STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Saluda County

R. Lawton McIntosh, Circuit Court Judge

SHAUN WAYNE WILES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000729

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN WALT WHITMIRE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRIAL TRANSCRIPT 1

APPLICATION FOR POST-CONVICTION RELIEF 332

RETURN 338

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 4, 2011 344

ORDER OF DISMISSAL 364

INDICTMENTS 374

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SALUDA

THE STATE OF SOUTH CAROLINA,

-VS-

SHAWN WAYNE WILES,

DEFENDANT.

BEFORE: THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A JURY.

APPEARANCES:

FOR THE STATE: H. FRANKLIN YOUNG, ASSISTANT SOLICITOR

FOR THE DEFENDANT: ADRIAN FALGIONE, ESQUIRE

COURT REPORTER: SMOKEY PERRY

2006-GS-41-78, 130 AND 2004-GS-41-91

WEEK OF MARCH 8, 2006

ORIGINAL

INDEX

DIRECT EXAMINATION OF INVESTIGATOR ANTLEY BY MR. YOUNG....8

CROSS-EXAMINATION OF INVESTIGATOR ANTLEY BY MR. FALGIONE....19

REDIRECT EXAMINATION OF INVESTIGATOR ANTLEY BY MR. YOUNG....22

RECROSS EXAMINATION OF INVESTIGATOR ANTLEY BY MR. FALGIONE....25

VOIR DIRE....36

JURY IMPANELED....69

OPENING STATEMENT TO THE JURY BY MR. YOUNG....77

OPENING STATEMENT TO THE JURY BY MR. FALGIONE....83

DIRECT EXAMINATION OF GARY L. DAVIS BY MR. YOUNG....85

CROSS-EXAMINATION OF GARY L. DAVIS BY MR. FALGIONE....92

DIRECT EXAMINATION OF HEATH DAVIS BY MR. YOUNG....96

CROSS-EXAMINATION OF HEATH DAVIS BY MR. FALGIONE....112

REDIRECT EXAMINATION OF HEATH DAVIS BY MR. YOUNG....119

DIRECT EXAMINATION OF STEPHEN BYRD BY MR. YOUNG....121

CROSS-EXAMINATION OF STEPHEN BYRD BY MR. FALGIONE....138

DIRECT EXAMINATION OF MARY RUTH HOLMES BY MR. YOUNG....144

CROSS-EXAMINATION OF MARY RUTH HOLMES BY MR. FALGIONE....151

REDIRECT EXAMINATION OF MARY RUTH HOLMES BY MR. YOUNG....163

DIRECT EXAMINATION OF FRANK DANIEL BY MR. YOUNG....165

CROSS-EXAMINATION OF FRANK DANIEL BY MR. FALGIONE....170

REDIRECT EXAMINATION OF FRANK DANIEL BY MR. YOUNG....175

RECROSS EXAMINATION OF FRANK DANIEL BY MR. FALGIONE....176

DIRECT EXAMINATION OF WENDY DEASON BY MR. YOUNG....177

CROSS-EXAMINATION OF WENDY DEASON BY MR. FALGIONE....180

INDEX

REDIRECT EXAMINATION OF WENDY DEASON BY MR. YOUNG....183

RECROSS EXAMINATION OF WENDY DEASON BY MR. FALGIONE....184

REDIRECT EXAMINATION OF WENDY DEASON BY MR. YOUNG....185

DIRECT EXAMINATION OF CAPTAIN SHORTER BY MR. YOUNG....185

CROSS-EXAMINATION OF CAPTAIN SHORTER BY MR. FALGIONE....191

REDIRECT EXAMINATION OF CAPTAIN SHORTER BY MR. YOUNG....192

RECROSS EXAMINATION OF CAPTAIN SHORTER BY MR. FALGIONE....193

DIRECT EXAMINATION OF ROBERT DENNIS BY MR. YOUNG....194

CROSS-EXAMINATION OF ROBERT DENNIS BY MR. FALGIONE....216

REDIRECT EXAMINATION OF ROBERT DENNIS BY MR. YOUNG....223

RECROSS EXAMINATION OF ROBERT DENNIS BY MR. FALGIONE....225

DIRECT EXAMINATION OF WILLIAM SCHAEKEL BY MR. YOUNG....226

CROSS-EXAMINATION OF WILLIAM SCHAEKEL BY MR. FALGIONE....228

DIRECT EXAMINATION OF GREG ANTLEY BY MR. YOUNG....229

CROSS-EXAMINATION OF GREG ANTLEY BY MR. FALGIONE....243

REDIRECT EXAMINATION OF GREG ANTLEY BY MR. YOUNG....247

CLOSING ARGUMENT TO THE JURY BY MR. YOUNG....275

CLOSING ARGUMENT TO THE JURY BY MR. FALGIONE....290

CHARGE TO THE JURY BY THE COURT....300

VERDICTS....319

SENTENCES...328

CERTIFICATE....329

EXHIBITS

STATE'S EXHIBITS #1 MARKED FOR IDENTIFICATION....12

INDEX

EXHIBITS

STATE'S EXHIBITS #1 MARKED FOR IDENTIFICATION....12

STATE'S EXHIBIT #2 MARKED FOR IDENTIFICATION....16

STATE'S EXHIBIT #19 RECEIVED IN EVIDENCE....86

STATE'S EXHIBITS 3-15 AND #20 RECEIVED IN EVIDENCE....90

STATE'S EXHIBIT #16 RECEIVED IN EVIDENCE....103

STATE'S EXHIBIT #17 RECEIVED IN EVIDENCE....110

STATE'S EXHIBIT #1 RECEIVED IN EVIDENCE....236

(ALL OTHER EXHIBITS WERE MARKED DURING RECESS OR PRE-TRIAL)

MR. YOUNG: YOUR HONOR, THIS IS THE STATE OF SOUTH CAROLINA -VS- SHAWN WAYNE WILES THE STATE IS CALLING FOR TRIAL. 2006-GS-41-130 WHICH IS POSSESSION OF A STOLEN VEHICLE OF A VALUE BETWEEN 1000 AND 5000. CALLING FOR TRIAL 2006-GS-41-78 FAILURE TO STOP FOR A BLUE LIGHT. WE'RE CALLING FOR TRIAL 2004-GS-41-091 ASSAULT AND BATTERY WITH INTENT TO KILL. I UNDERSTAND THERE ARE SOME MOTIONS, YOUR HONOR. WE HAVE A JACKSON V. DENNO HEARING. INVESTIGATOR GREG ANTLEY—

THE COURT: Y'ALL DON'T TURN YOUR BACK WHEN YOU TALK.

MR. YOUNG: I APOLOGIZE, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. YOUNG: THERE IS A MOTION IN LIMINE THAT'S BEING SOUGHT IN PART BY BOTH THE STATE AND THE DEFENSE TO SEEK INTRODUCTION OF EVIDENCE REGARDING MR. WILES' STATUS AS AN ESCAPEE AT THE TIME THESE OFFENSES WERE COMMITTED.

THE COURT: ALL RIGHT. MR. FALGIONE, WHAT DO YOU HAVE?

MR. FALGIONE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT?

THE COURT: YES, SIR.

MR. FALGIONE: YOUR HONOR, WE FILED OUR MOTION IN LIMINE TO PROHIBIT THE PROSECUTION FROM BRINGING OUT AMONG OTHER THINGS ANY INFORMATION ABOUT THE DEFENDANT'S ESCAPE FROM ANY CORRECTIONAL INSTITUTION. YOUR HONOR, THE FACTS OF THIS CASE ARE THAT MR. WILES DID, IN FACT, ESCAPE FROM A CORRECTIONAL INSTITUTION APPROXIMATELY ONE WEEK PRIOR TO THIS INCIDENT. HE HAS BEEN SENTENCED; HE PLED GUILTY AND HAS BEEN SENTENCED AND IS SERVING HIS SENTENCE REGARDING THOSE CHARGES. YOUR HONOR, THE CHARGES BEFORE THE COURT TODAY INVOLVED A TRAFFIC COLLISION DOWN HERE ON THE MAIN STREET AND THE INTERSECTION INVOLVING DEPUTY DANIELS AND MR. WILES. THE ALLEGATIONS

ARE THAT MR. WILES WAS ALLUDING POLICE AT A HIGH RATE OF SPEED, WAS DRIVINC A STOLEN VEHICLE WHEN HE CAME INTO TOWN AND COLLIDED WITH DEPUTY DANIEL'S VEHICLE. THE CHARGES BEFORE THE COURT TODAY ARE ASSAULT AND BATTERY WITH INTENT TO KILL CHARGING MR. WILES INTENDED TO HIT OFFICER DANIEL OR DID SO WITH SUCH MALICE AS TO BE PRESUMED, THAT HE WAS DRIVING A STOLEN VEHICLE AND HE FAILED TO STOP FOR A BLUE LIGHT.

YOUR HONOR, THE PREJUDICIAL IMPACT THAT ANY -- ANY REFERENCE TO AN ESCAPE FROM PRISON FOR WHICH HE'S ALREADY BEEN SENTENCED AND PLED GUILTY WOULD BE SO HIGHLY PREJUDICIAL AS TO PREVENT MR. WILES FROM HAVING A FAIR TRIAL ON THE THREE CHARGES WE'RE IN FRONT OF THE COURT TODAY.

YOUR HONOR, I'LL BE HAPPY TO TAKE THESE INDIVIDUALLY BUT I'M ASSUMING YOU'LL WANT A RESPONSE FROM MR. YOUNG REGARDING THIS ONE ISSUE BEFORE WE GO FORWARD.

THE COURT: YES, SIR?

MR. YOUNG: YOUR HONOR, THE ORDER IN WHICH WE TAKE THESE MATTERS UP MIGHT BE IMPORTANT. INVESTIGATOR ANTLEY IS HERE TO TESTIFY REGARDING THE TAKING THE STATEMENT. THE STATEMENT WILL INCLUDE CERTAIN ASPECTS OF ESCAPE IN CONNECTION WITH WHERE THE STATEMENT WAS TAKEN FROM BECAUSE IT WAS TAKEN FROM THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, AND HE'S THE OFFICER ASSIGNED TO THE DUTIES NECESSARY TO INVESTIGATE ESCAPES AND RELATED MATTERS, AND HE MADE THE EFFORT TO TAKE THE STATEMENT IN CONNECTION WITH THAT ESCAPE, AND DURING THE TERMS OF THAT ESCAPE INQUIRY, IF YOU WANNA CALL IT THAT, MATTERS CAME OUT REGARDING MR. WILES' INTENTIONS, WHAT HE WAS TRYIN' TO DO, WHERE HE WAS TRYIN' TO GO. HE'S CHARGED WITH FAILURE TO STOP WHICH HAPPENED -- AND JUST TO MAKE THE COURT AWARE OF THE CIRCUMSTANCE

OUR CASE WOULD PRIMARILY BEGIN WITH POSSESSION OF A STOLEN VEHICLE THAT WAS TAKEN FROM BYRON, GEORGIA, WHICH IS LOCATED ROUGHLY BETWEEN MACON AND ROLLINS (PHONETIC) GEORGIA.

WE HAVE THE CO-OWNER OF THE BUSINESS WHO OWNED THE VEHICLE. HE MADE THAT -- HE MADE -- THAT HAPPENED AROUND A DAY OR TWO BEFORE DECEMBER 26TH WHICH WAS THE DAY OF THIS INCIDENT.

CAME BACK TO SOUTH CAROLINA. PICKED UP AN OCCUPANT OF HIS VEHICLE; WENT BACK TO AUGUSTA, GEORGIA. AFTER CHRISTMAS DAY CAME BACK INTO SOUTH CAROLINA. AND DURING THAT TIME WAS -- CAME INTO CONTACT WITH A HIGHWAY PATROLMAN WHO WAS -- HAD HIS RADAR OPERATIVE, AND CLOCKED HIM AT OVER 100 MILES AN HOUR.

HE WAS IN THE COMPANY OF ANOTHER ESCAPED CONVICT, MR. GRIFFITH. THEY INITIALLY MADE A STOP SOMEWHERE JUST INSIDE GREENWOOD COUNTY LINE IN EDGEFIELD.

WHEN THE OFFICERS GOT OUT OF THE CAR TO GO TOWARD MR. WILES' VEHICLE, MR. WILES REVERSED DIRECTIONS AND HEADED BACK TOWARD EDGEFIELD COUNTY ON 25, PROCEEDED UP TO THE INTERSECTION OF 378 AND THEN TOWARD SALUDA AT A VERY HIGH RATE OF SPEED IN EXCESS OF 100 MILES AN HOUR. DURING THAT CHASE SEQUENCE HE WAS JOINED BY ANOTHER HIGHWAY PATROLMAN. SUBSEQUENTLY THEY INSTRUCTED AT ABOUT A 3-MILE DISTANCE TO BREAK OFF THE PURSUIT BECAUSE OF THE DANGEROUS SPEEDS INVOLVED AND THE TRAFFIC CONDITIONS. AT THAT POINT A PATROLMAN -- NOT A PATROLMAN, BUT A HIGHWAY -- EXCUSE ME -- A DEPUTY OF THE SALUDA COUNTY SHERIFF'S OFFICE WHO WAS MONITORING THE TRANSMISSION POSITIONED HIMSELF ON THE ROOF. HE SPED UP JUST BEFORE THEY -- MR. WILES' VEHICLE CAME TO HIS LOCATION AT ABOUT 70 OR 80 MILES AN HOUR. PASSED HIM. RAN

8

ACROSS THE ROAD. HE PROCEEDED AROUND THAT PORTION. THE SPEED LIMITS BEGAN TO DROP RIGHT AFTER THAT.

HE WAS ALSO INSTRUCTED TO GO INTO ANY OF THE CHASE BECAUSE OF THE SPEED. HE BROKE OFF HIS PURSUIT, BUT MAINTAINED SIGHT CONTACT. HE WATCHED THE CARS GO INTO THE TOP OF THE HILL WHICH WAS RIGHT ABOVE THIS INTERSECTION FROM 378 LEADING INTO THE CENTER OF TOWN AT 121. HE ESTIMATES THE SPEEDS AT ABOUT 100 OR BETTER.

FROM THAT POINT THERE IS NO FURTHER VISUAL CONTACT WITH THIS CAR UNTIL PERSONS WE HAVE AVAILABLE WOULD TESTIFY AS TO THE CIRCUMSTANCES AT THAT INTERSECTION AT THAT TIME. AND DEPUTY DANIEL WAS, IN FACT, RESPONDING TO THE SAME LOCATION AND HAD PROCEEDED UP 121 FROM THE SOUTH TO THE NORTH, HAD HIS EMERGENCY VEHICLE LIGHTS AND THE SIREN ACTIVATED.

THERE WAS ANOTHER LADY IN THE INTERSECTION WHO WAS A PASSENGER IN A CAR THAT WAS IN THE RIGHT HAND LANE TO PROCEED NORTH TOWARD NEWBERRY. AT ABOUT THE SAME TIME THEY ARRIVED AT THE INTERSECTION TOGETHER, DEPUTY DANIELS WAS INTENDING ON MAKING A LEFT HAND TURN TO GO IN THE DIRECTION OF EDGEFIELD COUNTY ON 378 FROM THE 121 INTERSECTION.

AS HE CAME TO THE INTERSECTION HE HAD THE GREEN LIGHT; DID NOT CLEAR THE INTERSECTION. HE COULD NOT CLEAR THE INTERSECTION BECAUSE OF ONCOMING TRAFFIC, AT WHICH TIME HE LOOKED TO HIS LEFT AND WAS STRUCK. THE LADY IN THE CAR WHO WAS TO THE RIGHT WILL TESTIFY THAT HER SON WAS IN THE CAR, OBSERVED THIS CAR THAT WAS COMING THROUGH THE INTERSECTION; DID NOT APPEAR TO BE STOPPING; ANNOUNCED TURN RIGHT, TURN RIGHT. THEY TURNED RIGHT TO AVOID CONTACT WITH THE CAR. THEY HAD – THIS – THE LADY'S NAME WAS MS. HOLMES.

SHE OBSERVED THE IMPACT. DEPUTY DANIEL'S CAR SPUN AROUND IN THE INTERSECTION.

THE VEHICLE THAT WAS DRIVEN BY MR. WILES WOUND UP IN THIS BUILDING ACROSS THE STREET FROM US WHICH IS A LAW OFFICES. WAS EMBEDDED IN THE BUILDING.

HE AND HIS OCCUPANT GOT OUT OF HIS CAR. THE OCCUPANT CAME OUT OF THE CAR. WENT UPSTAIRS EVENTUALLY AND THEN CAME OUTSIDE.

BY THIS TIME LAW ENFORCEMENT OFFICIALS SURROUNDED THE AREA. THEY BECAME AWARE AFTER SHE CAME OUT THAT MR. WILES WAS, IN FACT, STILL IN THE BUILDING AND THAT HE WAS AN ESCAPED CONVICT. AT THAT POINT IN TIME SLED RESPONDED WITH THEIR ABILITIES AND CAME HERE AND SURROUNDED THE AREA AND MADE AN ENTRY INTO THE BUILDING AND RETRIEVED HIM FROM THE ROOF AREA ABOVE THIS BUILDING TO OUR RIGHT.

THAT IS A SUMMARY OF WHAT I EXPECT THE CASE WILL GO – HOW IT WILL GO, AND, ESSENTIALLY, IN THAT ORDER. THE CONFESSION THAT WE ARE GOING TO OFFER IS TO – WE BELIEVE IT WILL BE A CONFESSION TO POSSESSION OF A STOLEN MOTOR VEHICLE TO THE FAILURE TO STOP AND TO PARTS, IF NOT ALL OF, THE MAN EFFECTING THE ASSAULT AND BATTERY WITH INTENT TO KILL, AND THAT WAS TAKEN AFTER HE WAS RETURNED TO CUSTODY, AND INVESTIGATOR ANTLEY TOOK HIS STATEMENT WHILE HE WAS INCARCERATED IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

THE COURT: WELL, LET'S DO THE DENNO HEARING FIRST.

MR. YOUNG: ALL RIGHT, SIR. INVESTIGATOR ANTLEY, WILL YOU TAKE THE WITNESS STAND OVER HERE, PLEASE, SIR.

THE COURT: NO, IT'S OVER HERE.

MR. YOUNG: OH, I'M SORRY.

INVESTIGATOR ANTLEY, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. YOUNG

Q INVESTIGATOR ANTLEY, WOULD YOU GIVE UP YOUR FULL NAME.

A GREG ANTLEY. LAST NAME SPELLED A-N-T-L-E-Y.

Q THANK YOU, SIR. WHERE DO YOU WORK AND FOR HOW LONG?

A I'M CURRENTLY EMPLOYED WITH THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS AS AN INVESTIGATOR. I'VE BEEN EMPLOYED WITH THE AGENCY FOR 3 YEARS.

Q AND HOW LONG HAVE YOU BEEN A POLICE OFFICER?

A SINCE 1994.

Q ALL RIGHT, SIR. AND IN THE PAST HAVE YOU COME INTO CONTACT WITH A PERSON BY THE NAME SHAWN WILES?

A YES, I HAVE.

Q WHAT WERE THE CIRCUMSTANCES UNDER WHICH YOU CAME INTO CONTACT WITH HIM IN THE LATEST EVENT?

