU NOW TO THE CUSTODY OF THE DETENTION
17 CENTER. GOOD LUCK TO YOU, MR. COHENS.

18 AND, MRS. COHENS AND FAMILIES, BOTH SIDES,
19 BEST WISHES TO YOU. I REGRET THAT THIS HAS COME TO THIS,
20 BUT I WISH YOU WELL. AS TIME PASSES, PERHAPS THERE'LL BE
21 SOME HEALING AMONG YOUR FAMILIES. AND GOOD LUCK
22 TOWARD THAT END. THIS CASE IS NOW IN RECESS. WE HAVE
23 OTHER BUSINESS.

24 -----AT THIS TIME THE TRIAL OF THE CASE WAS CONCLUDED-----

25 *PHONETIC

CERTIFICATE

I, THE UNDERSIGNED, MEG A. MOLLOHAN, OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE VIDEO TAPED PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR THE STATE OF SOUTH CAROLINA.

1/16/17

Meg A. Mollohan

MEG A. MOLLOHAN,

COURT REPORTER

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONALD COHENS,

APPELLANT

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in beginning the trial without the presence of counsel and then requiring counsel to apologize to the jury for arriving late as a condition for allowing cross examination of the victim?
2. Did the trial judge err in refusing to remove a juror who winked at one of the assistant solicitors prosecuting the case after admitting that the assistant solicitor was a patient in the juror's dental practice?

STATEMENT OF THE CASE

In April 2006, the Georgetown County Grand Jury indicted Cohen's for assault and battery with intent to kill and failure to stop for a blue light, indictments #06-GS-22-354, 355. On June 27, 2006, Cohen proceeded to jury trial before the Honorable J. Michael Baxley. On June 30, 2006, the jury returned verdicts of guilty on each charge. Judge Baxley sentenced Cohen to 12 years for assault and battery with intent to kill and 3 years concurrent for failure to stop for a blue light. A timely notice of intent to appeal was filed on July 10, 2006. This appeal follows.

ARGUMENT

1. The trial judge erred in beginning the trial without the presence of counsel and then requiring counsel to apologize to the jury for arriving late as a condition for allowing cross examination of the victim.

The jury convicted Cohens of intentionally ramming his wife's car with his own causing her to wreck. On the second day of trial, the judge started without the presence of defense counsel. (R. p. 86, lines 14- p. 87, lines 1-7). Counsel was late arriving for court. (R. p. 87, lines 1-25). The last testimony heard by the jury on the first day of trial was the direct examination of Mrs. Cohens. Counsel had not yet had the opportunity to cross examine Mrs. Cohens. As counsel was not present at the start of the second day of trial, the court found there was no cross examination of Mrs. Cohens and asked the State to call their next witness. (R. p. 86, lines 25 – p. 87, lines 1-5). Counsel appeared in court before the next witness took the stand. (R. p. 87, lines 14-25). Counsel asked to approach the bench. (R. p. 88, lines 4-9). Following the bench conference, the State's next witness took the stand.

At the conclusion of the witness testimony, and outside of the presence of the jury, counsel requested the opportunity to cross examine Mrs. Cohens. (R. p. 111, lines 1 – p. 114, lines 1-6). The judge granted the request but required counsel to apologize to the jury for being late. (R. p. 115, lines 1-9). Counsel asked that he be allowed to apologize during closing argument as opposed to prior to cross examination. (R. p. 115, lines 10-14). The judge stated, "Well, I would require you when they come back in and when you begin to question this witness, you just turn to the jury and just tell them you're sorry, you apologize for being late this morning. And I would require that to be contemporaneous so that it will

have some effect.” (R. p. 115, lines 15-20). The jury returned and counsel apologized prior to cross examining Mrs. Cohens. (R. p. 116, lines 23 – p. 117, lines 1-6).

The judge erred in proceeding with the trial without the presence of defense counsel, even if only for a short period of time. “The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment.” Faretta v. California, 422 U.S. 806, 807, 95 S.Ct. 2525, 2527, 45 L.Ed.2d 562, 566 (1975). The right to counsel may be waived but any waiver must be knowing, voluntary and intelligent. State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999).

When the jury entered the courtroom on the second day of trial, Mr. Cohens was seated alone at defense counsel without the presence of his attorney. Mr. Cohens did not waive his right to counsel. A few minutes later, in the presence of the jury, counsel appeared and was admonished by the judge for being late. (R. p. 87, lines 14- p. 88, lines 1-9). Beginning the trial without the presence of defense counsel violated Cohens’ Sixth Amendment right to counsel. Allowing the jury to see Cohens seated alone at counsel table combined with the comments made by the judge to the tardy attorney tended to impugn the credibility of counsel and diminish him in the eyes of the jury. Cohens is entitled to a new trial based solely on the judge’s actions and comments. State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994); State v. Simmons, 267 S.C. 479, 229 S.E.2d 597 (1976).

The error was further compounded by the fact that the judge required counsel to apologize to the jury as a condition to allow cross examination of, arguably, the most important witness in the State’s case, the victim. The right to confront witnesses guaranteed by the Sixth and Fourteenth Amendments includes the right to cross examine witnesses.

California v. Green, 399 U.S. 149, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970). The judge erred in conditioning the exercise of Cohens' constitutional right to cross examine adverse witnesses upon the requirement that counsel apologize to the jury for being late. Counsel asked to be allowed to apologize to the jury during closing argument rather than before cross examination and the judge refused because the judge wanted it to be "contemporaneous so that it will have some effect." (R. p. 115, line 20). The effect was to further impugn counsel's credibility with the jury and diminish him in the eyes of the jury.

It is well settled that a trial judge must act with absolute impartiality in the performance of judicial duties. Pace 447 S.E.2d 186; Canon 3 of Rule 501, SCACR. The judge allowed his understandable frustration with the tardy attorney to effect his impartiality in conducting the trial. Cohens was prejudiced by the judge's impartial actions and comments. The trial judge erred in beginning the trial without the presence of counsel and then requiring counsel to apologize to the jury for arriving late as a condition for allowing cross examination of the victim.