A I WAS ASSIGNED BY THE AGENCY TO CONDUCT AN INVESTIGATION CONCERNING THE ESCAPE OF INMATE SHAWN WILES. AND THIS OCCURRED, THIS ESCAPE OCCURRED ON DECEMBER 18TH 2003. MR. WILES WAS RECAPTURED FROM THE ESCAPE ON DECEMBER 26TH I BELIEVE IT WAS 2003. ON DECEMBER 30TH 2003, I HAD THE OPPORTUNITY TO INTERVIEW INMATE SHAWN WILES AT THE KIRKLAND CORRECTIONAL INSTITUTION IN THEIR SUPER MAX OR LOCK UP SECTION.

Q ALL RIGHT, SIR. AND YOU CAME TO MEET HIM ON WHAT DAY SPECIFICALLY?

A THAT WAS DECEMBER 30TH 2003.

Q ALL RIGHT, SIR, BUT WHERE DID THIS INTERVIEW TAKE PLACE WITHIN KIRKLAND?

A INSIDE KIRKLAND CORRECTIONAL INSTITUTION THERE'S A LOCKUP SECTION THAT IS REFERRED TO AS SUPER MAX. ONCE MR. WILES WAS RECAPTURED, HE WAS SENT TO THIS FACILITY AND HELD THERE. I INTERVIEWED MR. WILES IN A CONFERENCE ROOM JUST OFF FROM THE CONTROL IN THE SUPER MAX SECTION.

Q WAS HE IN CUSTODY?

A YES, HE WAS.

Q WHAT TYPE OF RESTRAINTS WERE ON HIM?

A HE WAS IN ANKLE RESTRAINTS AND HANDCUFFS ON HIS HANDS, BELLY CHAIN.

Q WAS ANYONE PRESENT BESIDES YOURSELF AND MR. WILES?

A NO, SIR.

Q AND HOW LONG HAD HE BEEN IN CUSTODY AT THAT POINT AT KIRKLAND?

A HE WAS -- APPROXIMATELY 4 DAYS. FROM THE 26TH TO THE 30TH.

Q OKAY. DURING THE PERIOD OF TIME YOU WERE IN HIS CONTACT, ARE YOU AWARE OF ANY CIRCUMSTANCES WHICH HE HAD BEEN DENIED ACCESS TO FOOD AND WATER. WAS HE WELL HYDRATED AND APPEAR TO BE IN ORGANIC PHYSICAL CONDITION?

A APPEARED TO BE IN NORMAL HEALTH.

Q WAS THERE ANY SPECIFIC FORM OF STRESS OF ANY KIND THAT YOU BECAME AWARE OF?

A NOT ABNORMAL STRESS.

Q WHAT WAS HIS GENERAL APPEARANCE AND BEHAVIOR?

A HE CAME IN. I INTRODUCED MYSELF, WHO I WAS, THE PURPOSE OF ME BEIN'

THERE. HE SAT AT THE TABLE. I SAT ACROSS FROM THE TABLE. EXPLAINED WHY I WAS THERE AND EXPLAINED THAT I, YOU KNOW, I WISHED TO INTERVIEW HIM.

Q DID HE APPEAR TO BE IN ANY FORM OF PHYSICAL OR OTHER DISTRESS—

A NO, SIR.

Q —BASED UPON HIS GENERAL BEHAVIOR AND APPEARANCE?

A NO, SIR.

Q DID -- DURING THIS INTERVIEW WAS HE SEATED OR STANDING, AND WERE YOU SEATED OR STANDING?

A WE WERE BOTH SEATED.

Q OKAY. ON THE SAME SIDE OR THE OPPOSITE SIDE OF THE TABLE?

A OPPOSITE SIDE OF THE TABLE.

Q WERE YOU AWARE THAT HE HAD BEEN INVOLVED IN A MOTOR VEHICLE COLLISION ON DECEMBER 26TH 2003?

A YES, I WAS AWARE OF THAT.

Q OKAY. WERE THERE ANY OBVIOUS SIGNS OF PHYSICAL INJURY APPEARING ON HIS PERSON?

A IF I RECALL, HE APPEARED TO BE SCARRED AND SCRAPED UP ABOUT, MAYBE, HIS FACE AT THAT TIME AND HANDS AND ARMS, BUT I DID NOT NOTICE ANY MAJOR INJURIES BY THE WAY HE WALKED OR THE WAY HE SPOKE.

Q NO OUTWARD SIGNS OF ILL EFFECT OTHER THAN SCRAPES AND SCRATCHES.

A NO, SIR.

Q AT THAT TIME WERE YOU AWARE AS TO WHETHER OR NOT HE WAS TAKING ANY MEDICATIONS THAT WOULD IMPAIR HIS JUDGMENT?

A I WAS NOT AWARE OF ANY.

Q AT ANY POINT DID HE EVER INDICATE THAT HE WAS IN DISCOMFORT OR PAIN?

A NO, SIR.

Q ALL RIGHT. DURING THIS INTERVIEW DID YOU AT ANY TIME DENY HIM AN OPPORTUNITY TO USE THE RESTROOM OR ANY OTHER COMFORT FACILITY?

A NO, SIR.

Q DID YOU DENY HIM FOR A DRINK OF WATER OR ANY OTHER TYPE OF SIMILAR COMFORT, CIGARETTE?

A NO, SIR.

Q DID YOU OFFER HIM ANY FAVORABLE TREATMENT OR ANY BENEFIT OF ANY KIND IF HE WOULD TALK WITH YOU?

A NO, SIR.

Q DID YOU THREATEN HIM THAT IF HE DID NOT ANSWER YOUR QUESTIONS THINGS WOULD HAPPEN TO HIM?

A NO, SIR.

Q DID YOU USE ANY OTHER FORM OF COERCIVE TECHNIQUE IN ORDER TO GET HIM TO ANSWER YOUR QUESTIONS AND TALK WITH YOU?

A NO, SIR.

Q BEFORE YOU ADVISED HIM OF ANY RIGHTS UNDER MIRANDA DID YOU ASK HIM ANY QUESTIONS THAT WERE INCRIMINATING IN NATURE OR ANY OTHER QUESTIONS FOR THAT MATTER?

A NO, SIR.

Q SO BEFORE ASKING ANY QUESTIONS, DID YOU ADVISE HIM OF HIS RIGHTS UNDER MIRANDA?

A I DID ADVISE HIM OF HIS RIGHTS.

Q AND HOW DID YOU ACCOMPLISH THIS ADVICE?

A I ADVISED HIM VERBALLY AND WITH MIRANDA FORM.

Q ALL RIGHT, SIR. DO YOU HAVE A COPY OF THE FORM OR THE FORM WITH YOU?

A YES, SIR, I DO.

Q IS THIS THE FORM OR THE COPY OF THE FORM?

A THIS IS A COPY OF THE FORM.

MR. YOUNG: CAN I HAVE THIS MARKED, PLEASE, FOR IDENTIFICATION. (STATE'S EXHIBIT #1 MARKED FOR IDENTIFICATION.)

Q HAVING SHOWN THIS TO THE DEFENSE COUNSEL, I HAND IT BACK TO YOU AS PROSECUTION EXHIBIT 1 FOR IDENTIFICATION AND SEE IF YOU CAN IDENTIFY IT.

A THIS IS A SOUTH CAROLINA DEPARTMENT OF CORRECTIONS OFFICE OF INSPECTOR GENERAL DIVISION OF INVESTIGATIONS MIRANDA RIGHTS FORM THAT WAS USED WHEN I QUESTIONED HIM. IT'S SHAWN WILES ON DECEMBER 30TH 2003. I SEE AS A WITNESS MY SIGNATURE IS ON IT. THE DATE IS DECEMBER 30TH 2003, AND THE APPROXIMATE TIME WAS 2:08 P.M. AND ALSO INCLUDED ON THE FORM ARE MR. WILES' SIG -- EXCUSE ME -- INITIALS BESIDE EACH LINE WHEN HE WAS READ HIS RIGHTS.

Q DOES HIS SIGNATURE APPEAR ANYWHERE ON IT?

A YES, IT DOES. IT APPEARS TWICE.

Q AND THE TIME AND DATE AGAIN WOULD YOU PLEASE.

A IT WAS ON DECEMBER 30TH 2003 AT APPROXIMATELY 2:08 P.M.

Q WOULD THAT BE UPON COMPLETION OF THE RIGHTS ADVISEMENT OR AT THE INITIATION OF THE RIGHTS ADVISEMENT?

A THAT WAS THE TIME ONCE HE WAS ADVISED OF HIS RIGHTS.

Q ALL RIGHT. SO THAT IS THE COMPLETION OF THE ADVISEMENT OF RIGHTS? HE SIGNED IT AFTER YOU ADVISED HIM?

A YES, SIR.

Q OKAY. DID -- AND HOW WERE THE INITIALS -- WHAT TIME WITH REGARD TO THE

INITIALS WERE THERE TO EACH ONE OF THE RIGHTS INDICATED ON THAT FORM?

A WELL, THE TIME AND THE WAY I READ THE FORM TO MR. WILES, I READ EACH LINE INDIVIDUALLY. HE WOULD SIGN EACH LINE. FOR INSTANCE, AND I'LL READ THE FIRST LINE; HE WOULD SIGN. THEN I'D READ THE SECOND LINE; HE WOULD SIGN.

Q NOW YOU SAY HE WOULD SIGN. DID YOU ASK HIM TO SIGN IT IF HE UNDERSTOOD THE RIGHTS OR DID YOU STOP IF HE SAID HE DIDN'T UNDERSTAND IT? HOW DID YOU GO ABOUT THAT?

A I HAD HIM PUT HIS INITIALS IF HE UNDERSTOOD EACH LINE OF THE RIGHTS FORM.

Q AT ANY TIME DID HE INDICATE HE DID NOT UNDERSTAND ANY OF THE RIGHTS YOU INDICATED TO HIM?

A NO, SIR, HE DID NOT.

Q DID HE INDICATE AT ANY TIME HE DID NOT WANT TO ANSWER YOUR QUESTIONS?

A NO, SIR, HE DID NOT.

Q DID HE AT ANY TIME INDICATE TO YOU THAT HE WANTED TO TALK TO AN ATTORNEY BEFORE EITHER ANSWERING YOUR INITIAL QUESTIONS OR ANY FURTHER QUESTIONS YOU MIGHT ASK?

A NO, SIR, HE DID NOT.

Q ALL RIGHT. LET ME ASK THIS: TO BE SURE WE'RE ON THE SAME PAGE, DID YOU COMPLETE THIS RIGHTS ADVISEMENT FORM, DID YOU READ FROM IT VERBATIM OR DID YOU JUST READ RIGHTS TO HIM? HOW DID YOU DO IT?

A I READ FROM IT VERBATIM. WHAT I – WHAT I WOULD DO IS I TURN TO WHERE BOTH OF US CAN SEE THE FORM, AND AS I READ THE LINE I WAIT TO SEE IF HE PUT HIS INITIAL ON EACH LINE. IF HE PUT HIS INITIAL ON THAT LINE, THEN I WOULD MOVE TO THE NEXT LINE..

Q AT THE CONCLUSION OF ADVISING HIM OF HIS RIGHTS AND AFTER HIS SIGNATURE WAS PLACED ON THE LINE, WHEN, IF EVER, DID HE COMPLETE A WAIVER OF RIGHTS?

A ONCE HE PUT HIS -- HE SIGNED HIS NAME AT THE FIRST TIME AT THE BOTTOM OF THE RIGHTS SECTION, I ADVISED HIM BY READING THE WAIVER OF THE RIGHTS AND -- AND ADVISED HIM THAT BY SIGNING THE WAIVER OF RIGHTS LINE MEANT THAT HE WOULD SPEAK TO ME IF I ASKED HIM QUESTIONS BUT HE STILL HAD THE RIGHT TO STOP THE QUESTIONING AT ANY POINT.

Q DID YOU SPECIFICALLY READ THE LINE TO HIM I UNDERSTAND WHAT I'M DOING, I DON'T WANT AN ATTORNEY AT THIS TIME, NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME? DID YOU READ THAT TO HIM?

A YES, SIR, I DID.

Q DID YOU ALSO READ THE LINE I'M WILLING TO MAKE A STATEMENT AND UNDERSTAND THE QUESTIONS?

A YES, SIR.

Q AND TO ANSWER QUESTIONS?

A YES, SIR, I DID.

Q ALL RIGHT. AFTER THAT IS THAT WHAT HE SIGNED?

A ONCE I READ THE LINE HE FIRST INITIALED IT, AND THEN IF HE SIGNED THE LINE OR PUT HIS SIGNATURE ON THAT LINE AND DATED IT, THAT MEANT THAT AT LEAST INITIALLY HE WAS WILLING TO SPEAK TO ME.

Q OKAY. SO DID YOU SIGN YOUR PORTION OF THE -- AS A WITNESS AFTER HE INITIATED ALL HIS RIGHTS AND SIGNED ALL THESE RIGHTS AWAY OR WHEN DID YOU SIGN?

A AFTER HE SIGNED HIS WAIVER OF RIGHTS AND DATED IT, I SIGNED MY SIGNATURE AS A WITNESS, DATE IT AND THEN THAT'S WHEN I LOOK AT MY WATCH TO SEE WHAT TIME IT IS.

Q SO THAT WOULD BE UPON COMPLETION OF THE RIGHTS TO HIM. AND THEREAFTER YOU BEGAN AN INTERVIEW WITH HIM?

A AFTERWARDS I BEGAN AN INTERVIEW.

Q ALL RIGHT. AND WHAT WAS THE PURPOSE OF THE INTERVIEW? WHAT DID YOU WANT TO KNOW FROM HIM?

A THE PURPOSE OF MY INTERVIEW WAS TO DETERMINE IF MR. WILES EXPLAINED TO ME WHERE HE WAS, WHO HE MIGHT'VE BEEN WITH DURING THE TIME THAT HE HAD ESCAPED FROM CUSTODY BETWEEN DECEMBER 18TH OF 2003 AND DECEMBER 26, 2003.

Q OKAY. WAS THIS IN A QUESTION AND ANSWER FORMAT MOSTLY OR WAS IT MORE OF A CONVERSATION WHERE YOU JUST ASKED HIM WHAT HAPPENED?

A WELL, THE WAY I STARTED THE INTERVIEW OUT, I -- I ADVISED MR. WILES THAT I WASN'T HERE TO INTERROGATE HIM OR YELL AT HIM, POINT A FINGER AT HIM, ANY OF THAT NATURE, THAT I WAS INTERESTED IN HEARING HIS STORY. I WANTED, IF HE WOULD, EXPLAIN TO ME WHERE HE WENT, WHAT OCCURRED AND, POSSIBLY, WHO HE WAS WITH WHILE HE WAS AWAY FROM THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS.

Q OKAY. WHAT DID HE TELL YOU? JUST IN GENERIC WHAT DID HE TELL YOU?

A OKAY. HE BASICALLY -- WE -- WE STARTED FROM THE -- FROM THE, I GUESS YOU WOULD SAY THE PLANNING STAGE UP TO THE NIGHT THAT HE GOT OUT OF RIDGELAND CORRECTIONAL INSTITUTION AND ESCAPED AND, BASICALLY, TOOK IT DAY FROM DAY AFTER THAT, JUST A GENERAL IDEA OF WHERE HE WAS AND WHAT HE DID ON EACH DAY.

Q OKAY. AND DID HE INDICATE TO YOU AT SOME POINT HE WENT TO GEORGIA AND OBTAINED A CAR AND THEN CAME BACK TO SOUTH CAROLINA?

A YES, SIR, HE DID.

Q ALL RIGHT. WOULD YOU, BASICALLY, PICK IT UP FROM THE STANDPOINT OF HOW HE GOT TO WHERE HE WAS IN GEORGIA AND WHERE HE WENT IF ANY – IF HE TOLD YOU ANYTHING ABOUT THAT, AND THEN TELL US WHAT HAPPENED -- TRANSPIRED, AS BEST YOU CAN, CHRONOLOGICALLY FROM THAT POINT FORWARD.

MR. FALGIONE: YOUR HONOR, I'D LIKE THE RECORD TO BE CLEAR THAT INVESTIGATOR ANTLER -- ANTLEY -- EXCUSE ME – IS REFERRING TO SOME WRITTEN DOCUMENTS AT THIS POINT.

MR. YOUNG: YES, YOUR HONOR.

THE COURT: HE SAID THAT INVESTIGATOR ANTLEY IS REFERRING TO SOME OTHER DOCUMENTS AT THIS POINT.

Q IF I COULD, LET ME ASK YOU, SIR, DO YOU HAVE A COPY OF THE STATEMENT THAT YOU TOOK A SUMMARY YOU MADE OF THE STATEMENT?

A YES, SIR, I DO.

Q DO YOU HAVE A COPY YOU CAN PROVIDE ME? TELL YOU WHAT, LET ME HAND YOU THIS. WOULD YOU MIND IF I TOOK IT APART?

A THAT WOULD BE FINE. (STATE'S EXHIBIT #2 MARKED FOR IDENTIFICATION.)

THE COURT: Y'ALL NEED TO PICK UP THE PACE, FOLKS.

Q I HAND YOU NOW WHAT'S MARKED PROSECUTION EXHIBIT 2 FOR IDENTIFICATION. CAN YOU IDENTIFY IT?

A YES. THIS IS A REPORT OF INTERVIEW THAT I CONDUCTED WITH INMATE SHAWN WILES, THE WRITTEN DOCUMENT OF THE INTERVIEW THAT I SUBMITTED AS MY REPORT FROM THE INTERVIEW CONDUCTED ON DECEMBER 30TH 2003, AND THIS IS LISTED AS

CASE #03-0482. THAT IS THE CASE NUMBER ON THIS.

Q AND THAT IS YOUR SUMMARY OF WHAT Y'ALL DID.

A YES, SIR.

Q ALL RIGHT. OBVIOUSLY THERE WERE THINGS -- WERE THERE OTHER THINGS MORE THAN THAT THAT HE TOLD YOU THAT ARE IN THIS REPORT AS WELL?

A THERE MAY BE A COMMENT OR TWO THAT WAS MADE THAT MAY BE IN MY NOTES THAT WERE TAKEN, BUT THIS IS THE OVERALL SUMMARY OF WHAT WAS -- AS BEST THE DETAIL AS COULD BE.

Q ALL RIGHT. AT ANY TIME DID YOU OFFER HIM A CHANCE TO SIGN THE STATEMENT HIMSELF?

A NO, SIR, I DID NOT.

Q OKAY. SO YOU JUST TALKED TO HIM AND TOOK DOWN WHAT HE TOLD YOU.

A YES, SIR.

Q AFTER YOU ADVISED HIM OF MIRANDA.

A YES, SIR.

Q DOES THAT SUMMARY FAIRLY AND ACCURATELY COVER EVERYTHING HE TOLD YOU?

A YES, SIR.

Q ALL RIGHT, SIR. WOULD YOU JUST TELL THE COURT WHAT HE TOLD YOU REGARDING TAKING THE CAR IN GEORGIA.