2. The trial judge erred in refusing to remove a juror who winked at one of the assistant solicitors prosecuting the case after admitting that the assistant solicitor was a patient in the juror's dental practice.

During voir dire the jurors were asked if they had any professional connection with assistant solicitors Matthew Modica or Dorie Bioglanti. (R. p. 14, lines 1-14). Juror 153 advised the court that one of the solicitors was a patient in his dental practice. (R. p. 15, lines 13 - 19). The judge questioned juror 153 and found him qualified. (R. p. 15, lines 20 - p. 16, lines 1-6). At this time, counsel did not ask that the juror be struck for cause.

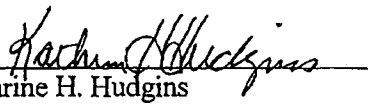
Juror 153 was ultimately seated on Mr. Cohens jury. (R. p. 31, lines 20 – p. 32, lines 1-2). Counsel had exercised his five peremptory strikes and did not challenge for cause. (R. p. 31, lines 24 – p. 32, line 1). After the jury was seated but outside the presence of the jury, counsel moved to replace juror 153 with an alternate because he observed the juror wink at the assistant solicitor. (R. p. 42, lines 4 – p. 43, lines 1-11). The judge offered to re-question juror 153 about his relationship with the solicitor's office. (R. p. 44, lines 4-8). Counsel expressed concern about re-questioning the juror and again asked that the juror be replaced with an alternate. (R. p. 44, lines 9 – p. 45, lines 1-11). The judge re-questioned juror 153 and then refused to replace him with an alternate. (R. p. 45, lines 21 – p. 46, 47, lines 1-20). The judge erred.

A decision whether to dismiss a juror and replace her with an alternate is within the sound discretion of the trial court, and such decision will not be reversed on appeal absent an abuse of discretion. State v. Smith, 338 S.C. 66, 71, 525 S.E.2d 263, 265 (Ct.App. 1999). The judge's questioning of juror 153 did not adequately address the juror's connection with the solicitor's office. The dentist juror admitted that he had seen assistant solicitor Dori Bioglani in his office just a week earlier. (R. p. 46, lines 14-16). The judge incorrectly stated that assistant solicitor Bioglanti, was not trying the case. (R. p. 46, lines 21 – p. 47, lines 1-2). The record reflects that assistant solicitor Bioglanti examined one witness, Amy Glover. (R. 2). The record clearly established a recent professional relationship between juror 153 and one of the prosecuting attorneys. The judge abused his discretion in refusing to replace juror 153 with an alternate juror.

CONCLUSION

Based on the above argument, Cohens sentence and conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

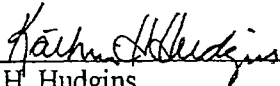
ATTORNEY FOR APPELLANT.

This 28th day of April, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

April 28, 2008


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

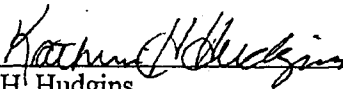
V.

RONALD COHENS,

APPELLANT

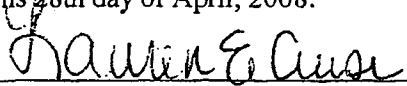
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant and Designation of Matter in the above referenced case has been served upon Harold M. Coombs, Esquire, Senior Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 28th day of April, 2008.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 28th day of April, 2008.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Georgetown County
Honorable J. Michael Baxley, Circuit Court Judge

THE STATE,

Respondent,

vs.

RONALD COHENS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. The defendant asks whether the court erred beginning trial without his counsel and requiring counsel to apologize to the jury for his late arrival as a condition precedent for cross examining the victim. (Appellant's Statement of Issues on Appeal 1).

2. The defendant asks whether the court erred in refusing to remove a juror who winked at an assistant solicitor after acknowledging the assistant was a patient in the juror's dental practice. (Appellant's Statement of Issues on Appeal 2).

STATEMENT OF THE CASE

The defendant was charged with assault and battery with intent to kill (2006-GS-22-354) and failure to stop for a blue light ((2006-GS-22-355). The defendant and his counsel came to trial June 27-30, 2006 before the Honorable J. Michael Baxley, Judge, and a jury. The jury found the defendant guilty of the charges. The court sentenced him to imprisonment for twelve years for ABIK and a concurrent three years imprisonment for the blue light violation.

ARGUMENT

I.

The trial court exercised sound discretion conducting the trial.

The defendant asks whether the court erred beginning trial without his counsel and requiring counsel to apologize to the jury for his late arrival as a condition precedent for cross examining the victim. (Appellant's Statement of Issues on Appeal 1). An examination of the record shows there was no error.

The defendant and victim had experienced domestic difficulties. One morning when the victim was driving to work, the defendant rammed her white Chevrolet Blazer with his blue Honda. On the fourth blow she lost control and went off the road. (R. pp. 57-72).

At the beginning of a new day of trial, the victim was ready for cross examination, but defense counsel was not present. The court directed the solicitor to call another witness, and defense counsel appeared, noted a needed stop in Kingstree, and apologized for being late. The court observed courtesy for the jury and the jurors' time required beginning on time. The state began examining the new witness (Lewis). He saw the vehicles bumping and traveling over seventy miles an hour. The victim was finally pushed off the highway, and her vehicle turned over. She was hysterical and indicated that her assailant had been trying to kill her. (R. pp. 86-96).

Out of the presence of the jury, defense counsel said going to his office for a transcript caused his fifteen minute tardiness. Counsel wanted to cross examine the victim without having to call her as his own witness, and the court allowed that. The court accepted defense counsel's apology and wanted him to apologize to the jury since

the court was always concerned about courtesy to the jurors. Counsel said he was delighted to apologize but preferred to do it during closing. The court required counsel to offer the apology to the jury when beginning cross examination so it would be more contemporaneous and effective. (R. pp. 113-115).

Defense counsel apologized to the jury and began his cross examination. (R. pp. 116-117). The victim denied giving the defendant the finger, denied ramming him, and denied driving off the road when the defendant braked. (R. p. 146; pp. 152-153).

Parenthetically, Respondent notes that the victim's account was well corroborated by witnesses who saw the incident (R. pp. 88-96; pp. 157-163), and during post trial motions, the court observed the overwhelming evidence of the defendant's guilt. (R. p. 186).

First, at trial counsel was delighted to apologize to the jury, but simply preferred to make it later rather than sooner. On appeal, counsel characterizes his apology as a condition precedent to cross examination, and he is no longer delighted. The complaint on appeal was neither presented to nor passed upon by the trial court and should not be considered on appeal. State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995)(a party cannot argue one ground below and then argue another ground on appeal); State v. Newton, 274 S.C. 287, 262 S.E.2d 906 (1980)(questions neither presented to nor passed upon by the trial judge are waived and should not be considered by the appellate court for the first time on appeal).

Insofar as the trial purportedly began without defendant's trial counsel, the defendant does not show where that complaint was raised to the trial court. Again, there

is nothing raised for the appellate court's review. Moreover, the record shows that defense counsel appeared before the examination of the next witness. (R. pp. 87-88).

See McKnight v. State, 320 S.C. 356, 465 S.E.2d 352 and n. 2 (1995)(defendant denied Sixth Amendment right to counsel when direct examination of one victim completed in absence of counsel and defendant had begun cross examination; defense counsel finally returned and - without explanation or objection - continued cross examination; prejudice presumed when counsel denied at critical stage of the trial; absence of counsel may be so minimal as to want constitutional significance; citing federal circuit holding "where . . . no evidence directly inculcating a defendant is presented while that defendant's counsel is absent, we decline to hold that counsel was absent during a critical stage of trial"); United States v. Elder, 309 F.3d 519 (9th Cir. 2002)(after court had repeatedly addressed lead defense counsel's conduct, defendant complained jury's seeing her taken out in handcuffs prejudiced him; court did not order handcuffing, and counsel later returned, and court required counsel to apologize to jury - while her objection was correct, she was wrong to argue with court and court instructed jury not to consider incident in deliberation; unique circumstances including evidence of defendant's guilt mitigated any prejudice from counsel's removal).

II.

The trial judge exercised sound discretion in seating a fair and impartial jury.

The defendant asks whether the court erred in refusing to remove a juror who winked at an assistant solicitor after acknowledging the assistant was a patient in the juror's dental practice. (Appellant's Statement of Issues on Appeal 2).

After the call of the case, the court allowed an assistant solicitor to introduce the solicitor's staff, the alleged victim, and himself. The court asked any prospective jurors to stand who were related or knew of some close business, professional or social connection. The responders included Dr. J. The doctor noted that a solicitor was a dental patient. In response to the court's inquiry, the doctor affirmed that he could give a fair and impartial trial. The court found, based upon the doctor's response, the doctor qualified. (R. p. 12, line 22 - p. 16, line 6). The court seated Dr. J. (Juror No. 153) after the defendant expressly declined to offer a challenge for cause. (R. p. 31, line 20 - p. 32, line 3). Later in the context of a Batson motion, the defendant's counsel referred to "the dentist." Counsel said he saw "the man wink at the assistant solicitor when he came up here." (R. p. 34, line 22 - p. 37, line 5). The assistant solicitor maintained that the other assistant solicitor and he were looking at each other, and neither one of them could say whether the dentist winked. (R. p. 38, lines 12-20). The defendant's counsel maintained that after he saw the dentist winking at "this woman. . . the assistant solicitor," he didn't want to put the juror on the spot. Defense counsel did not expect the dentist to admit winking, and defense counsel did not expect the assistant solicitors to admit seeing the winking. Defense counsel wanted to dismiss the dentist and use an alternate. The court noted that it had not seen the wink. (R. p. 42 - p. 45, line 19). The court again questioned Dr. J. The

doctor affirmed that while an assistant solicitor - one not actually trying the case - was his patient, that professional relationship would not influence him, and he could make his ruling solely upon the evidence and the testimony. (R. p. 45, line 20 - p. 47, line 20). The jury was sworn. (R. p. 56).

The trial judge soundly exercised his responsibility of ensuring that the juror was impartial. S. C. Code § 14-7-1020 (1976); State v. Prater, 26 S.C. 613, 2 S.E. 108 (1887)(question of impartiality of juror is for the court). There was no error.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
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Solicitor, Fifteenth Judicial Circuit

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ATTORNEYS FOR RESPONDENT

April 11, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Georgetown County
Honorable J. Michael Baxley, Circuit Court Judge

THE STATE,

Respondent,

vs.

RONALD COHENS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
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ATTORNEYS FOR RESPONDENT

April 11, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Georgetown County
Honorable J. Michael Baxley, Circuit Court Judge

THE STATE,

Respondent,

vs.

RONALD COHENS,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing three copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Kathrine H. Hudgins, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 11th day of April, 2008.


HAROLD M. COOMBS, JR.

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ATTORNEY FOR RESPONDENT

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

The State,

Respondent,

v.

Ronald Cohens,

Appellant.

**Appeal From Georgetown County
J. Michael Baxley, Circuit Court Judge**

**Unpublished Opinion No. 2009-UP-064
Submitted February 2, 2009 – Filed February 9, 2009**

AFFIRMED

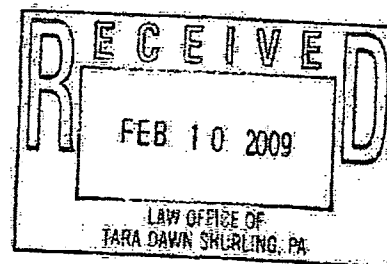
Tara Dawn Shurling, of Columbia, for Appellant.

**Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Senior Assistant Attorney General Harold M.
Coombs, Jr., all of Columbia; Solicitor John Gregory
Hembree, of Conway, for Respondent.**

PER CURIAM: Ronald Cohens appeals his conviction for assault and battery with the intent to kill and failure to stop for a blue light. Cohens alleges the trial court erred in proceeding with trial without his counsel and refusing to remove a juror. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) (holding if a party fails to object properly at trial, the party is procedurally barred from raising the issue on appeal); State v. Bell, 374 S.C. 136, 147, 646 S.E.2d 888, 894 (Ct. App. 2007) (explaining a decision on whether to replace a juror with an alternate is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion).