A HE STATED THAT OR IN MY DOCUMENT I HAVE THAT ON TUESDAY DECEMBER 23RD 2003 HE, BEING MR. WILES, LEFT THE MOTEL IN COLUMBIA AND TRAVELED TO GEORGIA WITH FRIENDS. HE DID NOT MENTION WHO THE FRIENDS WERE, WHO IT WAS. THEY REACHED MACON, GEORGIA, AREA AND STOLE A BLUE COLORED FORD CROWN VICTORIA.

Q THEY BEING WHO STOLE IT? WHO STOLE IT?

A MEANING HIM AND THE PEOPLE HE WENT WITH.

Q OKAY.

A HE NEVER NAMED EXACTLY WHO HE WENT WITH TO GEORGIA.

Q OKAY.

A HE SPENT THE NIGHT IN GEORGIA AT A MOTEL AND RETURNED TO COLUMBIA ON WEDNESDAY WHICH WOULD'VE BEEN DECEMBER 24TH. WHEN HE ARRIVED BACK IN COLUMBIA, GRIFFIN WHICH WAS INMATE GRIFFIN, WAS DRIVING A DODGE PICKUP TRUCK. HE, WILES, WOULD NOT REVEAL TO THIS INVESTIGATOR FROM WHERE GRIFFIN GOT THE TRUCK. ON WEDNESDAY NIGHT HE WENT AND PICKED UP HIS GIRLFRIEND MELISSA MILLER FROM A LOCATION WHERE HER MOTHER RESIDES. AND HE STATED TO ME THAT MELISSA STAYED WITH HIM UNTIL HE WAS CAPTURED ON DECEMBER 26TH 2003.

Q WHAT HAPPENED AFTER THAT WITH REGARD TO COMING BACK INTO SOUTH CAROLINA ON DECEMBER 26TH? WHAT DID HE RELAY ABOUT THAT?

A SIR?

Q LET ME GO BACK. HE INDICATED HE WAS IN THE COMPANY OF MR. GRIFFIN? DID HE INDICATE WHAT KIND OF TRUCK THAT WAS?

A HE JUST SAID A DODGE PICKUP TRUCK.

Q OKAY. WOULD YOU TAKE IT FROM THERE AND ON DECEMBER 26TH WHAT HE SAID HAPPENED ON THAT DAY.

A ON FRIDAY DECEMBER 26TH 2003, HE, MEANING MR. WILES, AND MELISSA WERE RIDING IN THE COUNTRY AS GRIFFIN, WHICH REFERS TO INMATE GRIFFIN, WERE FOLLOWING THEM IN THE PICKUP TRUCK. HE SPOTTED A STATE TROOPER. HE THEN PANICKED AND TOOK OFF DRIVING AS FAST AS HE COULD. HE LOST TRACK OF GRIFFIN AT THAT POINT. HE STATED HE RACED TOWARD SALUDA, SOUTH CAROLINA AT SPEEDS

UP TO 140 MILES PER HOUR. HE REALIZED THAT HE WAS ABOUT OUT OF GAS IN HIS VEHICLE WHEN HE REACHED SALUDA. HIS THOUGHTS WERE THAT HE WAS ABOUT TO BE KILLED OR WOULD END UP KILLING SOMEONE IN THE PROCESS OF TRYING TO GET AWAY FROM THE POLICE. HE CLAIMED TO ME THAT THE SALUDA COUNTY DEPUTY PULLED INTO THE INTERSECTION AND RAMMED HIS VEHICLE. HE CLAIMED TO ME THAT HE WAS NOT AIMING FOR THIS DEPUTY.

Q ALL RIGHT, SIR.

MR. YOUNG: YOUR HONOR, THAT IS THE SUMMARY OF THE TESTIMONY THAT WE WOULD ANTICIPATE OFFERING IN CONNECTION WITH THIS -- WE OFFER HIM FOR QUESTIONS THAT MR. FALGIONE MAY HAVE.

THE COURT: CROSS.

MR. FALGIONE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT?

THE COURT: YES, SIR.

CROSS-EXAMINATION

BY MR. FALGIONE

Q INVESTIGATOR ANTLEY, DID I UNDERSTAND YOU TO SAY CORRECTLY THAT THIS IS -- THIS REPORT THAT YOU JUST TESTIFIED FROM DATED JANUARY 9, 2004, IS NOT A COMPLETE STATEMENT OF EVERYTHING THAT WAS TOLD TO YOU BY SHAWN WILES?

A THAT'S TRUE. I -- I TAKE THIS REPORT FROM MY NOTES. TO BE EXACT IF I TOOK EVERY STATEMENT THAT HE MADE TO ME AND PUT IT IN THE REPORT, THERE MAY BE ANOTHER STATEMENT OR SOMETHIN' ON -- ON THE NOTES.

Q INVESTIGATOR ANTLEY, DID YOU RECORD YOUR CONVERSATION OF YOUR INTERVIEW WITH MR. WILES?

A NO, SIR, I DID NOT.

Q OKAY. ISN'T IT TRUE THAT I HAVE ISSUED A SUBPOENA TO YOUR OFFICE TO

SECURE ANY RECORDINGS THAT YOU MAY HAVE HAD IN THIS INTERVIEW WITH MR. WILES, AND ACCORDINGLY I HAVE NOT BEEN PROVIDED ANY TAPE RECORDING OR ANY RECORDED FEATURES OF THAT. IS THAT TRUE?

A THAT'S CORRECT.

Q THANK YOU.

A THERE WAS NO -- THERE WAS NO RECORDING.

Q NOW AT THE TIME YOU INTERVIEWED MR. WILES, WERE YOU AWARE THAT HE'D BEEN GIVEN MEDICATIONS FOR THE INJURIES HE'D SUSTAINED IN THAT COLLISION?

A I WAS NOT AWARE, NO, SIR.

Q DID YOU INQUIRE OF ANYONE AS TO WHETHER OR NOT HE WAS, IN FACT, ON MEDICATION?

A NO, SIR, I DID NOT.

Q OKAY. ISN'T IT TRUE THAT THIS TRANSCRIPTION THAT WE SEE OR YOUR SUMMARY WAS COMPILED ON JANUARY 9TH OF 2004?

A YES, SIR.

Q AND YOU ACTUALLY INTERVIEWED HIM ON DECEMBER THE 30TH OF 2003. IS THAT NOT TRUE?

A YES, SIR.

Q AND ISN'T IT TRUE THAT WHEN YOU APPROACHED MR. WILES FOR THE PURPOSE OF THIS INTERVIEW, YOU EXPLAINED TO HIM THAT YOU WANTED TO QUESTION HIM ABOUT HIS ESCAPE. IS THAT CORRECT?

A THAT'S CORRECT.

Q AND THAT WOULD BE IN KEEPING WITH YOUR DUTIES. IS THAT NOT TRUE?

A THAT'S CORRECT.

Q BUT SOMEHOW THIS INTERVIEW TURNED INTO MORE OF AN INTERVIEW ABOUT

HIS POLICE CHASE AND COLLISION. DIDN'T IT?

A IT LED INTO THAT, YES, SIR.

Q OKAY. AND ISN'T IT TRUE THAT THIS SUMMARY THAT YOU HAVE PREPARED THAT THE PROSECUTION WOULD LIKE TO ADMIT INTO EVIDENCE ACTUALLY CONTAINS EDITORIAL COMMENTS BY YOU?

A THAT'S CORRECT.

Q OKAY. IN FACT, IN ONE PLACE IN THIS SUMMARY YOU ACTUALLY TRIED TO INTERPRET MR. WILES' THOUGHTS AND MENTAL PROCESS. DO YOU NOT?

A WELL, THE STATEMENT CONCERNING WHAT HE WAS THINKING WAS -- THAT CAME FROM A QUESTION I ASKED HIM WHAT WAS GOING THROUGH YOUR HEAD AT THAT TIME.

Q AND THAT SOMEHOW FOUND IT INTO YOUR SUMMARY HERE AT THIS STATEMENT. HIS THOUGHTS WERE THAT HE WAS ABOUT TO BE KILLED OR WOULD END UP KILLING SOMEONE IN THE PROCESS OF TRYING TO GET AWAY FROM THE POLICE. IS THAT TRUE?

A THAT'S TRUE.

Q SO IN ESSENCE YOU OVERLAID MR. WILES' MENTAL THOUGHTS AND QUESTIONS INTO YOUR STATEMENT, DID YOU NOT?

A YES, SIR.

Q AS YOU PERCEIVED THEM. IS THAT TRUE?

A AS HE TOLD ME, YES, SIR.

Q OKAY. AND NO ONE ELSE WAS PRESENT DURING THIS INTERVIEW?

A NO, SIR.

Q NOW, MR. ANTLEY OR INVESTIGATOR ANTLEY -- EXCUSE ME, I MEAN NO DISRESPECT, BUT ISN'T IT TRUE THAT YOU DO NOT HAVE ACCESS BECAUSE OF THE

LAPSE OF TIME AND THE NON RECORDING OF THIS INTERVIEW TO ALL OF THE STATEMENTS THAT WERE PROVIDED TO YOU IN THAT INTERVIEW BY SHAWN WILES?

A I'M NOT--

Q I GUESS WHAT I'M ASKING, INVESTIGATOR ANTLEY, YOU DON'T HAVE PERFECT RECALL, DO YOU?

A NO, SIR.

Q AND THERE'S NO RECORDING OF THIS INTERVIEW, IS THERE?

A NO, SIR.

Q AND SHAWN WILES TOLD YOU MORE THINGS THAN YOU HAVE IN YOUR SUMMARY. IS THAT TRUE?

A YES, SIR.

Q AND ISN'T IT TRUE THAT YOU'RE HERE TODAY TESTIFYING ON THE BASIS OF THIS SUMMARY?

A YES, SIR.

Q OKAY. SO ISN'T IT ALSO TRUE THAT SOME OF THOSE OTHER IMPRESSIONS THAT MR. WILES GAVE YOU AND SOME OF THOSE OTHER COMMENTS THAT HE WOULD HAVE MADE MAY HAVE BEEN BENEFICIAL TO MR. WILES BUT THEY DIDN'T FIND THEIR WAY INTO THIS SUMMARY. IS THAT NOT TRUE?

A THAT'S TRUE.

Q THANK YOU.

THE COURT: REDIRECT.

<u>REDIRECT EXAMINATION</u>

<u>BY MR. YOUNG</u>

Q THE QUESTION THAT YOU ASKED HIM WHAT WAS GOING THROUGH YOUR -- THROUGH HIS HEAD, WHAT WAS GOING THROUGH HIS HEAD MEANING MR. WILES, DOES

YOUR SUMMARY REFLECT WHAT HE TOLD YOU OR WHAT YOU THOUGHT HE TOLD YOU?

A HIS SUMMARY REFLECTS WHAT HE TOLD ME.

Q OKAY. AND WHAT WAS IT THAT HE TOLD YOU?

A HE TOLD ME THAT HE BELIEVED THAT SOMETHING BAD WAS ABOUT TO HAPPEN, AND THAT EITHER HE WAS – WOULD GET KILLED OR HE WOULD END UP KILLING SOMEONE WHEN HE GOT INTO TOWN OR WHENEVER THIS CHASE ENDED.

Q IS THAT AN ACCURATE STATEMENT OF WHAT HE TOLD YOU?

A YES, SIR.

Q OKAY. AND THAT'S NOT BASED UPON YOUR SUMMARY, BUT UPON YOUR RECALL?

A FROM MY RECALL AND MY NOTES.

Q ALL RIGHT. IN TERMS OF – IN TERMS OF WHAT HE TOLD YOU ABOUT GOIN' TO GEORGIA AND TAKING A CAR, IS THAT A CORRECT STATEMENT THAT HE WENT TO GEORGIA AND TOOK A CAR FROM SOME PLACE NEAR MACON?

A YES, SIR.

Q OKAY. IS IT A TRUE STATEMENT THAT HE TOLD YOU THAT IN THE PROCESS OF COMING BACK TO SOUTH CAROLINA THAT HE CAME UPON A HIGHWAY PATROLMAN?

A YES, SIR.

Q AND THAT AFTER THAT HE WAS – WAS HE IN THE COMPANY OF SOMEONE AT THAT TIME?

A AT THE TIME WHEN HE RAN, WHEN HE CAME ABOUT THE TROOPER, YES, MELISSA MILLER WAS IN THE VEHICLE WITH HIM.

Q ALL RIGHT. LET ME ASK YOU, DID HE INDICATE WHETHER HE STOPPED OR NOT INITIALLY OR DIDN'T STOP? DID HE INDICATE THAT?

A I RECALL HE STOPPED AND INITIALLY FOR THE TROOPER AND GRIFFIN THAT WAS

IN THE PICKUP TRUCK SOMEWHERE BEHIND THEM. EXACTLY WHERE, I'M NOT SURE. AND HE INITIALLY STOPPED, BUT THEN HE TURNED -- TURNED AROUND IN THE HIGHWAY OFF THE SHOULDER OF THE ROAD AND PROCEEDED THE OTHER DIRECTION.

Q WAS IT HIS STATEMENT THAT HE WAS ABOUT OUT OF GAS AS HE WAS COMIN' TO SALUDA?

A IT WAS HIS STATEMENT.

Q AND WHAT WAS HIS STATEMENT ABOUT THE SPEED HE WAS DRIVING? DID HE MAKE ANY STATEMENT ABOUT THE SPEEDS THAT HE WAS DRIVING?

A WELL, I ASKED THE QUESTION DID HE RECALL HOW FAST HE WAS GOING DURING THE CHASE BECAUSE I WAS AWARE THAT THE VEHICLE THAT -- THAT CRASHED OR CAME -- CAME ABOUT IN THE VEHICLE COLLISION WAS A DECOMMISSIONED POLICE CAR. AND I WAS CURIOUS TO SEE HOW FAST THE SPEEDS OF THIS CHASE ACTULLY GOT.

Q DID HE ANSWER YOUR QUESTION?

A HE ANSWERED AND SAID I HAD IT PEGGED AT 140.

Q THOSE ARE HIS WORDS.

A THOSE ARE HIS WORDS.

Q WHAT WERE HIS WORDS ABOUT WHO HIT WHO IN THE INTERSECTION?

A HE MADE THE STATEMENT TO ME THAT -- THAT THE DEPUTY EASED UP OR PULLED UP INTO THE INTERSECTION AS HE WAS COMIN' THROUGH IT, AND STATED THAT THE DEPUTY TRIED TO RAM HIS VEHICLE.

Q OKAY. WITH REGARD TO HIS APPEARANCE, AGAIN, DID YOU INDICATE -- YOU INDICATED EARLIER THAT HE DID NOT APPEAR TO BE SUFFERING ILL EFFECTS OF HIS INJURIES. IS THAT CORRECT?

A THAT'S CORRECT.

Q WELL, WAS HE RESPONSIVE TO YOUR QUESTIONS WHEN YOU ASKED THEM?

A HE WAS RESPONSIVE, YES, SIR.

Q DID HE APPEAR TO UNDERSTAND YOUR QUESTIONS?

A YES, SIR.

Q YOU'VE HAD TRAINING AND EXPERIENCE IN IDENTIFYING THE EFFECTS OF ALCOHOL AND DRUGS UPON OTHER PEOPLE?

A I DO, YES, SIR.

Q DID HE APPEAR TO BE COHERENT IN YOUR MIND?

A YES, SIR.

Q DID HE -- DID YOU SEE ANY OUTWARD EFFECTS OF EITHER DRUGS OR INTOXICATION IN ANY FASHION THAT MIGHT'VE AFFECTED HIS ABILITY TO ANSWER YOUR QUESTIONS?

A NO, SIR.

Q AT ANY POINT DID YOU HAVE DOUBTS AS TO WHETHER OR NOT HE COULD UNDERSTAND AND RESPOND TO YOUR QUESTIONS?

A NO, SIR.

Q I HAVE NO FURTHER QUESTIONS.

THE COURT: RECROSS.

MR. FALGIONE: THANK YOU, YOUR HONOR.

RECROSS EXAMINATION

BY MR. FALGIONE

Q INVESTIGATOR ANTLEY, YOU'RE TRAINED -- YOU'RE NOT TRAINED AS A DOCTOR, ARE YOU?

A NO, SIR.

Q YOU'RE NOT TRAINED AS A PHARMACIST.

A NO, SIR.

INVESTIGATOR ANTLEY - RECROSS EXAMINATION BY MR. FALGIONE

Q SO THE TRAINING THAT MR. YOUNG JUST REFERRED TO IS PRIMARILY TOWARDS THE COURSE OF ILLEGAL DRUGS. IS THAT NOT TRUE?

A THAT'S TRUE.

Q AND YOU DON'T CLAIM TO HAVE KNOWLEDGE OF PRESCRIPTION DRUGS, DO YOU?

A NO, SIR.

Q AND, IN FACT, WHEN YOU INTERVIEWED MR. WILES YOU DIDN'T EVEN INQUIRE AS TO WHETHER OR NOT HE'D HAD ANY MEDICATION.

A NO, SIR.

Q OKAY. DID YOU INQUIRE ABOUT THE TREATMENT FOR HIS INJURIES, IF HE'D SUFFERED A CONCUSSION OR ANYTHING?

A NO, SIR, I DIDN'T.

Q OKAY. AND, AGAIN, MR. WILES' STATEMENTS AS RELAYED TO YOU ARE NOT FULLY CONTAINED WITHIN ANY SUMMARY THAT YOU'VE DONE. IS THAT CORRECT?

A CORRECT.

Q AND THEY ARE NOT CONTAINED IN ANY NOTES THAT HAVE BEEN PROVIDED TO MY OFFICE. IS THAT CORRECT?

A CORRECT.

Q AND THEY ARE NOT CONTAINED IN ANY AUDIO TRANSCRIPTIONS OR VIDEO TRANSCRIPTIONS. IS THAT CORRECT?

A THAT'S CORRECT.

Q THANK YOU.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN. ANY FURTHER WITNESSES IN THE JACKSON -VS- DENNO?

MR. YOUNG: NONE FROM THE STATE, YOUR HONOR.

THE COURT: MR. FALGIONE, DO YOU HAVE ANY EVIDENCE TO PRESENT ON THE JACKSON -VS- DENNO?

MR. FALGIONE: NO, YOUR HONOR.

THE COURT: ALL RIGHT. NOW WHAT ARE THE OTHER MOTIONS?

MR. FALGIONE: YOUR HONOR, THE OTHER MOTIONS ARE TO KEEP FROM THE HEARING OF THE JURY ANY REFERENCE TO ESCAPES FROM ANY CORRECTIONAL INSTITUTIONS BY MR. WILES. THEY'RE NOT PART OF THIS CASE, NOT PART OF THESE CHARGES.

THE COURT: YOU SAID ESCAPES, PLURAL?

MR. FALGIONE: YES, YOUR HONOR. PRIOR TO AND SUBSEQUENT.

THE COURT: ALL RIGHT. MR. YOUNG?