AFFIRMED.¹

SHORT, THOMAS, and GEATHERS, JJ., concur.



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

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

SC Court of Appeals

J. Michael Baxley, Circuit Court Judge

Case No. 06-GS-22-354; 06-GS-22-355

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

RONALD COHENS

APPELLANT.

PETITION FOR REHEARING

TARA DAWN SHURLING
Attorney and Counselor at Law

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(803) 738-8622
(803) 738-1600 (FAX)

ATTORNEY FOR APPELLANT.

NOW COMES the Appellant in the above-captioned action, acting by and through undersigned counsel, seeking rehearing on this Court's unpublished opinion in this matter. State v. Ronald Cohens, Op. No. 09-UP-64 (S.C. Ct. App. Filed February 9, 2009). Pursuant to Rule 221(a), SCACR, the Appellant petitions for rehearing on the ground that certain issues of material fact or law have either been overlooked or misapprehended by the Court in the Opinion in question. In support of this position, the Appellant would show unto this Honorable Court the following:

The Appellant was charged with assault and battery with intent to kill and failure to stop for a blue light in connection with his alleged attempt to ram his wife's car with his own. On appeal, the Appellant first argued that the lower court violated his Sixth Amendment right to counsel when the trial court began the second day of trial without defense counsel present and by requiring defense counsel to apologize to the jury for being late to court. Secondly, the Appellant argued that the lower court erred in failing to disqualify a juror who winked at one of the solicitors prosecuting the case. Each allegation will be addressed in turn.

A. The Sixth Amendment Issue

The first day of trial concluded with the direct examination of the victim in this case. When the second day began, defense counsel was not present, leaving the Appellant seated alone at the defense table. At that point, the presiding judge made the following statement:

And is Mrs. Cohens present? She is. And is there cross examination of Mrs. Cohens? Mr. Barr is not present and therefore it appears at this time there is not. Please call your next witness, Mr. Modica.

ROA p. 87, lines 1-5. At this point, defense counsel arrived and explained that he had to stop at his office prior to coming to court. ROA p. 87, lines 18-20. The trial court then ordered that the trial continue without affording defense counsel the opportunity to cross-examine the victim.

Following the conclusion of the next witness' testimony, defense counsel requested that he be able to cross-examine the victim. ROA p. 113, line 6-p. 114, line 6. When the trial court ordered that defense counsel apologize to the jury as a precondition for cross-examination of the victim, defense counsel responded that he "would prefer that I be able to do [the apology] at closing as opposed to during the course of the trial." ROA p. 115, lines 12-14. The trial court then required defense counsel to make the apology prior to cross-examination "so that it will have some effect." ROA p. 115, line 20. Defense counsel then made his apology and the trial continued with the cross-examination of the victim.

On appeal, the Appellant argued that the trial court's actions deprived him of his constitutional right to the assistance of counsel in violation of his Sixth and Fourteenth Amendment rights. This Court found that the issue was not preserved for appellate review. See State v. Cohens, *supra*. The Appellant respectfully argues that this Court overlooked the colloquy between defense counsel and the lower court wherein defense counsel requested that he be able to make his apology at the conclusion of the trial. The Appellant asserts that this colloquy was sufficient to preserve this issue for this Court's review.

Alternatively, the Appellant asserts that a contemporaneous objection was not necessary to preserve this issue for review. Unlike most cases where the attorney fails to object at trial where opposing counsel or a witness argues or states something objectionable, this case involves a trial court's command to an attorney. Had defense counsel levied a further objection to the court's decision to begin the trial without counsel or the requirement that he apologize to the jury, the lower court may not have permitted defense counsel to cross-examine the victim. Attorneys should not be penalized for failing to extensively quarrel with a judge, and the

Appellant asserts that their clients should not be procedurally barred from raising the issue on appeal if their attorneys fail to raise objections to the trial court's mandates.

Furthermore, under similar facts, the South Carolina Supreme Court has held that a contemporaneous objection is not required to preserve this type of issue for appellate review. In State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994), the Supreme Court held that "the tone and tenor of the trial judge's remarks concerning [the defense attorney's] ... conduct were such that any objection would have been futile." 316 S.C. at 74, 447 S.E.2d at 187. The Supreme Court went on to hold that the defendant's failure to object to the trial court's prejudicial remarks did not prevent this issue from being raised on direct review. Id. Therefore, the Appellant respectfully asserts that this Court overlooked this longstanding precedent in finding that his issue was not preserved for appellate review.

The Appellant was unquestionably prejudiced by the lower court's actions. Forcing the Appellant to proceed without any attorney present, when combined with the lower court's remarks about defense counsel's absence, irreparably harmed the Appellant's defense. Additionally, conditioning the Appellant's cross-examination of the victim on his attorney's personal apology to the jury violated the Appellant's constitutional right to confront witnesses against him. The proper remedy is a new trial.

B. The Alternate Juror Issue

During *voir dire*, the potential jurors were asked if they had a close connection to the solicitors prosecuting the case. ROA p. 14, lines 7-14. Juror 153 stated that he was a dentist and that one of the solicitors was a patient in his practice. ROA p. 15, lines 14-15. He stated that his connection with the solicitor would not prevent him from fairly and impartially serving as a juror on the case. ROA p. 15, line 23. During jury selection, defense counsel, having exhausted his

peremptory strikes, did not challenge for cause and permitted Juror 153 to serve. ROA p. 31, line 20-p. 32, line 1.

After the jury was seated but before they were sworn, defense counsel noticed that Juror 153 winked at one of the assistant solicitors. ROA p. 42, lines 8-24. Defense counsel then requested that Juror 153 be removed from the jury and that an alternate be seated. ROA p. 43, lines 6-11. After questioning Juror 153, the lower court decided to deny the Appellant's request to seat an alternate juror. ROA p. 45, line 21-p. 47, line 20. This Court found that the lower court's decision was not an abuse of discretion. See State v. Cohens, supra.

The Appellant respectfully asserts that this Court misapprehended the nature of the evidence in this case. The evidence is uncontroverted that defense counsel saw Juror 153 wink at one of the prosecutors in this case. Though neither the trial court nor the solicitors prosecuting the case observed the wink, they also stated that they were not watching for a wink. See ROA p. 43, line 14-p. 44, line 3. Juror 153 was not questioned about the wink. Since the record clearly reflects a professional relationship between Juror 153 and one of the solicitors prosecuting the case and that an inappropriate wink was made to that solicitor by Juror 153, the lower court abused its discretion in denying the Appellant's request to have an alternate juror seated. The appropriate remedy is a new trial.

CONCLUSION

WHEREFORE, having set forth his grounds, the Appellant, Ronald Cohens, asks that this Court rehear his direct appeal and permit further briefing.

Respectfully submitted,


TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite D
Columbia, S.C. 29204
803-738-8622
803-738-1600 Fax
E-mail: tdslaw@shurlinglaw.com

ATTORNEY FOR APPELLANT

This 24th day of February, 2009.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM Georgetown COUNTY
Court of General Sessions
J. Michael Baxley, Circuit Court Judge

SC Court of Appeals

Case No. 2006-GS-22-354, 355

STATE OF SOUTH CAROLINA,

RESPONDENT,

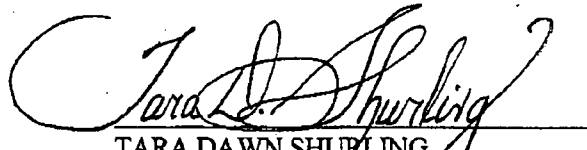
-v-

RONALD COHENS,

APPELLANT.

CERTIFICATE OF SERVICE

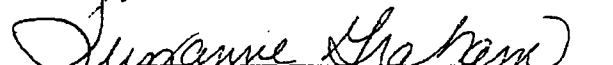
The undersigned hereby certifies that a true copy of the Petition for Rehearing of Appellant in the above matter has been served on opposing counsel, Harold M. Coombs, Jr., Senior Assistant Attorney General, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 24th day of February, 2009.



TARA DAWN SHURLING
Attorney and Counselor at Law
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204
(803) 738-8622

ATTORNEY FOR APPELLANT.

SWORN TO BEFORE me this 24th day
of February, 2009.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 3/12/2013.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Ronald Cohens,

Appellant.

The Honorable J. Michael Baxley
Georgetown County
Trial Court Case No. 2006-GS-22-00354

ORDER

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

Paul E. Short, Jr. J.

Paul D. Thomas J.

John D. Featherman J.

Columbia, South Carolina

April 6, 2009

cc: Tara Dawn Shurling, Esquire
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Senior Assistant Attorney General Harold M. Coombs, Jr.
John Gregory Hembree, Esquire

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN
Court of General Sessions

J. Michael Baxley, Circuit Court Judge

Case No. 2006-GS-22-354, 355

RECEIVED

AUG 06 2009

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

RONALD COHENS

PETITIONER.

PETITION FOR A WRIT OF CERTIORARI

TARA DAWN SHURLING
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ATTORNEY FOR PETITIONER.

CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies, pursuant to Rule 242(d)(1), SCACR, that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on April 6, 2009.

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QUESTIONS PRESENTED

I.

Whether the Court of Appeals erred in finding that the Petitioner did not sufficiently preserve for appeal his objection to the trial court's proceeding in his attorney's absence and requiring his attorney to directly apologize to the jury prior to continuing with testimony, violating the Petitioner's Sixth Amendment rights in the process?

II.

Whether the Court of Appeals incorrectly determined that the trial court did not abuse its discretion when it refused to dismiss a juror who winked at a solicitor that was a patient in his dental practice?

STATEMENT OF THE CASE

The Petitioner was indicted in April 2006 by the Georgetown County Grand Jury for Assault and Battery with Intent to Kill ("ABWIK") (06-GS-22-354) and Failure to Stop for a Blue Light (06-GS-22-355). On June 27-20, 2006, the Petitioner proceeded to trial by jury and was found guilty as charged. The Honorable J. Michael Baxley, presiding circuit judge, sentenced the Petitioner to twelve years imprisonment on the ABWIK charge and three years imprisonment on the failure to stop for a blue light charge, with the sentences to run concurrently.

The Petitioner timely filed a Notice of Appeal on July 10, 2006. On February 9, 2009, the South Carolina Court of Appeals filed an unpublished opinion affirming the Petitioner's convictions and sentences. See State v. Ronald Cohens, Op. No. 09-UP-064 (S.C. Ct. App. filed Feb. 9, 2009). On February 24, 2009, the Petitioner timely filed a Petition for Rehearing. That Petition was denied by written order on April 6, 2009.

The Petitioner now seeks a writ of certiorari to the South Carolina Court of Appeals.

STATEMENT OF FACTS

Prior to the date of the incident, the Petitioner and his wife Nadine Cohens ("Nadine") were experiencing marital difficulties. Nadine moved out of their home and went to live with her mother, approximately half a mile down the road from the Petitioner's home. App. p. 62, lines 19-24.

On March 23, 2009, Nadine left her home at approximately 7:00 A.M. She testified at trial that she was on her way to work in her vehicle when she encountered her husband driving his vehicle. App. p. 65, line 11-p. 67, line 5. She testified that a chase then ensued wherein the Petitioner hit her vehicle four times with his vehicle. App. p. 71, line 14-p. 72, line 14. After the fourth collision, Nadine lost control of her vehicle and "went off the road." App. p. 72, lines 10-19. She was then taken to a hospital, where she remained for a couple of hours and was then released. App. p. 74, lines 8-15. The Petitioner was charged with ABWIK as a result of his actions.

ARGUMENT

- I. The Court of Appeals erred in finding that the Petitioner did not preserve for appeal objection to the trial court proceeding in his attorney's absence and in requiring his attorney to apologize to the jury prior to cross-examining the victim "so that it will have some effect," which violated the Petitioner's Sixth Amendment rights.