MR. YOUNG: WITH REGARD TO THE ESCAPES, YOUR HONOR, THE STATE WOULD LIKE TO BE HEARD ON THAT. WE DO HAVE WE BELIEVE EVIDENCE OF FLIGHT IS ALWAYS ADMISSIBLE. THE FACT THAT ESCAPE IS AN ASPECT OF FLIGHT, WE BELIEVE THAT THE ESCAPE ITSELF BEARS UPON MOTIVE AND INTENT CONNECTED WITH THIS. THE STATE HAS THE BURDEN OF PROOF IN THIS CASE, NOT ONLY IN CONNECTION WITH THE FAILURE TO STOP, BUT WITH REGARD TO ABWIK AS TO THE RECKLESSNESS AND WILFULLNESS AND WANTONNESS OF THE BEHAVIOR ASSOCIATED WITH THIS. MALICE IS AN ELEMENT OF PROOF IN ASSAULT AND BATTERY WITH INTENT TO KILL ALTHOUGH THERE'S ONLY A GENERAL INTENT TO BE PROVEN--

THE COURT: SLOW DOWN A LITTLE BIT.

MR. YOUNG: ALTHOUGH THERE'S ONLY A GENERAL INTENT TO KILL THAT NEEDS TO BE PROVED, IT MUST BE SUCH THAT HAD THE VICTIM DIED OF THIS PARTICULAR CHARGE, THIS PARTICULAR CASE, THE CHARGE OF MURDER WOULD BE APPROPRIATE, AND WE CAN EITHER FIND EXPRESS OR IMPLIED MALICE FROM THE CIRCUMSTANCES.

IN THIS PARTICULAR CASE, YOUR HONOR, THERE'S CASE LAW THAT DOES SUPPORT MALICE CAN BE INFERRED FROM EVIDENCE SHOWING A GROSS DISREGARD FOR THE SAFETY OF OTHERS AND THE BEHAVIOR ASSOCIATED WITH THIS KIND OF DRIVING, I DO HAVE A COUPLE OF CASES ON THAT AND IF I CAN FIND IT.

THERE'S STATE -VS- REED IN WHICH DRIVING SPEEDS UP TO 119 MILES PER HOUR. THIS IS FROM WEST COLUMBIA, UNTIL THE CRASH ENDED AT ALPINE ROAD AND I-20 IN COLUMBIA.

THERE'S A FAILURE TO STOP SITUATION AS WELL. IN THAT PARTICULAR CASE, THE COURT BASED ITS OPINION ON ALLOWING THAT EVIDENCE IN AS SAYING IT WAS NOT -- NOT STOPPING WAS BASED UPON THE DEFENDANT'S STATED DESIRE THAT HE DID NOT WANT TO GO BACK TO JAIL. IT WAS MADE TO OCCUPANTS. THAT WAS, I BELIEVE, A RECKLESS HOMICIDE SCENARIO. THE FAILURE TO STOP WITH DEATH.

THIS CASE WE ARE -- WE ARE RELYING UPON THE WILFULNESS AND THE WANTONNESS IN THE BEHAVIOR OF THE DRIVER WHICH WE INTEND TO OFFER EVIDENCE ABOUT TO DEMONSTRATE THE MALICE NECESSARY TO SUPPORT THE ABWIK CHARGE, AND WE BELIEVE, YOUR HONOR, THAT ESCAPE GOES ALONG WITH THAT TO DEMONSTRATE THAT HE WAS WILLING TO DO ANYTHING TO GET AWAY FROM THE POLICE. AND THE ESCAPE WAS MOTIVATING THAT. THERE IS OTHER CASE LAW I CAN POINT TO ON THE VIOLENT NATURE ISSUES ASSOCIATED WITH RECKLESSNESS AND THE INTENT TO KILL CAN BE INFERRED FROM THE SURROUNDING CIRCUMSTANCES. I HAVE TWO CASES IN THAT REGARD, YOUR HONOR. I DO ALSO -- WE'D POINT TO THE FACT THAT WE BELIEVE THIS IS PART OF THE RES GESTAE. UNDER 404(b), YOUR HONOR, WE HAVE A NEED TO EXPLAIN THE CIRCUMSTANCES BECAUSE IT WAS PART OF WHAT WAS HAPPENING. IT IS, IN FACT, THE UNDERLYING BASIS FOR HIS PRESENCE TO BEGIN WITH IN THIS COUNTY AND OTHER COUNTIES AS THE CHASE ENSUED. IN THE CONTEXT OF

THIS, YOUR HONOR, THIS IS NOT A DIRECTLY ON POINT ANALOGOUS CASE; THIS IS STATE VERSUS – IT'S A COURT OF APPEALS CASE, STATE -VS- JOHN WOOD. THIS IS A FAILURE TO STOP CASE IN WHICH – I'VE PROVIDED COUNSEL A COPY OF THAT – IN WHICH A HIGHWAY PATROLMAN HAD BEEN SHOT AND MURDERED TWO HOURS BEFORE OTHER EVENTS OCCURRED IN ANDERSON COUNTY. THE COURT – I BELIEVE THE CHARGES IN THAT CASE WERE MURDER IN ANDERSON COUNTY, I BELIEVE IT WAS, AND THE BOTTOM LINE IS IS THAT ESSENTIALLY THE COURT SAID THE PRIOR SHOOTING OF THE POLICE OFFICER 2 HOURS BEFORE IN ANOTHER COUNTY WAS PART OF THE RES GESTAE THAT SUPPORTED THE UNDERLYING MURDER CHARGE IN THAT CASE.

I BELIEVE, YOUR HONOR, AND I BELIEVE THE COURT ALSO WOULD TEND TO SUPPORT THE IDEA THAT THAT KIND OF BEHAVIOR UNDER CIRCUMSTANCES IN WHICH MALICE MUST BE SHOWN IN ORDER TO SUPPORT OUR CHARGE, WE'RE ALLOWED TO DEMONSTRATE THAT THE ESCAPE WAS MOTIVATING THE REASONS FOR NOT STOPPING AND TO SHOW THE RECKLESSNESS ASSOCIATED WITH THE BEHAVIOR AS HE WAS DRIVING.

THE COURT: MR. FALGIONE?

MR. FALGIONE: YOUR HONOR, THE ESCAPE IT'S IMPORTANT TO KNOW THAT HIS ESCAPE FROM ANY INSTITUTION OCCURRED A WEEK BEFORE THIS. THESE OFFICERS INCLUDING THE HIGHWAY PATROL THAT WENT ON THIS HIGH SPEED CHASE AND ANY OF THE SALUDA COUNTY OFFICERS DID NOT EVEN KNOW THAT HE HAD ESCAPED FROM PRISON DURING THE TIME OF ALL THIS. SO THAT CAN'T FAIRLY BE SAID THAT THAT REALLY ENTERS INTO THIS. THE PROBATIVE VALUE WHAT YOU THEN END UP DOING IF YOU ALLOW THIS EVIDENCE IS IS YOU NOW MAKE MR. WILES DECIDE BETWEEN GIVING UP HIS CONSTITUTIONAL RIGHT TO NOT TESTIFY AND FORCE HIM TO TAKE THE WITNESS STAND TO EXPLAIN THAT HE HAD TO ESCAPE FROM THESE OTHER PRISONS – BY THE

WAY -- CHARGES FOR WHICH HE'S PLED GUILTY AND RECEIVED 2 ONE-YEAR SENTENCES ON -- THEN HE HAD TO ESCAPE FROM THOSE PRISONS IN ORDER TO GET AWAY FROM GANGS THAT WERE THREATENING TO KILL HIM.

NOW THAT'S AN UNTENABLE POSITION AND IT CERTAINLY -- THE ESCAPE SCENARIO DOES NOTHING TOWARD ADDING PROBATIVE VALUE, BUT WHAT IT DOES DO IS INFLAME A JURY. AND, YOUR HONOR, THE PREJUDICE THAT MR. WILES WOULD INCUR BECAUSE OF THAT FAR OUTWEIGHS ANY NEED FOR COUNSEL ON THE PROSECUTION TO PROVIDE THAT INFORMATION.

YOUR HONOR, ADDITIONALLY, YOU KNOW, IF THEY -- IF THEY WANNA SAY THAT HIGH SPEED IS IN SUPPORT OF THEIR ABWIK, THE ASSAULT AND BATTERY WITH INTENT TO KILL PROVISION, THEY CAN DO THAT. YOU KNOW, WE'VE GOT THE HIGHWAY PATROL WHO'S GOING TO SAY THAT HE WAS CHASING MR. WILES AT A HIGH SPEED AND CERTAINLY HE CAN TESTIFY TO THAT. SO THE PROSECUTION'S CASE IS NOT DIMINISHED IN ANY WAY BY EXCLUDING THIS -- THIS BIT OF EVIDENCE. BUT IT CERTAINLY IS A PREJUDICIAL ISSUE AS IT RELATES TO MR. WILES.

THE COURT: WHAT OTHER MOTIONS DO YOU HAVE?

MR. FALGIONE: YOUR HONOR, OF COURSE, I WANT TO KEEP OUT ANY STATEMENTS MADE BY MR. WILES PRIOR TO THE ISSUANCE OF HIS MIRANDA WARNINGS. I'M NOT AWARE OF ANY STATEMENTS HAVING BEEN MADE, AND I DON'T BELIEVE THE PROSECUTION HAS ANY. MR. YOUNG'S BEEN VERY GOOD ABOUT PROVIDING ME WITH MATERIALS.

THE COURT: DO YOU HAVE ANY INFORMATION THAT HE GAVE ANY STATEMENTS PRIOR TO MIRANDA WARNINGS BEING GIVEN?

MR. YOUNG: YOUR HONOR HAS NO INTENTION -- THE STATE HAS NO INTENTION OF OFFERING ANYTHING OF THAT NATURE. WE DON'T HAVE ANY EVIDENCE OF IT.

MR. FALGIONE: AND, OF COURSE, YOUR HONOR, WE WOULD MOVE TO KEEP OUT ANY EVIDENCE OF MR. WILES' PRIOR CRIMINAL CONVICTIONS, AND THAT'S JUST BY WAY OF CAUTIONARY MOTION, YOUR HONOR. AND THE NEXT THING WE HAVE AND THE LAST THING WE WOULD HAVE WAS WE WOULD MOVE TO EXCLUDE ANY ESTIMATIONS OF SPEEDS OF THE VEHICLE BY ANYONE OTHER THAN SOMEONE WHO ACTUALLY CLOCKED MR. WILES DURING THE COURSE OF THIS PURSUIT OR PUT A RADAR OR SIMILAR LASER GUN OR SIMILAR SPEED MEASURING DEVICE UPON HIM.

YOUR HONOR, WHAT I AM ASKING THE COURT TO DO IS TO NOT ALLOW SOMEONE AFTER THE FACT TO RAISE A CONJECTURE BASED UPON SOME ESTIMATION THAT HAS OCCURRED WITH NO FACTUAL BINDING OR NO FACTUAL BASIS, EXCUSE ME, AS TO THEIR ANALYSIS OF HIS SPEED.

THE COURT: IS THAT ALL THE MOTIONS?

MR. FALGIONE: YES, YOUR HONOR.

MR. YOUNG: YOUR HONOR?

THE COURT: YES, SIR.

MR. YOUNG: FLIGHT IS A CONTINUING OFFENSE IF YOU'RE TRYING TO ESCAPE FROM THE POLICE. ESCAPE IS A CONTINUING OFFENSE UNTIL IT'S COMPLETED BY APPREHENSION. FAILURE TO STOP IS A CONTINUING OFFENSE UNTIL SUCH TIME AS IT'S CONCLUDED BY APPREHENSION. ALL THAT ENDED ACROSS THE STREET, YOUR HONOR, AFTER A CAR CRASH. THAT'S THE STATE'S POSITION ON THAT ADDITIONAL MATTER. WITH REGARD TO THE ESTIMATIONS OF SPEED, THE STATE WOULD SAY -- NOTE FOR THE RECORD, YOUR HONOR, THAT WE WILL OFFER CERTAIN PERSONS WHO HAVE BEEN DRIVING LOTS OF THEIR -- MOST OF THEIR LIVES AND FAMILIAR WITH THE ESTIMATES OF SPEED AND CAN ESTIMATE SPEED IN OTHER PEOPLE'S CARS AND THEIR CARS, AND I INTEND TO OFFER THAT, YOUR HONOR, ALONG WITH THE TESTIMONY OF THE POLICE

OFFICER WHO WAS PASSED BY THIS GENTLEMAN AS HE PROCEEDED DOWN THE SAME PATH. I INTEND TO OFFER THOSE ESTIMATES, YOUR HONOR. AND THERE WERE NO MEASURING DEVICES EXCEPT FOR THE FIRST ONE. I BELIEVE THAT WAS BY HIGHWAY PATROLMAN HEATH DAVIS.

THE COURT: ALL RIGHT. IS THAT IT?

MR. FALGIONE: IT IS, YOUR HONOR, AND, OF COURSE, WE STARTED THIS WHOLE MOTION IN LIMINE WITH A – WITH MY MOTION TO KEEP FROM THE PURVIEW OF THE JURY ANY INFORMATION ABOUT HIS ESCAPE FROM THE CORRECTIONAL INSTITUTION.

THE COURT: ALL RIGHT. WITH REGARD TO JACKSON -VS- DENNO, THE COURT HAS CAREFULLY CONSIDERED ALL THE EVIDENCE THAT HAS BEEN OFFERED BY THE STATE AND IS CONVINCED THAT THE STATE HAS MET THE REQUISITE DEGREE OF PROOF AND HAS ESTABLISHED BY AT LEAST CLEAR AND CONVINCING EVIDENCE THAT BEFORE ANY ALLEGED INCRIMINATING STATEMENT OR CONFESSION WAS OBTAINED THAT THE DEFENDANT WAS FULLY ADVISED OF HIS RIGHTS UNDER THE 5TH AND 6TH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND THAT HE WAS ADVISED OF HIS CONSTITUTIONAL SAFEGUARDS REQUIRED BY MIRANDA -VS- ARIZONA. LET ME SEE THOSE. SPECIFICALLY, HE WAS ADVISED—

MR. YOUNG: YOUR HONOR, I WANT TO MAKE SURE THAT YOU UNDERSTAND I DID NOT MAKE THOSE PART OF THE RECORD. WE'RE NOT INTENDING TO OFFER THE ENTIRE STATEMENT. WE ONLY WANT TO OFFER THAT PORTION OF THE STATEMENT WHICH WOULD GO TO THE PORTION OF TIME DURING THE ESCAPE THAT HE BEGAN TO, LET'S JUST SAY, OBTAIN THE VEHICLE FROM GEORGIA WHICH IS WHAT HE'S CHARGED WITH, AND FROM THAT POINT FORWARD THE STATE SHOULD BE ADMIS -- THE STATEMENT SHOULD BE ADMISSIBLE BEARING UPON THE FACTS. THE ESCAPE WAS SIMPLY PART OF THE RES GESTAE FROM THAT POINT FORWARD.

THE COURT: HE WAS ADVISED PRIOR TO ANY INTERROGATION THAT HE HAD THE RIGHT TO REMAIN SILENT, THAT IF HE WAIVED THAT RIGHT, ANY STATEMENT HE MADE WOULD BE USED AGAINST HIM IN COURT.

THAT HE HAD A RIGHT TO HAVE AN ATTORNEY AND TO TALK WITH AN ATTORNEY BEFORE QUESTIONING AND TO HAVE AN ATTORNEY PRESENT WITH HIM DURING QUESTIONS. IF HE DID NOT HAVE THE RESOURCES TO HIRE AN ATTORNEY, THAT ONE WOULD BE PROVIDED FOR HIM.

THAT HE HAD THE RIGHT TO STOP THE QUESTIONING AT ANY TIME, STOP ANSWERING QUESTIONS AT ANY TIME. HE HAD THE RIGHT TO HAVE A LAWYER PRESENT DURING QUESTIONING I THINK I'VE ALREADY SAID. THE STATE HAS ALSO ESTABLISHED THAT THE DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHTS UNDER THE 5TH AND 6TH AMENDMENTS OF THE CONSTITUTION IN THE MIRANDA CASE, THAT THE STATEMENT HE GAVE WAS THE PRODUCT OF HIS OWN FREE WILL GIVEN FREELY AND VOLUNTARILY WITHOUT DURESS, WITHOUT COERCION, WITHOUT UNDUE INFLUENCE, WITHOUT REWARD, PROMISE OR HOPE OF REWARD, PROMISE OF LENIENCY WITHOUT THREAT OF INJURY, WITHOUT ANY COMPULSION OR INDUCEMENT OF ANY KIND THAT WOULD BE IMPROPER, AND THAT THE STATEMENTS WERE THE PRODUCT OF THE VOLUNTARY FREE AND UNCONSTRAINED WILL OF THE DEFENDANT. THE STATEMENTS ARE ADMISSIBLE.

WITH REGARD TO THE STATEMENT, THERE IS NO NEED FROM THE COURT'S VIEW TO STATE THAT HE WAS IN SUPER MAX UNLESS HE'S ASKED ABOUT THAT, THE WITNESS IS ASKED ABOUT THAT.

MR. YOUNG: I AGREE WITH THAT, YOUR HONOR.

THE COURT: NOW WITH REGARD TO THE MOTIONS IN LIMINE, OBVIOUSLY, YOU GENTLEMEN KNOW THAT MOTIONS IN LIMINE ARE MOTIONS REQUESTING A

PRELIMINARY RULING. THEY CAN CHANGE AND THE RULINGS CAN CHANGE BASED ON WHAT'S BEEN PRESENTED IN THE TRIAL AND HOW SOMETHING DEVELOPS IN A TRIAL AND TO PRESERVE THE OBJECTION, THE OBJECTION HAS TO BE RAISED AT THE PROPER TIME DURING THE TRIAL. THE DEFENSE HAS FILED A WRITTEN MOTION IN LIMINE TO EXCLUDE CERTAIN STATEMENTS AND DOCUMENTS. I'M CERTAINLY NOT RULING THAT THE WRITTEN SUMMARY IS ADMISSIBLE IN ITS WRITTEN FORM. I DON'T WANT ANYBODY TO MISUNDERSTAND THAT. I HAVEN'T BEEN ASKED TO MAKE THAT RULING.

WITH REGARD TO THE REQUEST TO EXCLUDE EVIDENCE RELATED TO THE DEFENDANT'S ESCAPE, THE MOTIONS HAVE BEEN STATED USING THE WORD ESCAPES, PLURAL. THE ONLY ESCAPE THAT'S RELEVANT IS THE ESCAPE FROM RIDGELAND THAT THE WITNESS TESTIFIED ABOUT. AT THIS POINT THAT'S THE ONLY ESCAPE THAT I SEE THAT WOULD BE RELEVANT. SO IF THERE IS ANY OTHER ESCAPE OR ESCAPE ATTEMPT, THAT WOULD NOT BE ADMISSIBLE; HOWEVER, THE ESCAPE IS NECESSARY TO ALLOW INTO EVIDENCE TO SHOW THE RES GESTAE. ALSO, UNDER RULE 404 TO SHOW MOTIVE, ABSENCE OF MISTAKE OR ACCIDENT AND INTENT. AT LEAST THOSE THINGS. MR. FALGIONE'S STATEMENT THAT THE -- WHAT THE OFFICERS KNEW ABOUT IT AT THE TIME I CERTAINLY ACCEPT, BUT THE REASON FOR ADMITTING THE EVIDENCE IS NOT TO SHOW WHAT THE OFFICERS HAD IN THEIR MIND, BUT WHAT THE DEFENDANT HAD IN HIS MIND. AND THE JURY CAN TAKE THAT EVIDENCE AND USE IT FOR WHATEVER PURPOSE THEY DEEM APPROPRIATE.