A. How the Issue Arose Below

The Petitioner's trial commenced with the victim's testimony. At the conclusion of her direct testimony, the trial court decided to break for the day and to have cross-examination begin the following morning. App. p. 83, lines 4-10. The following morning, defense counsel was not present. The trial court then stated

Now we ended the day with closing direct examination of the witness, Mrs. Cohens. And is Mrs. Cohens present? She is. And is there cross examination of Mrs. Cohens? Mr. Barr is not present and therefore it appears at this time there is not. Please call your next witness, Mr. Modica.

App. p. 86, line 25-p. 87, line 5. However, prior to the next witness—Ronnie Lewis—beginning his testimony, defense counsel came into the courtroom. The trial court admonished defense counsel for being late in front of the jury and had the State begin the testimony of the next witness. App. p. 87, line 14-p. 8, line 11.

Following Lewis' testimony, the trial court sent the jury out for their morning break. Defense counsel then explained that he was late to court that morning because he needed to go by his office to obtain a transcript that he felt would be relevant at trial. App. p. 113, lines 6-16. Counsel then requested that he be permitted to cross-examine the victim. App. p. 113, line 17-p. 114, line 6. The trial judge stated that he would permit defense counsel to do so; however, he required defense counsel to "express an apology to the jury for being late this morning" before

cross-examining the victim. App. p. 115, lines 1-9. When defense counsel stated that he would prefer to apologize to the jury during closing argument, the trial court stated that the apology needed to be contemporaneous with the victim's cross-examination "so that it will have some effect." App. p. 115, lines 15-20. Defense counsel then directly apologized to the jury immediately prior to beginning the victim's cross-examination. App. p. 116, line 23-p. 117, line 6.

On appeal to the South Carolina Court of Appeals, the Petitioner argued that his Sixth Amendment rights were violated in several respects. First, the Petitioner argued that his Sixth Amendment right to the assistance of counsel was violated by the trial court forcing the trial to proceed without the Petitioner's attorney present. See App. p. 203. Second, the Petitioner argued that his Sixth Amendment right to cross-examine the State's witnesses was violated by the trial court requiring his attorney to apologize to the jury as a condition of proceeding with the testimony of the victim. See App. pp. 203-204.

The Court of Appeals found that the issue was not preserved for appeal, citing State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005). See App. p. 223. The Petitioner then petitioned for rehearing, arguing that the issue was preserved for appeal. See App. p. 226. In the alternative, the Petitioner argued that an objection was not necessary, given the circumstances of the case, citing State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994). See App. pp. 226-227. The Court of Appeals denied the petition for rehearing. App. p. 231.

B. Discussion

"To properly preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court." State v. Sweet, 374 S.C. 1, 5, 647 S.E.2d 202, 205 (2007) (citing State v. Johnson, *supra*). However, this rule is not absolute. In State v. Pace, *supra*, this

Court found that a defense attorney need not raise a contemporaneous objection to a trial court's remarks regarding that attorney when "the tone and tenor" of those remarks make "any objection ... futile." 316 S.C. at 74, 447 S.E.2d at 187. The Court of Appeals has referred to this exception to the contemporaneous objection rule as the "rule of futility." State v. Higgenbottom, 337 S.C. 637, 640, 626 S.E.2d 250, 251 (Ct. App. 1999), overruled on other grounds by State v. Higgenbottom, 344 S.C. 11, 542 S.E.2d 718 (2001). The Court of Appeals explained that this exception protects an attorney who, by making an objection, places his client "in a perilous posture." Id.

The Petitioner respectfully asserts that the Court of Appeals erred in finding that this issue was not preserved for appellate review. As an initial matter, defense counsel *did* argue with the trial court's requirement that he directly apologize to the jury prior to beginning the victim's cross-examination. See App. p. 149, lines 10-14. The Petitioner asserts that this colloquy with the trial court preserves these issues for appellate review.

In the alternative, the Petitioner would assert that the Court of Appeals clearly overlooked this Court's longstanding precedent in finding that this issue was not preserved for appeal. When trial counsel first arrived in the courtroom, it was clear that the trial judge was frustrated and angry with his tardiness. Had defense counsel raised an objection at that point in time to the trial beginning in his absence, he may have risked further damage to his client. Furthermore, following Lewis' testimony, had defense counsel further objected to the trial judge's requirement that he apologize to the jury, the trial court may very well have prohibited defense counsel from cross-examining the witness. This is especially true given the judge's comments immediately after defense counsel proposed his alternative solution. It is clear that any objection would have

been "futile" and that this Court's holding in Pace is directly applicable to this case. Therefore, the Court of Appeals erred in finding that this issue was not preserved for appellate review.

Additionally, as a practical matter, the Court of Appeals' ruling in this case is simply not tenable. In essence, the Court of Appeals would require defense counsel to object to the trial court's rulings and risk irreparably damaging his client's chances at trial in the hope that his client might prevail on appeal. Such a requirement should not be imposed.

The Sixth Amendment to the United States Constitution protects a criminal defendant's right to cross-examine the witnesses against him and guarantees the assistance of counsel at trial. The United States Supreme Court has found that the Sixth Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400 (1965).

The trial court's rulings in this case clearly violated the Petitioner's Sixth Amendment rights. Requiring the trial to continue in counsel's absence, for no matter how short an amount of time, violated the Petitioner's right to the assistance of counsel and his due process rights. Additionally, the trial court clearly violated the Petitioner's confrontation rights when he required defense counsel to apologize to the jury immediately prior to beginning his cross-examination of the victim so that it would have some sort of contemporaneous effect. By his own words, the trial judge wanted to demean defense counsel in the jury's eyes. Such action caused irreparable harm to the Petitioner, and he is entitled to a new trial.

II. The Court of Appeals erred in finding that that the trial court did not abuse its discretion in refusing to dismiss a juror who had a prior relationship with a solicitor and who winked at that solicitor after he was selected as a juror.

A. How the Issue Arose Below

During *voir dire*, the potential jurors were asked if they had a business, professional, or social connection to any of the solicitors. App. p. 14, lines 7-14. Juror 153, a dentist, stated that one of the solicitors was a patient in his practice. App. 15, lines 14-15. He stated that this relationship would not prevent him from serving as a fair and impartial juror. App. p. 15, lines 19-23. Defense counsel, who had exhausted his peremptory strikes, did not move to strike Juror 153 for cause during jury selection. App. p. 31, line 20-p. 32, line 1.

Following jury selection but prior to the swearing of the juror, defense counsel noticed that Juror 153 winked at one of the solicitors. He brought this matter to the court's attention and requested that Juror 153 be dismissed and an alternate be seated. App. p. 42, line 8-p. 43, line 11. Neither attorney for the State nor the trial judge witnessed the wink. App. p. 43, line 14-p. 44, line 3. However, the trial court brought the juror back into the courtroom and questioned him regarding his relationship with the solicitor. App. p. 45, line 21-p. 47, line 11. Notably, Juror 153 was not questioned about the wink. Juror 153 again stated that he could be fair and impartial. Following this colloquy, the trial court denied defense counsel's request to replace the juror. App. p. 47, lines 17-20.

On appeal, the Petitioner argued that it was an abuse of discretion for the judge to refuse to seat an alternate juror. See App. p. 205. The Court of Appeals disagreed and found that the decision was not an abuse of discretion. See App. p. 223. The Petitioner then petitioned for rehearing on this issue, arguing that the Court of Appeals misapprehended the nature of the

evidence in affirming the lower court's decision. See App. pp. 227-228. The Court of Appeals denied the petition for rehearing. App. p. 231.

B. Discussion

The decision to dismiss a juror and replace him with an alternate is within the sound discretion of the trial court. State v. Lindsey, 372 S.C. 185, 642 S.E.2d 557 (2007); State v. Simmons, 360 S.C. 33, 559 S.E.2d 448 (2004).

The Petitioner respectfully submits that the Court of Appeals erred in refusing to grant the Petitioner a new trial on this issue. The evidence is uncontroverted that defense counsel saw Juror 153 wink at the solicitor who was a patient in his dental practice. Furthermore, the trial court's subsequent questioning of the juror on the issue did nothing to clear up the issue. Importantly, the trial court did not question Juror 153 about the wink.

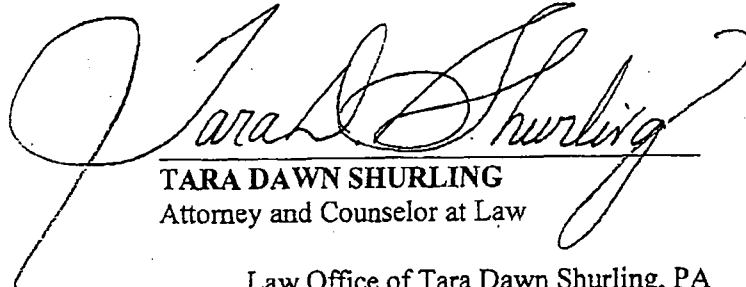
The state of the evidence is that the juror had a professional relationship with the assistant solicitor and then winked at her after he had been selected as a juror. Defense counsel, relying upon the juror's assertion that his position as the dentist of one of the prosecutors in this case would not prevent him from serving as a fair and impartial juror, had not moved to strike this juror for cause. Witnessing the wink by this juror clearly gave rise to new concerns about the closeness of the juror's relationship to this Assistant Solicitor and his potential bias in favor of the prosecution. The trial court undeniably abused its discretion in refusing to seat an alternate juror who would have been unbiased. The prejudice that the Petitioner suffered from this error defies quantification. Given the timing of the wink however, it is fair to say that the potential prejudice to the State was non-existent. No testimony had been heard and indeed, the jury had not even been sworn. Replacing this juror with an alternate would have posed no prejudice to

the State, and would have eliminated serious potential prejudice to the Appellant. The proper remedy is a new trial.

CONCLUSION

For the reasons stated, the Petitioner asks this Court to grant the petition and allow full briefing on this issue.

Respectfully submitted,



TARA DAWN SHURLING
Attorney and Counselor at Law

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ATTORNEY FOR THE PETITIONER

This 3rd day of August, 2009.

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions
J. Michael Baxley, Circuit Court Judge

Case No. 2006-GS-22-354, 355

STATE OF SOUTH CAROLINA,

RESPONDENT,

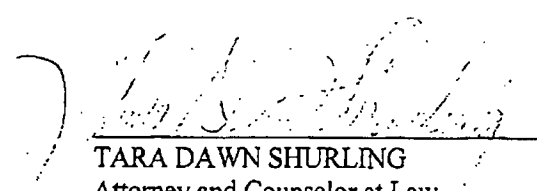
-v-

RONALD COHENS,

APPELLANT.

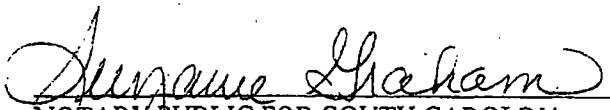
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and Appendix in the above matter have been served on opposing counsel, Harold M. Coombs, Jr., Senior Assistant Attorney General, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 4th day of August, 2009.


TARA DAWN SHURLING
Attorney and Counselor at Law
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204
(803) 738-8622

ATTORNEY FOR APPELLANT.

SWORN TO BEFORE me this 7th day
of August, 2009.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires

3/12/2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Georgetown County
Honorable J. Michael Baxley, Circuit Court Judge

Opinion No. 09-UP-064, Filed 2-9-09

THE STATE,

Respondent,

vs.

RONALD COHENS,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

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QUESTIONS PRESENTED

1. Did the trial court exercise sound discretion in conducting the trial?
2. Did the trial judge exercise sound discretion seating a fair and impartial jury?

ARGUMENT**I.****The trial court exercised sound discretion conducting the trial.**

On asking for discretionary review, the defendant says that had he supposedly “further objected to the trial judge’s requirement that he apologize to the jury [for his tardiness], the trial court may very well have prohibited him from cross-examining the witness.” (Petition for a Writ of Certiorari p. 7). The position is striking, self-serving, speculative, and contradicted by counsel’s stating, out of the jury’s presence, that he “would be delighted” to apologize to the jury. (Appendix pp. 112-117 [top of page]). The issue is discussed in the Final Brief of Respondent.