WITH REGARD TO STATEMENTS PRIOR TO MIRANDA, THERE ARE NONE THAT I KNOW ANYTHING ABOUT.

PRIOR CRIMINAL CONVICTIONS, THERE'D BE NO NEED TO GO INTO THOSE UNLESS WE REACH THE STAGE WHERE IT'S NECESSARY.

WITH REGARD TO ESTIMATION OF SPEED, MY UNDERSTANDING OF THE LAW

THAT IT IS PRETTY WELL ESTABLISHED IN THIS STATE THAT PEOPLE CAN TESTIFY ABOUT ESTIMATIONS RELATED TO SPEED, AND THEIR QUALIFICATIONS TO GAUGE SPEED GO MORE TO THE WEIGHT OF THE EVIDENCE AND NOT THE ADMISSIBILITY OF IT. THAT'S SOMETHING FOR THE JURY TO EVALUATE. BUT PRETTY MUCH ANYBODY IN THIS STATE CAN ESTIMATE SPEED OF A MOTOR VEHICLE AND HAVE THAT ESTIMATION GO BEFORE THE JURY FOR THE JURY TO EVALUATE.

DID I RULE ON ALL OF 'EM? AND THE 40 – THE 403 OBJECTION IS OVERRULED. THE COURT HAS IN ALL OF THIS BALANCED THE PREJUDICIAL EFFECT AND PROBATIVE VALUE, AND I THINK IT'S NECESSARY TO SEND IT TO A FAIR TRIAL AND THE STATE BE ALLOWED TO PRESENT EVIDENCE RELATED TO THE ESCAPE AND THE SPEEDS OF THE CHASE. THE LENGTH OF THE CHASE AND ALL THAT. ALL RIGHT. ANYTHING ELSE BEFORE LUNCH?

MR. YOUNG: YOUR HONOR, IF WE GO AHEAD AND TAKE LUNCH, THAT WOULD BE GREAT. WHAT WE NEED TO DO IS IF WE DO HAVE ADDITIONAL MATTERS WE CAN COVER BY – ON THE PHOTOGRAPHS, BUT WE'LL HAVE TO DO THAT AFTER LUNCH.

MR. FALGIONE: WE CAN TAKE THAT UP AND BE PREPARED TO STIPULATE TO THAT.

THE COURT: ALL RIGHT. WELL, HERE'S THE THING. MR. WILES APPARENTLY IS CONSIDERED AN ESCAPE RISK, AND WE HAVE A HIGH LEVEL OF SECURITY HERE, AND HE IS IN LEG SHACKLES. I INSTRUCTED THE CLERK OF COURT TO DRAPE THE TABLE, AND THE JURY HAS NOT SEEN MR. WILES YET. WE HAD THE JURY LEAVE THE COURTHOUSE, THE COURTROOM AND TOLD THEM THEY COULD NOT BE ON THIS FLOOR WHERE THE HOLDING CELL IS LOCATED IS ON THIS SAME FLOOR. BUT WHEN THEY START SHOWING BACK UP AND PROBABLY THEY'RE SHOWIN' UP NOW, I GOTTA BE ABLE TO GET HIM IN HERE WITHOUT THE JURY SEEING HIM IF HE'S GONNA BE IN LEG IRONS.

SO IF Y'ALL GOT A BUNCHA MOTIONS, THAT'S FINE. BUT Y'ALL GIVE SOME THOUGHT TO THAT. I MEAN WE'VE ONLY GOT 28 MINUTES FOR LUNCH. COURT'S IN RECESS TILL 2 O'CLOCK. Y'ALL NEED TO CHECK OUTSIDE AND MAKE SURE THERE ARE NO JURORS OUT THERE. (THERE WAS A LUNCH RECESS.)

MR. FALGIONE: YOUR HONOR, TWO OFFICERS FROM THE DEPARTMENT OF CORRECTIONS, PER THEIR POLICY, ARE SEATED BEHIND MY CLIENT. OF COURSE, OBVIOUSLY, THAT'S GONNA TELEGRAPH TO THAT JURY MY CLIENT'S STILL INCARCERATED, AND IT MAY ALSO RELATE TO THAT JURY THAT HE'S A THREAT OF FLIGHT, AND SOME OF THOSE OTHER QUALIFICATIONS THAT MIGHT PREJUDICE HIM. I JUST WISH TO PUT MY OBJECTION ON THE RECORD AND ASK THE COURT TO MAKE WHATEVER RULING IS APPROPRIATE REGARDING THE STATIONING OF THE GUARDS.

THE COURT: OBJECTION IS NOTED. AS LONG AS THEY SIT WHERE THEY'RE SITTING WHICH IS ON THE BENCH BEHIND THE DEFENDANT, I DON'T HAVE ANY PROBLEMS WITH IT. I NOTE YOUR OBJECTION. LET THE JURY IN.

THE COURT: ALL RIGHT. ALL THE JURORS IN? CALL YOUR CASE, SOLICITOR.

MR. YOUNG: STATE OF SOUTH CAROLINA CALLS DOCKET #2004 GS-41-091 THE STATE OF SOUTH CAROLINA -VS- SHAWN WAYNE WILES THE INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL. THE STATE CALLS DOCKET #2006-GS-41-078 FAILURE TO STOP FOR A BLUE LIGHT STATE OF SOUTH CAROLINA -VS- SHAWN WILES. THE STATE ALSO CALLS 2006-GS-41-139 STATE OF SOUTH CAROLINA -VS- SHAWN WILES FOR POSSESSION OF A STOLEN VEHICLE.

THE COURT: LADIES AND GENTLEMEN, PLEASE, GIVE ME YOUR ATTENTION. WE'RE ABOUT TO QUALIFY A JURY THAT WILL HEAR 3 SEPARATE AND DISTINCT INDICTMENTS EACH OF WHICH IS CAPTIONED THE STATE -VS- SHAWN WAYNE WILES. IN ONE INDICTMENT MR. WILES IS CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO

KILL. THAT INDICTMENT ALLEGES THAT IN SALUDA COUNTY ON OR ABOUT DECEMBER THE 26TH 2003, THAT SHAWN WAYNE WILES DID FELONIOUSLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT COMMIT AN ASSAULT AND BATTERY WITH INTENT TO KILL DEPUTY FRANK DANIELS BY RAMMING THE PATROL VEHICLE OPERATED BY DEPUTY DANIELS WITH ANOTHER MOTOR VEHICLE.

ANOTHER INDICTMENT CHARGES FAILURE TO STOP FOR A BLUE LIGHT. THAT INDICTMENT ALLEGES THAT SHAWN WAYNE WILES DID IN SALUDA COUNTY ON OR ABOUT DECEMBER THE 26TH 2003, WILFULLY, KNOWINGLY AND UNLAWFULLY FAIL TO STOP A MOTOR VEHICLE WHILE DRIVING ON A ROAD, STREET OR HIGHWAY OF THE STATE WHEN TROOPER HEATH DAVIS, A LAW ENFORCEMENT OFFICER OF THE HIGHWAY PATROL SIGNALED AND SOUNDED FOR -- SIGNALED AND SOUNDED HIS SIREN AND/OR TURNED ON THE FLASHING BLUE LIGHT.

AND THE THIRD INDICTMENT CHARGES POSSESSION OF A STOLEN VEHICLE VALUED AT MORE THAN 1000 BUT LESS THAN $5000. THAT INDICTMENT ALLEGES THAT SHAWN W. WILES DID IN SALUDA COUNTY ON OR ABOUT DECEMBER THE 26TH 2003, UNLAWFULLY, KNOWINGLY AND INTENTIONALLY RECEIVE OR POSSESS A STOLEN VEHICLE, SPECIFICALLY, A 1997 FORD SEDAN OWNED BY PRECISION COLLISION CENTER LLC BYRON, GEORGIA, KNOWING IT TO BE STOLEN OR CONVERTED UNDER CIRCUMSTANCES CONSTITUTING A CRIME.

NOW UPON HIS ARRAIGNMENT ON THESE CHARGES MR. WILES HAS ENTERED PLEAS OF NOT GUILTY. HE IS PRESUMED TO BE INNOCENT. IT IS INCUMBENT UPON THE STATE OF SOUTH CAROLINA HAVING BROUGHT THESE CHARGES TO PROVE EACH OF THEM BEYOND A REASONABLE DOUBT. I'M GOING TO BE ASKING YOU A SERIES OF QUESTIONS. IF ANY OF THESE QUESTIONS APPLY TO YOU OR IF YOU HAVE ANY DOUBT ABOUT WHETHER THEY APPLY TO YOU, YOU NEED TO STAND. WHEN I CALL ON YOU,

YOU NEED TO IDENTIFY WHO YOU ARE; LISTEN CAREFULLY TO THE QUESTIONS THAT I ASK, AND ANSWER THAT QUESTION.

ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR CONNECTED BY EMPLOYMENT WITH THE DEFENDANT IN THESE CASES SHAWN WAYNE WILES? IF SO, PLEASE, STAND.

MR. WILES WILL BE REPRESENTED BY MR. ADRIAN FALGIONE.

THE POSSIBLE WITNESSES FOR THE STATE INCLUDE THE FOLLOWING PERSONS. IF I STATE ANY OF THESE NAMES INCORRECTLY, PLEASE, CORRECT ME. INVESTIGATOR WILLIAM SHAEKL OF THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

MR. YOUNG: SHAEKL, YOUR HONOR.

THE COURT: SHAEKL. INVESTIGATOR EDDIE O'CAIN OF THE OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF CORRECTIONS.

INVESTIGATOR GREG ANTLEY OF THE OFFICE OF INSPECTOR GENERAL WITH THE DEPARTMENT OF CORRECTIONS.

HEATH DAVIS OF THE SOUTH CAROLINA HIGHWAY PATROL.

INVESTIGATOR WESLEY BOLAND OF THE NEWBERRY COUNTY SHERIFF'S OFFICE.

INVESTIGATOR ROBERT DENNIS OF THE NEWBERRY COUNTY SHERIFF'S OFFICE.

CAPTAIN ROBERT SHORTER OF SALUDA COUNTY SHERIFF'S OFFICE.

DEPUTY FRANK DANIELS OF THE SALUDA COUNTY SHERIFF'S OFFICE.

DEPUTY STEPHEN BYRD OF THE SALUDA COUNTY SHERIFF'S OFFICE.

OFFICER DON DENNY OF THE SALUDA POLICE DEPARTMENT.

MIKE ROWLETTE OF E.M.T. IN SALUDA.

WENDY DEASON OF E.M.T. IN SALUDA.

GARY L. DAVIS OF PRECISION COLLISION CENTER, BYRON, GEORGIA.

MS. MARY RUTH MAE HOLMES OF SALUDA COUNTY.

ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR CONNECTED BY EMPLOYMENT WITH ANY OF THE POTENTIAL WITNESSES FOR THE STATE? IF SO, PLEASE, STAND. YOUR NAME, SIR?

THE JUROR: CHARLES RICKLEY (204)

THE COURT: HOLD ON JUST A MINUTE. ALL RIGHT. MR. RICKLEY IS JUROR #204. WHAT'S YOUR SITUATION, SIR?

THE JUROR: IF I'M NOT MISTAKEN I USED TO WORK WITH DEPUTY FRANK DANIELS AT HONEYWELL SEVERAL YEARS BACK.

THE COURT: ALL RIGHT.

THE JUROR: USED TO BE WITH HIM AT ALLIED SIGNAL.

THE COURT: IS THERE ANYTHING ABOUT YOUR RELATIONSHIP OR EXPERIENCE WITH HIM THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: DO YOU HAVE ANY DOUBT IN YOUR MIND ABOUT THAT?

THE JUROR: NO, SIR.

THE COURT: JUST ANSWER THIS QUESTION YES OR NO. IF YOU NEED TO GO BEYOND THAT, COME DOWN FRONT. HAVE YOU EVER FORMED IN YOUR OWN MIND OR EXPRESSED TO ANYONE ELSE AN OPINION AS TO WHETHER HE IS BELIEVABLE OR NOT?

THE JUROR: NO, SIR.

THE COURT: THANK YOU, SIR. YOU CAN HAVE A SEAT. JUROR #204 MR. RICKLEY IS ELIGIBLE TO SERVE. THE STATE WILL BE REPRESENTED BY MR. FRANK YOUNG WHO IS AN ASSISTANT SOLICITOR IN THE 11TH CIRCUIT. LADIES AND GENTLEMEN, THIS INCIDENT, AS YOU'VE HEARD, IS ALLEGED TO HAVE OCCURRED ON OR ABOUT DECEMBER THE 26TH 2003. SO OBVIOUSLY THAT'S THE DAY AFTER CHRISTMAS 2003. THIS

INCIDENT IS ALLEGED TO HAVE ARISEN FROM A POLICE CHASE THAT ULTIMATELY WOUND UP WITH ONE OF THE VEHICLES RUNNING INTO A BUILDING ACROSS THE STREET. HAVE ANY OF YOU HEARD, SEEN OR READ ANYTHING ABOUT THIS CASE TO THE BEST OF YOUR KNOWLEDGE? IF SO, PLEASE, STAND. ANYBODY ELSE? WHAT'S THE NAME OF THE BUILDING? IS THAT WHERE THE LAW OFFICE IS NOW? IT WAS DELTA LOAN?

MR. YOUNG: YES, SIR.

THE COURT: ALL RIGHT. IF YOU'VE HEARD, SEEN OR READ ANYTHING ABOUT THE CASE, IF ANYBODY'S TALKED TO YOU ABOUT ANYTHING RELATED TO -- WHEN I SAY THE CASE NOW I MEAN THE ENTIRE MATTER THAT'S ALLEGED. I DON'T NECESSARILY MEAN ANY KINDA LEGALISTIC SENSE OF THE CASE. I MEAN DO YOU KNOW ANYTHING AT ALL ABOUT THIS MATTER EITHER THROUGH READING ANYTHING IN THE MEDIA, ANYBODY TALKIN' TO YOU OR SEEIN' ANYTHING ON TV, HEARING ANYTHING ON THE RADIO OR ANYTHING LIKE THAT. ANY SOURCE. ALL RIGHT, FOLKS, FORM A LINE OVER HERE, PLEASE, TO MY LEFT. THE LAWYERS MAY JOIN ME ON THE SIDE. (THE FOLLOWING OCCURRED ON THE RECORD BUT OUTSIDE THE HEARING OF THE COURTROOM.) YES, SIR. WHAT'S YOUR NAME, SIR?

THE JUROR: SYLVESTER CULBREATH.

THE COURT: HE'S JUROR #42. WHAT DO YOU RECALL?

THE JUROR: I READ ABOUT THAT IN THE SALUDA, THE PAPER SENTINEL.

THE COURT: YOU RECALL ANY SPECIFICS ABOUT WHAT YOU READ?

THE JUROR: NO MORE THAN HE WAS TRYIN' TO ESCAPE FROM THE, YOU KNOW, THE OFFICERS THAT WERE CHASIN' HIM AND THAT HE RAMMED THE VEHICLE INTO DEPUTY DANIEL'S VEHICLE.

THE COURT: IS THERE ANYTHING AT ALL ABOUT WHAT HAVE HEARD, SAW OR

READ THROUGH THE MEDIA THAT WOULD IN ANY WAY AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO.

THE COURT: YOU UNDERSTAND THAT IF YOU'RE ON THIS JURY THAT YOU'LL BE UNDER AN OATH IN WHICH YOU PROMISE US THAT YOU'RE DECIDING THE CASE BASED ON THE EVIDENCE PRESENTED IN THE COURTROOM AND THE LAW THAT I TELL YOU. YOU UNDERSTAND THAT?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANYTHING ABOUT WHAT YOU HAVE READ OR SEEN OR HEARD THAT WOULD AFFECT YOUR ABILITY TO FOLLOW THAT INSTRUCTION?

THE JUROR: NO, SIR.

THE COURT: ARE YOU CONFIDENT THAT YOU CAN DECIDE THE CASE WITHOUT REGARD TO WHAT YOU MAY HAVE SEEN, HEARD OR READ THROUGH THE MEDIA?

THE JUROR: YES, SIR.

THE COURT: ANY DOUBT IN YOUR MIND ABOUT ANY OF THIS?

THE JUROR: NO DOUBT, SIR.

THE COURT: THANK YOU VERY MUCH. MR. CULBREATH IS JUROR #42. HE'S ELIGIBLE TO SERVE. YOUR NAME?

THE JUROR: SYLVIA LINDLER.

THE COURT: MS. LINDLER IS 103. WHAT'S YOUR SITUATION, MA'AM?

THE JUROR: I JUST REMEMBER SEEING IT I REMEMBER SEEING IT ON TV AND I HAVE A SUBSCRIPTION TO THE LOCAL PAPER AND THE STORY HE CRASHED INTO THE BUILDING UPON A CHASE. THAT'S ABOUT IT.

THE COURT: ALL RIGHT. YOU UNDERSTAND THAT IF YOU'RE ON A JURY YOU'LL BE UNDER AN OATH THAT YOU PROMISE US TO DECIDE THE CASE BASED ON THE

EVIDENCE PRESENTED IN THE COURTROOM?

THE JUROR: YES, SIR.

THE COURT: WOULD YOU BE ABLE TO PUT ASIDE WHATEVER YOU SAW, HEARD OR READ THROUGH THE MEDIA AND DECIDE THE CASE BASED ONLY ON THE EVIDENCE?

THE JUROR: NO, SINCE I'VE ALREADY HEARD THAT.

THE COURT: ALL RIGHT. I'LL SET YOU ASIDE. DON'T DISCUSS ANY OF THAT WITH YOUR FELLOW JURORS. OKAY?

THE JUROR: OKAY.

THE COURT: MS. LINDLER IS JUROR 103. SHE'S SET ASIDE ON THIS TRIAL. YES, MA'AM? WHAT'S YOUR NAME?

THE JUROR: BETTY CORLEY #33.

THE COURT: OKAY. MS. CORLEY JUROR #33. WHAT'S YOUR SITUATION?

THE JUROR: I BELIEVE I HEARD IT AT CHURCH. WHEN I GOT TO CHURCH I THINK I HEARD THERE WAS AN ACCIDENT IN SALUDA TOWN. I KNOW IT CAME OUT IN THE PAPER. I DON'T REMEMBER A WHOLE LOT ABOUT IT, BUT I KNOW I HEARD—

THE COURT: OKAY. YOU REMEMBER ANY SPECIFICS AT ALL?

THE JUROR: I BELIEVE TO BE HONEST I WOULDN'T KNOW.

THE COURT: OKAY. THAT'S ALL I WANT YOU TO DO IS BE HONEST. WAIT A SECOND. I'M NOT THROUGH YET. YOU UNDERSTAND IF YOU'RE ON THIS JURY YOU WOULD BE UNDER AN OATH WHERE YOU PROMISED US YOU WOULD DECIDE THE CASE BASED ON THE EVIDENCE PRESENTED IN THE COURTROOM? JUST ANSWER OUT LOUD. SAY YES OR NO.

THE JUROR: YES.

THE COURT: DO YOU HAVE ANY DOUBT AT ALL ABOUT YOUR ABILITY TO PUT ASIDE WHAT YOU MAY HAVE SEEN, HEARD OR READ THROUGH OTHER SOURCES AND

DECIDE THIS CASE BASED ON THE EVIDENCE?

THE JUROR: YES.

THE COURT: I'LL SET YOU ASIDE ON THIS CASE, MS. CORLEY. DON'T DISCUSS ANY OF THAT WITH YOUR FELLOW JURORS. ALL RIGHT? MS. CORLEY IS 33. SHE'S SET ASIDE ON THE FIRST TRIAL. YES, SIR? YOUR NAME, PLEASE.

THE JUROR: ABRAHAM LEE MOON.

THE COURT: OKAY. MR. MOON 122. WHAT'S YOUR SITUATION?

THE JUROR: I HEARD ABOUT THE INCIDENT DURIN' THAT PARTICULAR DAY AND THEN I SAW IT ON THE NEWS THAT EVENIN'.

THE COURT: YOU REMEMBER ANY SPECIFICS ABOUT WHAT YOU MAY HAVE HEARD OR WHAT YOU MAY HAVE SEEN ON THE NEWS?

THE JUROR: ONLY THAT IT CULMINATED AT THE BUILDIN' THERE.

THE COURT: OKAY. YOU UNDERSTAND THAT IF YOU'RE ON THIS JURY, MR. MOON, YOU'LL PROMISE US THAT YOU WILL DECIDE THE CASE ON THE EVIDENCE THAT YOU HEAR IN THE COURTROOM?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANYTHING ABOUT WHAT YOU MAY HAVE HEARD, SEEN OR READ THAT WOULD AFFECT YOUR ABILITY TO DECIDE THE CASE BASED ONLY ON WHAT'S PRESENTED IN THE COURTROOM?

THE JUROR: NO, SIR.

THE COURT: YOU HAVE ANY DOUBT IN YOUR MIND ABOUT YOUR ABILITY TO PUT ASIDE ANYTHING YOU MAY HAVE HEARD OR SEEN THROUGH THE MEDIA AND DECIDE THIS CASE BASED ONLY ON THE EVIDENCE?

THE JUROR: NO, SIR.

THE COURT: THANK YOU, SIR. HAVE A SEAT BACK THERE. MR. MOON IS 122.

HE'S ELIGIBLE TO SERVE. YES, SIR?

THE JUROR: DANNY HIGHTOWER.

THE COURT: MR. HIGHTOWER IS JUROR #82. WHAT'S YOUR SITUATION, SIR?

THE JUROR: I'VE HEARD ABOUT, YOU KNOW, ACTUALLY WHAT HAPPENED.

THE COURT: WHAT DID YOU HEAR?

THE JUROR: THAT THERE WAS A HIGH SPEED CHASE AND THEY ENDED UP BUMPING HIM ON THE BUMPER AND MAKIN' HIM GO INTO DELTA LOAN OFFICE ACROSS THE ROAD.

THE COURT: MR. HIGHTOWER, IF YOU WERE ON THIS JURY DO YOU UNDERSTAND THAT YOU'D BE UNDER AN OATH THAT YOU WOULD PROMISE US THAT YOU WOULD DECIDE---

THE JUROR: YES, SIR.

THE COURT: —THE CASE ON THE EVIDENCE PRESENTED IN THE COURTROOM?

THE JUROR: YES, SIR.

THE COURT: DO YOU HAVE ANY DOUBT AT ALL ABOUT YOUR ABILITY TO PUT ASIDE WHAT YOU MAY HAVE HEARD, SEEN OR READ AND DECIDE THIS CASE BASED ONLY ON THE EVIDENCE PRESENTED IN THE COURTROOM?

THE JUROR: YES, SIR.

THE COURT: YOU HAVE SOME DOUBT?

THE JUROR: NO, SIR, I MEANT---

THE COURT: ARE YOU CONFIDENT YOU CAN DECIDE THE CASE BASED ON THE EVIDENCE?

THE JUROR: YES, SIR.

THE COURT: WHAT ARE YOUR SOURCES OF INFORMATION? DO YOU RECALL?

THE JUROR: I WORK IN JOHNSTON -- WELL, I USED TO WORK IN TRENTON, AND I

COME THROUGH HERE EVERY MORNIN', AND, YOU KNOW, PEOPLE TALK. AND JUST GOSSIP.

THE COURT: THANK YOU VERY MUCH. MR. HIGHTOWER IS JUROR #82. HE'S ELIGIBLE TO SERVE. OKAY. MR. TAYLOR?

THE JUROR: IF I'M NOT MISTAKEN, IS THIS THE FELLOW WHO ESCAPED FROM THE RIDGELAND CORRECTIONAL INSTITUTUION?

THE COURT: HE'S ACCUSED OF THAT.

THE JUROR: WE SEARCHED FOR HIM WITH OUR POLICE DEPARTMENT THE FIRST COUPLE OF DAYS HE ESCAPED.

THE COURT: I'M GONNA SET YOU ASIDE ON THIS CASE. DON'T DISCUSS ANY OF IT WITH YOUR FELLOW JURORS. MR. TAYLOR IS JUROR 172. HE'S SET ASIDE ON THIS TRIAL. YES, MA'AM? YOUR NAME, PLEASE.

THE JUROR: CAROL MARTIN. 109.

THE COURT: OKAY, MS. MARTIN, WHAT'S YOUR SITUATION?

THE JUROR: I GET THE SENTINEL AND IT HAD AN ARTICLE IN THE PAPER. AND I WAS IN TOWN THE DAY THE INCIDENT OCCURRED. SO I RODE BY THE BUILDING AND SAW THE TAPE AND THE BROKEN GLASS AND I AM AN ACQUAINTANCE OF SOMEONE WHO WORKED IN THE BUILDING AT THE TIME.

THE COURT: DID THAT PERSON TALK TO YOU ABOUT THE SITUATION?

THE JUROR: THAT PERSON DIDN'T, BUT THE PERSON'S MOTHER DID.

THE COURT: IS THERE ANYTHING ABOUT ANY OF THAT THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

THE JUROR: I'M NOT SURE.

THE COURT: I'LL SET YOU ASIDE ON THIS CASE. DON'T DISCUSS ANY OF IT WITH YOUR FELLOW JURORS, PLEASE. MS. MARTIN IS 109. SHE'S SET ASIDE ON THE FIRST

TRIAL. YES, SIR?

THE JUROR: SCOTT MARTIN.

THE COURT: MR. MARTIN, WHAT'S YOUR SITUATION?

THE JUROR: I MEAN I GET THE SALUDA SENTINEL PAPER, AND A FRIEND OF MINE WAS ACTUALLY MANAGING THE DELTA LOAN OFFICE AT THE TIME OF THE ACCIDENT. IT DIDN'T TAKE LONG FOR US TO FIND OUT ABOUT IT.

THE COURT: OKAY. IS THERE ANYTHING ABOUT YOUR SITUATION THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: YES.

THE COURT: I'M GONNA SET YOU ASIDE. DON'T DISCUSS ANY OF THAT WITH YOUR FELLOW JURORS, PLEASE. 110 MR. MARTIN IS SET ASIDE ON THE TRIAL OF THIS CASE. YOUR NAME, SIR?

THE JUROR: ISSAC MILTON.

THE COURT: WHAT'S YOUR SITUATION, SIR?

THE JUROR: I JUST -- I SAW WHERE THE ACCIDENT HAPPENED WHERE THE MAN -- WHERE THE WRECK WAS AND JUST SOMEONE TOLD ME THAT, YOU KNOW, THE POLICE WAS BEHIND SOMEBODY AND, YOU KNOW, THEY RAN INTO THAT BUILDIN'. THAT'S ALL I KNOW ABOUT IT.

THE COURT: YOU REMEMBER ANY OTHER SPECIFICS OF WHAT YOU MIGHT'VE HEARD OR READ OR BEEN TOLD?

THE JUROR: NO.

THE COURT: OKAY. YOU UNDERSTAND, MR. MILTON, THAT IF YOU'RE ON THIS JURY YOU'LL BE UNDER OATH THAT YOU WILL DECIDE THE CASE BASED ON THE EVIDENCE PRESENTED IN THE COURTROOM?

THE JUROR: YES.

THE COURT: OKAY. IS THERE ANYTHING AT ALL ABOUT WHAT YOU MIGHT'VE HEARD, SEEN OR READ, BEEN TOLD BY ANYONE THAT WOULD AFFECT YOUR ABILITY TO DECIDE THE CASE BASED ONLY ON THE EVIDENCE IN THE COURTROOM?

THE JUROR: NO.

THE COURT: IS THERE ANY DOUBT IN YOUR MIND ABOUT THAT?

THE JUROR: I DON'T HAVE ANY DOUBT.

THE COURT: THANK YOU, SIR. MR. MILTON IS 120. HE'S ELIGIBLE TO SERVE. HAVE A SEAT BACK THERE, PLEASE. YES, SIR? YOUR NAME?

THE JUROR: JAMES NEAL.

THE COURT: MR. NEAL, WHAT'S YOUR SITUATION, PLEASE?

THE JUROR: I HAPPENED TO BE IN SALUDA THAT AFTERNOON AFTER THE WRECK HAPPENED AND I SEEN THE CAR SITTIN' IN DELTA LOANS THERE, AND THEN I DID SEE BEFORE AND AFTER THAT NIGHT AFTERWARDS.

THE COURT: YOU SAW IT, WHAT, ON TELEVISION?

THE JUROR: YEAH.

THE COURT: IS THERE ANYTHING ABOUT YOUR SITUATION THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

THE JUROR: NO, SIR.

THE COURT: YOU UNDERSTAND THAT IF YOU'RE ON THE JURY, YOU'RE PROMISIN' US THAT YOU'RE GONNA DECIDE THIS CASE BASED ON THE EVIDENCE PRESENTED IN THE COURTROOM?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANYTHING AT ALL ABOUT WHAT YOU'VE HEARD OR WHAT YOU SAW ON THE MEDIA, WHAT YOU SAW THAT DAY THAT AFFECTS YOUR ABILITY TO PROMISE US THAT YOU'LL DECIDE THE CASE ONLY ON THE EVIDENCE IN THE

COURTROOM?

THE JUROR: NO, SIR.

THE COURT: SO IF THEY DON'T BRING SOMETHING OUT THAT YOU SAW THAT DAY, YOU CAN DISREGARD IT?

THE JUROR: WELL, I MEAN I REALLY DIDN'T SEE NOTHIN' BUT JUST THE CAR INTO THE—

THE COURT: SUPPOSE THEY DON'T SAY ANYTHING ABOUT THAT?

THE JUROR: IF THEY DON'T SAY ANYTHING ABOUT IT, THEN, YOU KNOW, ALL I SAW -- I KNOW -- THAT'S ALL I SAW.

THE COURT: WHAT I'M ASKIN' YOU IS WOULD YOU BE ABLE TO PUT ASIDE WHAT YOU YOURSELF SAW IF IT IN SOME WAY CONFLICTED WITH WHAT THE EVIDENCE WAS OR IF THEY DIDN'T BRING SOMETHING OUT?

THE JUROR: NO, SIR, I DON'T THINK I COULD.

THE COURT: I DON'T THINK YOU COULD EITHER. I KNOW I COULDN'T. I'LL SET YOU ASIDE ON THIS TRIAL. OKAY?

THE JUROR: OKAY.

THE COURT: MR. NEAL IS JUROR #127. HE'S SET ASIDE ON THIS TRIAL. YES, MA'AM? WHAT'S YOUR NAME?

THE JUROR: MARY ANN LORICK.

THE COURT: LAWRENCE?

THE JUROR: LORICK L-O-R-I-C-K.

THE COURT: OKAY, MS. LORICK, WHAT'S YOUR SITUATION?

THE JUROR: I JUST SEEN IT -- I SAW IT IN THE PAPER.

THE COURT: WHICH PAPER WAS THAT?

THE JUROR: THE SALUDA SENTINEL.

THE COURT: YOU REMEMBER WHAT YOU MAY HAVE READ IN THE PAPER?

THE JUROR: NO, SIR.

THE COURT: DON'T REMEMBER ANY SPECIFICS?

THE JUROR: NO, SIR.

THE COURT: MS. LORICK, IF YOU'RE ON THIS JURY, YOU UNDERSTAND YOU'LL PROMISE US THAT YOU'LL DECIDE THE CASE BASED ON THE EVIDENCE SUBMITTED IN THE COURTROOM?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANY DOUBT IN YOUR MIND ABOUT YOUR ABILITY TO PUT ASIDE WHAT YOU MIGHT'VE SEEN, HEARD OR READ THROUGH THE MEDIA?

THE JUROR: NO, SIR.

THE COURT: SO YOU CAN DECIDE THIS CASE BASED ONLY ON THE EVIDENCE?

THE JUROR: YES.

THE COURT: ANY DOUBT IN YOUR MIND AT ALL?

THE JUROR: NO, SIR.

THE COURT: THANK YOU, MA'AM. MS. LORICK IS 107. SHE'S ELIGIBLE TO SERVE. YES, MA'AM? TELL ME YOUR NAME AGAIN, PLEASE.

THE JUROR: EDNA FOREST.

THE COURT: AND WHAT'S YOUR SITUATION, MS. FOREST?

THE JUROR: I JUST HEARD IT AND SEEN IT IN THE NEWSPAPER A LOT, ALL ABOUT IT.

THE COURT: YOU SAW AN ARTICLE IN THE NEWSPAPER?

THE JUROR: UH-HUH.

THE COURT: WHICH PAPER WAS THAT?

THE JUROR: SALUDA.

THE COURT: YOU REMEMBER WHAT YOU SAW?

THE JUROR: NO, SIR, I DON'T.

THE COURT: MS. FOREST, IF YOU'RE ON THIS JURY, DO YOU UNDERSTAND YOU'LL BE UNDER AN OATH WHERE YOU PROMISE US THAT YOU'LL BE ABLE TO DECIDE THE CASE BASED ON THE EVIDENCE PRESENTED IN THE COURTROOM? DO YOU UNDERSTAND THAT?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANY DOUBT IN YOUR MIND ABOUT YOUR ABILITY TO PUT ASIDE WHATEVER YOU MAY HAVE SEEN, HEARD OR READ ABOUT THIS CASE BEFORE AND DECIDE THIS CASE BASED ONLY ON THE EVIDENCE PRESENTED IN THE COURTROOM? ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: YOU SURE ABOUT THAT?

THE JUROR: YES, SIR.

THE COURT: THANK YOU, MA'AM. MS. FOREST IS 56. SHE'S ELIGIBLE TO SERVE. YES, SIR. YOUR NAME?

THE JUROR: DAVID J. MILLER.

THE COURT: HOLD ON. WHAT'S YOUR SITUATION?

THE JUROR: I JUST REMEMBER WHEN THE CAR HAD CRASHED INTO DELTA LOANS AND I THINK I REMEMBER HEARING THAT THEY WERE -- HAD THE STREETS BLOCKED OFF LOOKIN' FOR THE DRIVER. AND THAT'S ALL I REMEMBER.

THE COURT: DID YOU ACTUALLY SEE THE VEHICLE?

THE JUROR: NO, SIR.

THE COURT: DO YOU KNOW WHAT -- WHERE YOUR SOURCE OF INFORMATION MIGHT'VE BEEN---

THE JUROR: I THINK IT MIGHT'VE BEEN MY WIFE. JUST HEARD IT UPTOWN, AND IT SEEMS LIKE I MIGHTA SEEN SOMETHIN' ON WIS THAT NIGHT. JUST DON'T REMEMBER ANY DETAILS. JUST THE FACT THAT IT WAS ON.

THE COURT: THAT WAS GONNA BE MY NEXT QUESTION. DO YOU REMEMBER ANY SPECIFICS ABOUT WHAT YOUR WIFE TOLD YOU, WIS OR--

THE JUROR: NO, SIR. JUST REMEMBER IT HAPPENED.

THE COURT: ALL RIGHT. MR. MILLER, IF YOU'RE ON THIS JURY YOU WOULD BE UNDER AN OATH IN WHICH YOU PROMISED US THAT YOU WOULD DECIDE THE CASE BASED ON THE EVIDENCE PRESENTED IN THE COURTROOM. YOU UNDERSTAND THAT?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANYTHING ABOUT WHAT YOU MAY'VE SEEN, HEARD OR READ FROM ANY SOURCE THAT AFFECTS YOUR ABILITY TO FOLLOW THAT OATH AND DECIDE THE CASE BASED ONLY ON THE EVIDENCE?

THE JUROR: NO, SIR.

THE COURT: IS THERE ANY DOUBT IN YOUR MIND ABOUT THAT?

THE JUROR: NO, SIR.

THE COURT: THANK YOU, SIR. MR. MILLER IS 118. HE'S ELIGIBLE TO SERVE. YES, SIR? YOUR NAME, SIR?

THE JUROR: JOHN KOON.

THE COURT: WHAT'S YOUR SITUATION, MR. KOON?

THE JUROR: I JUST REMEMBER THE ARTICLE IN THE SALUDA PAPER. I COULDN'T TELL YOU ANYTHING NOW IT SAID THEN.

THE COURT: OKAY. LET ME GO -- YOU TOLD US EARLIER THAT THERE'S SOME SORT OF RELATIONSHIP BETWEEN YOU AND MR. FALGIONE.

THE JUROR: HE'S MY LAWYER.

THE COURT: HE'S YOUR LAWYER?

THE JUROR: YES, SIR.

THE COURT: IS HE REPRESENTIN' YOU ON ANYTHING NOW?

THE JUROR: NO, SIR. NOT AT THIS TIME.

THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP, YOUR EXPERIENCE WITH HIM THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: SO YOU CAN DECIDE THIS CASE WITHOUT ANY REGARD TO WHAT MR. FALGIONE MIGHT THINK OF YOUR DECISION?

THE JUROR: YES, SIR.

THE COURT: AND YOU WOULDN'T BE WORRIED ABOUT OR CONCERNED ABOUT HOW THAT MIGHT AFFECT YOUR FUTURE DEALING WITH HIM IF YOU HAD ANOTHER MATTER?

THE JUROR: NO.

THE COURT: LET'S GET BACK TO THE NEWSPAPER. YOU DON'T REMEMBER ANY SPECIFICS AT ALL?

THE JUROR: I COULDN'T TELL YOU ANYTHING ABOUT IT.

THE COURT: MR. KOON, IF YOU'RE ON THIS JURY YOU WOULD PROMISE US THAT YOU WOULD DECIDE THE CASE BASED ON THE EVIDENCE PRESENTED IN COURT. YOU UNDERSTAND THAT?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANYTHING AT ALL ABOUT WHAT YOU MAY HAVE SEEN,

HEARD OR READ THROUGH ANY OTHER SOURCE THAT WOULD AFFECT YOUR ABILITY TO DECIDE THE CASE BASED ONLY ON THE EVIDENCE IN THE COURTROOM?

THE JUROR: NO, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: MR. KOON IS JUROR #99. HE'S ELIGIBLE TO SERVE. YES, SIR? YOUR NAME, SIR?

THE JUROR: JAMES M. WILLS.

THE COURT: OKAY. MR. WILLIS, WHAT'S YOUR SITUATION?