II.

The trial judge exercised sound discretion seating a fair and impartial jury.

On asking for discretionary review, the defendant notes the trial judge's "questioning of the juror on the issue [the wink] did nothing to clear up the issue. Importantly, the trial court did not question Juror 153 about the wink." (Petition for a Writ of Certiorari, p. 10). At trial, the defendant didn't want to question the juror more specifically. The court questioned the juror to ensure impartiality, and the defendant proposed no additional questions. (Appendix pp. 34-38; 42-47 [top of page]). The issue is discussed in the Final Brief of Respondent.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Georgetown County
Honorable J. Michael Baxley, Circuit Court Judge

Opinion No. 09-UP-064, Filed 2-9-09

THE STATE,

Respondent,

vs.

RONALD COHENS,

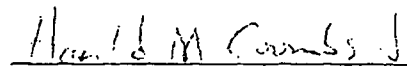
Petitioner.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Tara D. Shurling, Esquire, 3614 Landmark Drive, Suite D, Columbia, South Carolina 29204.

I further certify that all parties required by Rule to be served have been served.

This 31st day of August, 2009


HAROLD M. COOMBS, JR.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

CONCLUSION

The South Carolina Court of Appeals resolved the issues by applying the correct law, and the decision is factually supported by the record. This Court should decline to exercise discretionary review.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

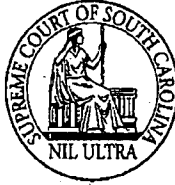
JOHN GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit

BY: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

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ATTORNEYS FOR RESPONDENT

August 31, 2009



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 8, 2010

Tara Shurling, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Dr., Ste. D
Columbia, SC 29204

Re: The State v. Cohens, Ronald
2006-GS-22-00354 and 00355

Dear Counsel:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

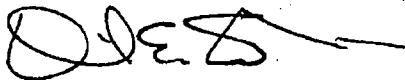
"Petition for Writ of
Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

April 8, 2010."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,


CLERK

DES/dmh

Tara Shurling, Esquire
Page Two
April 8, 2010

cc: The Honorable John Gregory Hembree
Senior Assistant Attorney General Harold M. Coombs, Jr.
The Honorable Alma Y. White
The Honorable Tanya Gee



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 12, 2010

REMITTITUR

The Honorable Alma Y. White
715 Prince Street Rm 221
PO Drawer 421270
Georgetown, SC 29442-1270

Re: The State v. Cohens, Ronald
2006-GS-22-00354; 2006-GS-22-00355

Dear Ms. White:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

VCA/lm

cc: Tara Shurling, Esquire
Senior Assistant Attorney General Harold M. Coombs, Jr.
John Gregory Hembree, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

2010CP2201592

RONALD COHENS, #316306)
Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2010 OCT -8 PM 2:31
CLERK OF COURT

FILED
2010 OCT -8 PM 2:31
CLERK OF COURT

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant 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 applicant was convicted.

1. Place of detention: Lieber Correctional Institution, Post Office Box 205, Ridgeville, SC 29472.
2. Name and location of Court which imposed sentence Georgetown County General Sessions Court
3. Name(s) of co-defendant(s) (if any) : N/A
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2006-GS-22-355 Failure to Stop for Blue Light.
 - (b) 2006-GS-22-354 Assault and Battery with Intent to Kill

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 30, 2006 - Three (3) years
 - (b) June 30, 2006 - Twelve (12) years
6. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty Yes
 - (c) after a plea of nolo contendere _____
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. Supreme Court of South Carolina
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. Denied
 - iii. N/A
 - (c) the date of each such result:
 - i. February 9, 2009
 - ii. April 8, 2010
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Unpublished Opinion No. 2009-UP-064
 - ii. Order dated April 8, 2010.
 - iii. N/A

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9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

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

(a) The Applicant received Ineffective Assistance of Counsel prior and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) The judgment and sentence against the Applicant were entered in violation of his right to due process of law and effective assistance of counsel.

(c) _____

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

(a) Trial Counsel was ineffective for failing to be punctual during the Applicant's trial. Trial Counsel's late arrival to Court resulted in him not being able to cross-examine the victim at the appropriate time and damaged his effectiveness as an advocate by making a negative impression on the jury.

(b) Trial Counsel failed to adequately preserve for appellate review his objection to being required to apologize to the jury for being late to court during the trial.

(c) Trial Counsel was ineffective for failing to request a mistrial after the trial judge required him to apologize to the jury in a manner that irreparably damaged his effectiveness as an advocate for the balance of the trial.

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

(a) any petitions in a State Court under South Carolina law? n/a

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? n/a

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? n/a

(d) any other petitions, motions or applications in this or any other Court? n/a

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. n/a

ii. n/a

iii. n/a

iv. n/a

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

i. n/a

ii. n/a

iii. n/a

iv. n/a

(c) the disposition thereof:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(d) the date of each such disposition:

i. n/a

ii. n/a

iii. n/a

iv. n/a

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

i. n/a

ii. n/a

iii. n/a

iv. n/a

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? Yes

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

(a) which grounds have been presented:

i. n/a

ii. n/a

iii. n/a

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

i. n/a

ii. n/a

iii. n/a

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) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues.

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(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? no

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

(a) the name and address of each attorney who represented you:

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i. Charles David Barr, Esq., 319 West Main Street, Kingstree, SC 29556

ii. Charles David Barr, Esq., 319 West Main Street, Kingstree, SC 29556

iii. Kathrine H. Hudgins, SCCID, P. O. Box 11589, Columbia, SC 29211

iv. Tara Dawn Shurling, 3614 Landmark Dr, Suite D, Columbia, SC 29204

(b) the proceedings at which each such attorney represented you:

i.

ii. Trial and Sentencing

iii. Direct Appeal to South Carolina Court of Appeals

iv. Petition for Rehearing in the Court of Appeals and Petition for Writ of Certiorari in the Supreme Court of South Carolina.

19. State clearly the relief you seek in filing this application. Vacation of judgment and sentence. Applicant seeks a new trial.

20. Are you now under sentence from any other court that you have not challenged? no