THE JUROR: I READ ABOUT IT IN THE PAPER AND IF IT'S THE SAME CASE I'M THINKIN' ABOUT – I'M NOT SURE – THE ONE THAT THE DEPUTY CAR WAS HIT WHERE THE RED LIGHT IS.

THE COURT: YES,SIR.

THE JUROR: OKAY. AND I ALSO TALKED WITH DEPUTY FRANK DANIELS ABOUT IT.

THE COURT: YOU DID?

THE JUROR: (NODDED YES.)

THE COURT: DO YOU HAVE INSURANCE COVERAGE ON THEM, ANY OF THEM?

THE JUROR: JUST ON HIM. HE'S A CLIENT OF MINE.

THE COURT: OKAY. I'M GONNA SET YOU ASIDE ON THIS CASE. OKAY? YOU STAY WITH US, BUT DON'T DISCUSS ANY—

THE JUROR: ALL RIGHT.

THE COURT: —OF THAT WITH YOUR FELLOW JURORS. I'LL SET YOU ASIDE.

THE JUROR: OKAY. FINE.

THE COURT: 194 MR. WILLS IS SET ASIDE ON THE FIRST TRIAL. MR. ROWE?

THE JUROR: YES, SIR.

THE COURT: WHAT'S YOUR SITUATION?

THE JUROR: I JUST HEARD ABOUT IT, YOU KNOW, SOMEBODY RAN INTO A CORNER BUILDING THAT THE POLICE WERE CHASIN'.

THE COURT: YOU REMEMBER HOW YOU HEARD THAT?

THE JUROR: MY WIFE. WE WERE WORKIN' OUTTA TOWN AND I CALLED HER AND SHE TOLD ME.

THE COURT: YOU REMEMBER ANY SPECIFICS OTHER THAN WHAT YOU JUST SAID?

THE JUROR: NO.

THE COURT: ANY OTHER SOURCE OF INFORMATION OTHER THAN YOUR WIFE?

THE JUROR: NO.

THE COURT: DID YOU READ ABOUT IT IN THE PAPER OR SEE IT TV?

THE JUROR: I ONLY READ THE SPORTS IN THE PAPER.

THE COURT: OKAY. MR. ROWE, IF YOU'RE ON THIS JURY YOU UNDERSTAND YOU'LL BE PROMISING US THAT YOU WILL DECIDE THE CASE BASED ON THE EVIDENCE PRESENTED IN THE COURTROOM?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANYTHING AT ALL ABOUT WHAT YOU MAY HAVE GATHERED FROM ANY OTHER SOURCE THAT AFFECTS YOUR ABILITY TO BE -- TO DECIDE THIS CASE BASED ONLY ON THE EVIDENCE?

THE JUROR: NO.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU, SIR. MR. ROWE IS 156. HE'S ELIGIBLE TO SERVE. (THE

FOLLOWING OCCURRED WITHIN THE HEARING OF THE COURTROOM.)

ALL RIGHT. LADIES AND GENTLEMEN, TO THE BEST OF MY KNOWLEDGE NOW I'VE TOLD YOU A THUMBNAIL ABOUT WHAT THE CASE IS ALLEGED TO BE ABOUT.

I'VE READ THE INDICTMENTS TO YOU.

I'VE INTRODUCED BY TELLING YOU THE NAMES OF THE POTENTIAL WITNESSES FOR THE STATE AND THE NAME OF THE DEFENDANT AND THE ATTORNEYS INVOLVED IN THE CASE.

WHAT I NEED FOR YOU TO DO NOW IS THIS: IF YOU'VE GOT ANY CONNECTION OF ANY KIND WITH ANY OF THE PEOPLE OR ANY OF THE ENTITIES IN THIS CASE, YOU NEED TO DISCLOSE THAT TO US. SO FOR EXAMPLE, IF YOU'RE A FRIEND; IF YOU ATTEND THE SAME CHURCH OR CIVIC CLUBS; IF YOU'RE A CURRENT OR FORMER CLIENT OF ONE OF THESE ATTORNEYS; IF YOU'VE EVER BEEN ON THE OPPOSITE OF A CASE INVOLVING ONE OF THESE ATTORNEYS; IF YOU'VE GOT ANY CONNECTION OF ANY KIND WITH ANY OF THE PEOPLE OR ANY OF THE ENTITIES IN THIS CASE, PLEASE, LET US KNOW ABOUT IT. YOU DON'T NEED TO COME UP HERE UNLESS -- UNLESS IT'S SOMETHIN' YOU THINK YOU NEED TO TALK TO -- OKAY. I NEED TO CORRECT -- WHEN I WAS GOING THROUGH THAT LAST QUESTION, I IDENTIFIED A JUROR AS 118. THAT'S 119. IT'S MR. MILLER. HE'S ELIGIBLE TO SERVE. I SAID 118. HE'S ACTUALLY 119. YES, SIR? MR. FALGIONE, YOU WANT TO JOIN US?

MR. FALGIONE: CERTAINLY. (THE FOLLOWING OCCURRED ON THE RECORD BUT WITHOUT THE HEARING OF THE COURTROOM.)

THE JUROR: YOUR HONOR, I THINK I MAY BE PREJUDICE AGAINST THIS---

THE COURT: TELL ME WHAT YOUR NAME IS, SIR.

THE JUROR: JOHN GOFF #65.

THE COURT: YOU THINK YOU MIGHT HAVE PREJUDICE AGAINST WHO?

THE JUROR: MR. FALGIONE HERE. HE AND HIS CLIENT MR. ADDY ATTEMPTED LAWSUIT AGAINST ME.

THE COURT: I'LL SET YOU ASIDE ON THIS CASE. THANK YOU VERY MUCH, MR. GOFF.

THE JUROR: ALL RIGHT.

THE COURT: DON'T DISCUSS ANY OF THAT WITH YOUR FELLOW JURORS. OKAY? MR. GOFF IS JUROR #65. HE'S SET ASIDE ON THIS TRIAL. YES, SIR?

THE JUROR: TONY LAKE.

THE COURT: HOLD ON JUST A MOMENT, MR. LAKE. L-A-K-E?

THE JUROR: YES, SIR.

THE COURT: 100. WHAT'S YOUR SITUATION?

THE JUROR: JUST I'M ON HOLLYWOOD VOLUNTEER FIRE DEPARTMENT, FIRST RESPONDER AND I DO RESPOND TO CALLS SOMETIMES IF MIKE'S ON THE AMBULANCE SERVICE.

THE COURT: AMBULANCE SERVICE?

THE JUROR: SALUDA. MIKE ROWLETTE.

THE COURT: ALL RIGHT. YOU RESPOND TO THE SAME CALLS THAT MIKE ROWLETTE—

THE JUROR: IF THEY'RE IN OUR AREA, THEY CALL FOR THE FIRST RESPONDERS.

THE COURT: IS THERE ANYTHING ABOUT THAT RELATIONSHIP THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: CAN YOU DECIDE THE CASE WITHOUT REGARD TO WHAT MR. ROWLETTE MAY THINK ABOUT YOUR DECISION?

THE JUROR: YES.

THE COURT: AND HAVE YOU EVER FORMED IN YOUR OWN MIND OR EXPRESSED TO ANYONE ELSE AN OPINION AS TO WHETHER HE'S BELIEVABLE OR NOT?

THE JUROR: NO, SIR.

THE COURT: DO YOU HAVE ANY DOUBT ABOUT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

THE JUROR: NO, SIR. (THE FOLLOWING OCCURRED WITHIN THE HEARING OF THE COURTROOM.)

THE COURT: MR. LAKE IS 100. HE'S ELIGIBLE TO SERVE. THE MR. MILLER THAT CAME UP HERE AND TALKED TO ME, WHERE ARE YOU? DAVID MILLER. ALL RIGHT. MR. MILLER, YOU WORK FOR THE DEPARTMENT OF EDUCATION?

THE JUROR: YES, SIR. THE BUSSES.

THE COURT: MECHANIC. SIR?

THE JUROR: THE BUSSES.

THE COURT: THE BUS? ALL RIGHT. WELL, I HAD THE RIGHT NAME. IT WAS 118. NOT 119. (THE FOLLOWING OCCURRED WITHOUT THE HEARING OF THE COURTROOM, BUT ON THE RECORD.)

MR. FALGIONE: YOUR HONOR, GIVEN THE RESPONSE WE'VE HAD AND THE RESPONSES WE'VE HAD FROM THESE JURORS, IT'S OBVIOUS TO ME THAT THIS WHOLE JURY POOL HAS BEEN TAINTED BY THE PUBLICITY IN THIS MATTER. I THINK WE NEED TO MOVE TO DISQUALIFY THE JURY POOL BASED ON THE PUBLICITY AND THE RAMPANT KNOWLEDGE AND MEDIA ATTENTION THIS MATTER HAS RECEIVED.

THE COURT: MOTION DENIED. (THE FOLLOWING OCCURRED WITHIN THE HEARING OF THE COURTROOM.) ARE ANY OF YOU EMPLOYED IN ANY FIELD OF LAW ENFORCEMENT OR DO YOU HAVE ANY FAMILY MEMBERS OR CLOSE PERSONAL FRIENDS WHO ARE EMPLOYED BY LAW ENFORCEMENT AGENCIES AT ANY LEVEL, STATE,

FEDERAL, LOCAL, MILITARY, ANYONE EMPLOYED IN LAW ENFORCEMENT OR ANYONE WHO HAS RELATIVES OR CLOSE PERSONAL FRIENDS IN LAW ENFORCEMENT? IF SO, PLEASE, STAND. OVER HERE ON THE LEFT. YOUR NAME, PLEASE, MA'AM?

THE JUROR: PEGGY MCCLURE.

THE COURT: PEGGY WHAT?

THE JUROR: MCCLURE.

THE COURT: I'M SORRY. 116. AND WHAT'S YOUR SITUATION?

THE JUROR: I HAVE A SISTER THAT'S IN LAW ENFORCEMENT. CAROL O'NEAL.

THE COURT: WHERE DOES SHE WORK?

THE JUROR: SHE'S IN COLUMBIA.

THE COURT: FOR WHAT AGENCY?

THE JUROR: I HAVE NO IDEA.

THE COURT: COLUMBIA POLICE DEPARTMENT, RICHLAND COUNTY SHERIFF?

THE JUROR: SHE WORKS FOR THE WOMEN'S CENTER THERE.

THE COURT: OH, SHE WORKS FOR THE DEPARTMENT OF CORRECTIONS. IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP OR EXPERIENCE WITH HER THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, I DON'T THINK SO.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO.

THE COURT: 116. MS. MCLURE. JUST HAVE A SEAT. YOUR NAME, PLEASE, MA'AM?

THE JUROR: I HAVE A DAUGHTER----

THE COURT: WHAT'S YOUR NAME?

THE JUROR: MY NAME? KATHLEEN DUKES.

THE COURT: HER NAME IS DUKES. I THINK SHE WAS TELLIN' ME HER DAUGHTER.

MR. YOUNG: JUROR 51, YOUR HONOR.

THE COURT: ALL RIGHT. MS. DUKES. JUROR #51. WHAT' S YOUR SITUATION?

THE JUROR: I HAVE A DAUGHTER THAT WORKS HERE AT—

THE COURT: YOUR DAUGHTER WORKS WHERE?

THE JUROR: OUT AT THE DETENTION CENTER—

THE COURT: I HEARD HER SAY HERE BUT—

THE JUROR: OUT AT THE DETENTION CENTER.

MR. YOUNG: I BELIEVE SHE SAID, YOUR HONOR, THAT HER DAUGHTER WORKS AT LAW ENFORCEMENT CENTER – DETENTION CENTER HERE IN SALUDA.

THE COURT: UNLESS Y'ALL WANT TO BE HEARD ON THE SUBJECT—

MR. YOUNG: NO OBJECTION.

THE COURT: MS. DUKES, YOU'RE SET ASIDE ON THIS CASE. JUST STAY WITH US. ALL RIGHT?

THE JUROR: YES, SIR.

THE COURT: YOUR NAME, SIR. I'M SORRY. LET ME GET THE FIRST ROW FIRST. YOUR NAME, SIR?

THE JUROR: GEORGE LAWSON. 102.

THE COURT: WHAT'S YOUR SITUATION, MR. LAWSON?

THE JUROR: I HAVE A BROTHER-IN-LAW THAT'S A GAME WARDEN.

THE COURT: A GAME WARDEN. ANYTHING ABOUT THAT RELATIONSHIP OR EXPERIENCE WITH HIM THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU. 102 IS ELIGIBLE. YES, MA'AM?

THE JUROR: ACHINIA MATHIS.

THE COURT: STARTS WITH AN R?

THE JUROR: SIR?

THE COURT: YOUR LAST NAME STARTS WITH AN R?

MR. YOUNG: MATHIS, YOUR HONOR.

THE JUROR: MATHIS.

THE COURT: MATHIS. I APOLIGIZE.

MR. YOUNG: JUROR 113.

THE COURT: MS. MATHIS IS JUROR #113. WHAT'S YOUR SITUATION, PLEASE?

THE JUROR: TRICIA ANN MATHIS FOR EDGEFIELD COUNTY. FIRST COUSIN.

THE COURT: WHO IS THAT? I KNOW IT'S YOUR COUSIN. I NEED TO KNOW – I DON'T KNOW EVERYBODY IN EDGEFIELD COUNTY. WHAT – WHAT DOES SHE – WHAT DOES SHE DO?

THE JUROR: POLICE OFFICER.

THE COURT: OKAY. SHE WORKS FOR THE LOCAL TOWN POLICE IN EDGEFIELD?

THE JUROR: YES, SIR.

THE COURT: OKAY. IS THERE ANYTHING ABOUT YOUR RELATIONSHIP OR EXPERIENCE WITH HER THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU, MA'AM. 113 IS ELIGIBLE. YES, SIR, OVER HERE.

THE JUROR: ABRAHAM MOON.

THE COURT: OKAY, MR. MOON, HOLD ON A SECOND.

THE CLERK: 122.

THE COURT: ALL RIGHT. MR. MOON IS 122. WHAT'S YOUR SITUATION?

THE JUROR: MY NIECE WORKS AT THE DETENTION CENTER.

THE COURT: IN SALUDA?

THE JUROR: YES, SIR.

THE COURT: UNLESS Y'ALL WANT TO BE HEARD, I'M GONNA SET HIM ASIDE.

MR. YOUNG: NO OBJECTION.

THE COURT: YOU'RE SET ASIDE ON THIS CASE, MR. MOON. YOU STAY WITH US. ALL RIGHT. BUT YOU'RE NOT ELIGIBLE TO SERVE ON THIS CASE. YOUR NAME, PLEASE?

THE JUROR: MARY MATTHEWS.

THE CLERK: 114

THE COURT: OKAY. MS. MATTHEWS IS 114. WHAT'S YOUR SITUATION?

THE JUROR: I HAVE A DAUGHTER THAT WORKS FOR JUDGE JEFFCOAT IN LEXINGTON. I HAVE A SON-IN-LAW THAT'S WITH LEON LOTT, RICHLAND COUNTY, AND I HAVE A GRANDSON THAT'S AN AIR MARSHALL.

THE COURT: IS THERE ANYTHING ABOUT ANY OF THOSE RELATIONSHIPS OR EXPERIENCE WITH ANY OF THOSE PEOPLE THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO.

THE COURT: THANK YOU, MA'AM. 114 IS ELIGIBLE. YES, MA'AM? YOUR NAME?

THE JUROR: PAM RIKARD.

THE CLERK: 146.

THE COURT: ALL RIGHT. MS. RIKARD, WHAT'S YOUR SITUATION?

THE JUROR: CHRIS CROUCH WORKS FOR THE SHERIFF'S DEPARTMENT IN SALUDA. HE'S MY FIRST COUSIN.

THE COURT: UNLESS I HEAR AN OBJECTION, I'LL SET HER ASIDE.

MR. FALGIONE: NO OBJECTION, YOUR HONOR.

MR. YOUNG: NO OBJECTION.

THE COURT: ALL RIGHT. MS. RIKARD, YOU'RE SET ASIDE ON THIS TRIAL. ALL RIGHT. YOUR NAME, SIR?

THE JUROR: HARRY AUGHTRY.

THE COURT: AUSTIN?

THE JUROR: AUGHTRY.

THE COURT: AUGHTRY. I APOLOGIZE.

THE JUROR: #7.

THE COURT: WHAT'S YOUR SITUATION, MR. AUGHTRY?

THE JUROR: GOT A BROTHER-IN-LAW THAT WORKS FOR RICHLAND COUNTY SHERIFF. NIECE HER HUSBAND IS THE SHERIFF IN PITTSBURGH, NORTH CAROLINA.

THE COURT: IS THERE ANYTHING ABOUT ANY OF THOSE RELATIONSHIPS OR EXPERIENCES WITH THOSE PEOPLE THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, YOUR HONOR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU, SIR. MR. AUGHTRY IS JUROR #7. HE'S ELIGIBLE. YES, MA'AM?

THE JUROR: (INAUDIBLE) HORN #86.

THE COURT: HOLD ON A SECOND. MS. HORN IS JUROR #86. AND GO AHEAD,

PLEASE.

THE JUROR: I AM CLOSE PERSONAL FRIENDS WITH A SALUDA COUNTY DEPUTY AND HIS WIFE.

THE COURT: WHICH ONE?

THE JUROR: BOBBY JONES.

THE COURT: HAVE THEY DISCUSSED ANYTHING WITH YOU ABOUT THIS MATTER?

THE JUROR: NOT THAT I'M AWARE OF THAT I CAN REMEMBER.

THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH THEM OR EXPERIENCE WITH THEM THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: YOU CAN DECIDE THE CASE WITHOUT REGARD TO WHAT THEY MAY THINK OF YOUR DECISION?

THE JUROR: YES, SIR.

THE COURT: ANY DOUBT IN YOUR MIND ABOUT ANY OF THAT?

THE JUROR: NO, SIR.

THE COURT: THANK YOU. MS. HORN'S 86. SHE'S ELIGIBLE. YES, SIR? OVER HERE.

THE JUROR: CURTIS QUATTLEBAUM.

THE COURT: WAIT A SECOND. QUATTLEBAUM?

THE CLERK: 142.

THE COURT: ALL RIGHT. MR. QUATTLEBAUM, GO AHEAD.

THE JUROR: SISTER-IN-LAW SALUDA COUNTY SHERIFF'S DEPARTMENT. NEPHEW COUNTY OF SALUDA POLICE DEPARTMENT.

THE COURT: WHO'S AT THE POLICE DEPARTMENT?

THE JUROR: DEPUTY QUATTLEBAUM.

THE COURT: AND WHAT RELATION TO YOU?

THE JUROR: I'M HIS UNCLE.

THE COURT: I'LL SET YOU ASIDE ON THIS TRIAL, MR. QUATTLEBAUM. DON'T DISCUSS ANY OF THAT WITH YOUR FELLOW JURORS. BEHIND HIM. YOUR NAME, SIR?

THE JUROR: TREVOR DEAN.

THE COURT: THAT WAS 142 I JUST SET ASIDE. 47. GO AHEAD, MR. DEAN.

THE JUROR: I HAVE SEVERAL CLOSE FRIENDS IN THE BATESBURG-LEESVILLE POLICE DEPARTMENT.

THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH HIM OR EXPERIENCES WITH THEM THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU, SIR. MR. DEAN IS 47. HE'S ELIGIBLE. YES, SIR?

THE JUROR: ALTON MCCARY.

THE COURT: ALL RIGHT. MR. MCCARY IS JUROR #115. YOU'VE TOLD ME EARLIER THAT YOU'RE FIRST COUSINS WITH A DEPUTY SHERIFF IN SALUDA?

THE JUROR: YES, SIR.

THE COURT: I'LL SET YOU ASIDE ON THIS TRIAL. 115 MR. MCARY IS SET ASIDE. DO ME A FAVOR. OH, I APOLOGIZE. I DIDN'T KNOW I HAD JURORS UP HERE. IF YOU'VE BEEN SET ASIDE ON THIS TRIAL, HAVE A SEAT ON THOSE BACK ROWS OVER THERE AND - AND KINDA FILL UP THOSE ROWS FOR ME. ALL RIGHT. IF YOU'VE BEEN SET ASIDE ON THIS TRIAL. YOUR NAME, SIR?

THE JUROR: SAMUEL WISE.

THE COURT: MR. WISE IS JUROR #195. WHAT'S YOUR SITUATION, SIR?

THE JUROR: SECURITY OFFICER FOR SIZEMORE SECURITY.

THE COURT: YES, SIR. IS THERE ANYTHING AT ALL ABOUT YOUR SITUATION AS A SECURITY OFFICER OR YOUR EXPERIENCE THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU, MR. WISE. 195 IS ELIGIBLE. YES, MA'AM?

THE JUROR: MY NAME IS CARRIE RILEY (PHONETIC).

THE COURT: OKAY. MS. RILEY, IF YOU WOULD HOLD ON JUST A SECOND.

THE JUROR: OKAY.

THE COURT: MS. RILEY, I'M NOT GONNA PUT YOU ON THESE CASES. I DON'T KNOW HOW LONG IT'S GOING TO TAKE. SO YOU HAVE A SEAT BACK THERE. I PROTECTED YOU ON THURSDAY. ALL RIGHT. ARE ANY OF YOU MEMBERS OF OR FINANCIAL CONTRIBUTORS TO ANY ORGANIZATIONS THAT HAS AS ONE OF ITS PRIMARY PURPOSES THE PREVENTION OF CRIME OR ADVOCACY OF VICTIMS' RIGHTS? THOSE ORGANIZATIONS WOULD INCLUDE MOTHERS AGAINST DRUNK DRIVING; STUDENTS AGAINST DRUNK DRIVING; CITIZENS AGAINST VIOLENT CRIME, SIMILAR ORGANIZATIONS. IF ANY OF YOU ARE MEMBERS OF OR FINANCIAL CONTRIBUTORS TO ANY SUCH ORGANIZATION, PLEASE, STAND. HAVE ANY OF YOU OR ANY OF YOUR IMMEDIATE FAMILY MEMBERS OR CLOSE PERSONAL FRIENDS EVER HAD THEIR CAR STOLEN? IF SO, PLEASE, STAND. ALL RIGHT. TELL ME YOUR NAME AGAIN, PLEASE, MA'AM.

THE JUROR: ACHINIA MATHIS.

THE CLERK: 113.

THE COURT: WAS THIS YOU OR SOME FAMILY MEMBER OR FRIEND?

THE JUROR: MY UNCLE'S CAR AFTER HE LEFT WORK.

THE COURT: YOUR UNCLE'S CAR WAS STOLEN FROM WORK?

THE JUROR: HE HAD JUST LEFT MICHELIN AND PULLED UP TO THE GAS STATION AND LEFT IT RUNNIN'. WHEN HE CAME OUT IT WAS GONE.

THE COURT: MS. MATHIS, THERE ARE GONNA BE ALLEGATIONS IN THIS CASE THAT MR. WILES WAS CHARGED WITH POSSESSION OF A STOLEN VEHICLE. IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP TO YOUR UNCLE OR EXPERIENCE WITH HIM THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU. MS. MATHIS IS 113. SHE'S ELIGIBLE. YES, SIR, YOUR NAME?

THE JUROR: (INAUDIBLE) BLEDSOE.

THE COURT: OKAY. MR. BLEDSOE IS JUROR #16. WHAT'S YOUR SITUATION?

THE JUROR: MY BROTHER-IN-LAW HAD HIS CAR STOLEN ABOUT IT WAS 25 YEARS AGO, I GUESS. OUT OF HIS YARD.

THE COURT: YOUR BROTHER-IN-LAW HAD HIS CAR STOLEN ABOUT 25 YEARS AGO OUT OF THE YARD, HIS YARD.

THE JUROR: YES, SIR.

THE COURT: YOU UNDERSTAND THE ALLEGATIONS IN THIS CASE?

THE JUROR: I DO.

THE COURT: IS THERE ANYTHING ABOUT YOUR RELATIONSHIP OR EXPERIENCE WITH YOUR BROTHER-IN-LAW THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NONE AT ALL.

THE COURT: NO DOUBT IN YOUR MIND?

THE JUROR: NO DOUBT IN MY MIND.

THE COURT: THANK YOU VERY MUCH. MR. BLEDSOE IS ELIGIBLE. YES, MA'AM, OVER THERE. WHAT'S YOUR NAME?

THE JUROR: IDA COATES.

THE COURT: COATES?

THE JUROR: COATES.

THE COURT: 27. WHAT'S YOUR SITUATION, MS. COATES?

THE JUROR: MY SISTER-IN-LAW HAD HER CAR STOLEN.

THE COURT: YOU UNDERSTAND THE ALLEGATIONS IN THIS CASE?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH YOUR SISTER-IN-LAW OR EXPERIENCE WITH HER THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO.

THE COURT: THANK YOU, MA'AM. MS. COATES IS JUROR #27. SHE'S ELIGIBLE. YES, MA'AM? YOUR NAME?

THE JUROR: ANNETTE HARRIS. (73)

THE COURT: OKAY. MS. HARRIS IS JUROR #73. AND WHAT'S YOUR SITUATION,

PLEASE?

THE JUROR: MY SON HAD HIS CAR STOLEN IN MYRTLE BEACH.

THE COURT: ALL RIGHT. IS THERE ANYTHING AT ALL ABOUT THAT EXPERIENCE OR YOUR RELATIONSHIP WITH YOUR SON THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THE CASE?

THE JUROR: NO.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO.

THE COURT: DO YOU UNDERSTAND THE ALLEGATIONS IN THIS CASE?

THE JUROR: YES.

THE COURT: THANK YOU, MA'AM. MS. HARRIS IS JUROR #73. SHE'S ELIGIBLE. HAVE ANY OF YOU FORMED OR EXPRESSED ANY OPINIONS ABOUT THE CASE? IF SO, PLEASE, STAND. ARE ANY OF YOU AWARE OF ANY INTEREST, BIAS OR PREJUDICE THAT YOU MIGHT HAVE FOR OR AGAINST THE STATE, FOR OR AGAINST THE DEFENDANT MR. WILES, FOR OR AGAINST ANYONE OR ANY ENTITY IN THIS CASE? IF SO, PLEASE, STAND. CAN EACH OF YOU GIVE BOTH THE STATE OF SOUTH CAROLINA AND THE DEFENDANT MR. SHAWN WILES A FAIR AND IMPARTIAL TRIAL? IF YOU KNOW OF ANY REASON WHY YOU CANNOT, PLEASE, STAND NOW. FURTHER QUESTIONS FROM THE STATE?

MR. YOUNG: NONE FROM THE STATE, YOUR HONOR.

THE COURT: DEFENSE?

MR. FALGIONE: NONE FROM THE DEFENSE, YOUR HONOR.

THE COURT: THANK YOU. THE JURY PANEL IS QUALIFIED. LADIES AND GENTLEMEN, THE WAY WE SELECT JURIES IN GENERAL SESSIONS COURT IS THE CLERK IS GONNA DRAW THE NAMES RANDOMLY FROM A HOPPER UP HERE. IF YOU HEAR YOUR NAME CALLED, YOU NEED TO GATHER YOUR PERSONAL BELONGINGS. COME DOWN

FRONT. COME ALL THE WAY DOWN TO THE CENTER TO THAT RAIL IN FRONT OF MS. HOLMES. IT'S WHERE THAT MICROPHONE IS IN FRONT OF MS. HOLMES. YOU COME RIGHT THERE. TURN AROUND AND FACE BACK IN THE DIRECTION FROM WHICH YOU CAME. WHEN YOU GET DOWN HERE THE CLERK IS GONNA ASK QUESTIONS OF THE STATE'S ATTORNEY AND THE DEFENSE ATTORNEY, AND BASED ON THEIR RESPONSES, YOU WILL BE TOLD TO HAVE A SEAT IN THE JURY BOX OVER HERE OR RETURN TO YOUR SEAT IN THE COURTROOM. SO YOU NEED TO BRING YOUR PERSONAL BELONGINGS BECAUSE YOUR NEXT STOP MAY BE OVER HERE. IF YOU COME DOWN FRONT AND YOU'RE NOT SELECTED ON THIS JURY, PLEASE, GO BACK OVER HERE ON MY RIGHT WHERE THOSE OTHER FOLKS ARE THAT WERE SET ASIDE ON THIS CASE AND HAVE A SEAT BACK THERE. ALL RIGHT? I DON'T SEE ANYTHING THAT INCREASES IT TO 10 AND 5. AM I MISSING SOMETHING?

MR. YOUNG: NO, SIR.

THE COURT: THE STRIKES ARE 5 FOR THE STATE AND 5 FOR THE DEFENSE. ASSUMING THERE IS NO OBJECTION TO THE CLERK DRAWING THE NAMES, WE'LL PROCEED TO STRIKE. MADAM CLERK, GIVE US A JURY.

#56 EDNA T. FORREST - WHITE FEMALE - EXCUSED BY DEFENSE

#132 JOHN R. PADGETT – WHITE MALE - EXCUSED BY DEFENSE

#114 MARY F. MATTHEWS - WHITE FEMALE - EXCUSED BY DEFENSE

#107 MARY A. LORICK - BLACK FEMALE - ACCEPTED

#137 CHARLES E. POTTER, SR. - WHITE MALE - EXCUSED BY DEFENSE

#52 BARBARA A. EDWARDS - WHITE FEMALE - ACCEPTED

#99 JOHN P. KOON - WHITE MALE - EXCUSED BY STATE

#187 TIFFANY N. WERTZ - BLACK FEMALE - ACCEPTED

#116 PEGGY H. MCCLURE - BLACK FEMALE - ACCEPTED

#54 HELEN J. FINCANON - WHITE FEMALE - ACCEPTED

#124 TERESA D. MORRIS - BLACK FEMALE - ACCEPTED

#42 SYLVESTER CULBREATH - BLACK MALE - ACCEPTED

#195 SAMUEL WISE - BLACK MALE - ACCEPTED

#64 CYNTHIA H. GODBY - WHITE FEMALE - ACCEPTED

#179 MELISSA R. USERY - WHITE FEMALE - ACCEPTED

#191 CANDACE W. OXNER - WHITE FEMALE - ACCEPTED

#167 CINDY C. SMITH - WHITE FEMALE - EXCUSED BY DEFENSE

#113 ACHINIA MATHIS - BLACK FEMALE - EXCUSED BY STATE

#74 BRITTANY S. HARRIS - BLACK FEMALE - ACCEPTED

ALTERNATE

#94 JAMES R. JOHNSON - BLACK MALE - ACCEPTED

#7 TERRY E. AUGHTRY - WHITE MALE - EXCUSED BY DEFENSE

#173 PAMELA M. TEMPLE - WHITE FEMALE - EXCUSED BY DEFENSE

#100 TONY E. LAKE - WHITE MALE - ACCEPTED

THE COURT: ARE THERE ANY MATTERS TO TAKE UP INCLUDING COMPOSITION OF THE PANEL PRIOR TO THE JURY BEING SWORN? FROM THE STATE?

MR. YOUNG: YOUR HONOR, IF I MAY HAVE A SECOND?

THE COURT: YES, SIR.

MR. YOUNG: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. FALGIONE: NOTHING.

THE COURT: THANK YOU VERY MUCH. MR. CULBREATH?

THE JUROR: YES, SIR.

THE COURT: YOU'RE THE FOREMAN OF THIS JURY. WHEN YOU COME BACK IN

YOU BE THE LAST ONE IN. YOU TAKE THE SEAT ON THE END OF THE FIRST ROW. ALL RIGHT?

THE JUROR: YES, SIR.

THE COURT: THE TWO ALTERNATES STAY IN THOSE SEATS THROUGHOUT THE TRIAL. FOLKS ON THE BACK. THE REST OF YOU FOLKS WILL SIT ANYWHERE YOU LIKE ON THE FIRST TWO ROWS. PLEASE, DON'T WALK ACROSS ONE ANOTHER. IF YOU HAVE A FAVORITE CHAIR, SPACE YOURSELF ACCORDINGLY OUT HERE AND FILE ALL THE WAY DOWN AS YOU COME IN. WE HAD AN INCIDENT IN LEXINGTON WHERE A LADY BROKE HER ANKLE. I DON'T WANT THAT HAPPENING TO YOU. SO DON'T WALK ACROSS ONE ANOTHER. I'M GONNA SEND YOU INTO THE JURY ROOM WHILE I GET MY BEARINGS FROM THE LAWYERS. DO NOT DISCUSS THIS CASE IN ANY WAY. DON'T TALK ABOUT THE PEOPLE INVOLVED. DON'T TALK ABOUT THE TYPE OF CASE IT'S ALLEGED TO BE. DON'T TALK ABOUT THIS CASE AT ALL. IF YOU'LL STEP IN THERE, PLEASE, I'LL GET TO YOU AS QUICKLY AS I CAN. THANK YOU. (THE FOLLOWING OCCURRED OUTSIDE THE PRESENCE OF THE JURY.) (THERE WAS A BRIEF RECESS.) STATE READY FOR THE JURY?

MR. YOUNG: STATE'S READY.

THE COURT: DEFENSE?

MR. FALGIONE: YES, SIR.

THE COURT: BRING THE JURY, PLEASE. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) ALL RIGHT. LADIES AND GENTLEMEN, I NEED TO HAVE YOU PLACED UNDER OATH AS JURORS. SO, PLEASE, STAND AND RAISE YOUR RIGHT HAND. (THE JURY WAS SWORN AT 3:48 P.M.) NOW, LADIES AND GENTLEMEN, WE'RE GOING TO START INTO THE TRIAL OF THE CASE, AND YOU'RE GOING TO HEAR THE OPENING STATEMENTS FROM THE ATTORNEYS. IN THESE OPENING STATEMENTS THE ATTORNEYS ARE NOT PERMITTED TO ENGAGE IN LEGAL ARGUMENT. THEY'RE PERMITTED TO GIVE

YOU AN OUTLINE, AN INTRODUCTION, AN OVERVIEW. ONCE THE OPENING STATEMENTS ARE FINISHED, THEN I WILL CALL UPON THE STATE TO PRESENT ITS EVIDENCE. AS I TOLD YOU EARLIER, THE STATE BROUGHT THESE CHARGES AND THE STATE HAS THE ENTIRE BURDEN OF PROOF. AN INDICTMENT IS NOT EVIDENCE OF ANYTHING. AN INDICTMENT IS NOTHING MORE THAN A CHARGING PAPER. IT'S MERELY THE FORMAL MEANS BY WHICH SOMEONE IS CHARGED AND BROUGHT TO TRIAL. AND YOU MAY NOT AFFORD THE INDICTMENT ANY EVIDENTIARY VALUE. SO I'LL RECOGNIZE THE SOLICITOR TO PRESENT EVIDENCE IN AN ATTEMPT TO MEET THE BURDEN OF PROOF. WHEN THE SOLICITOR HAS FINISHED HIS CASE IN CHIEF, HE WILL ADVISE ME THE STATE RESTS, AND AT THAT POINT IN TIME I'LL HAVE TO SEND YOU OUT OF THE COURTROOM SO I CAN DISCUSS SOME LEGAL ISSUES WITH THEM.

NOW JUST FOR PLANNING PURPOSES, FOLKS, WHAT I ANTICIPATE WE'LL DO TODAY IS YOU'LL HEAR THE OPENING STATEMENTS AND THEN YOU'RE PROBABLY GONNA HEAR FROM ONE STATE'S WITNESS AND THEN WE'LL RECESS FOR THE DAY AND START BACK TOMORROW AT 9:30.

NOW I NEED TO EXPLAIN TO YOU SOME THINGS. IT'S REALLY IMPORTANT THAT YOU UNDERSTAND THESE THINGS.

NOW FIRST YOU NEED TO UNDERSTAND THAT THAT OATH THAT YOU JUST TOOK IS ONE IN WHICH YOU PROMISED US THAT YOU'RE GONNA DECIDE THESE CASES BASED ON THE EVIDENCE AND THE LAW. SO YOU NEED TO KNOW WHERE THOSE THINGS COME FROM. THE LAW WILL COME FROM ME. IT'S MY JOB TO DECIDE WHAT LAW APPLIES TO THIS CASE AND TELL IT TO YOU AT THE END OF THE TRIAL. THE EVIDENCE COMES FROM THE SWORN TESTIMONY OF WITNESSES. EVIDENCE MAY ALSO COME FROM IN THE FORM OF EXHIBITS. AN EXHIBIT CAN BE ANYTHING TANGIBLE THAT'S MARKED IN THE RECORD OF THE CASE. IF SOMETHING IS AN EXHIBIT, YOU WILL HAVE IT WITH YOU IN

THE JURY ROOM TO REVIEW AS MUCH AS YOU LIKE WHEN YOU DECIDE THE CASE. WHAT THE LAWYERS SAY IS NOT EVIDENCE. I WANT YOU TO PAY ATTENTION TO THEM, BUT WHAT COMES OUT OF THEIR MOUTHS IS NOT EVIDENCE. THE EVIDENCE COMES FROM THE WITNESSES AND THE EXHIBITS. THERE IS ONE EXCEPTION TO THE RULE ABOUT WHAT THE LAWYERS SAY AS NOT BEING EVIDENCE. IF WE COME ACROSS IT, I'LL TELL YOU ABOUT IT. OTHERWISE I WON'T BURDEN YOU WITH IT. SO YOU KNOW THE EVIDENCE AND THE LAW, YOU KNOW WHERE THOSE THINGS COME FROM. WHILE YOU MUST DECIDE THE CASE BASED ON THE EVIDENCE AND THE LAW, I'M NOT TELLIN' YOU TO LEAVE YOUR COMMON SENSE AT HOME. WE WANT YOU TO USE YOUR COMMON SENSE.

NOW IT JUST MAKES GOOD COMMON SENSE THAT YOU KEEP AN OPEN MIND ABOUT THESE CASES AND THAT YOU DON'T MAKE UP YOUR MIND UNTIL YOU'VE HEARD ALL THE EVIDENCE AND YOU KNOW WHAT THE LAW IS THAT APPLIES TO THE CASE. SO WE INSIST ON A RULE THAT'S VERY HARD TO FOLLOW BUT YOU MUST FOLLOW, AND THAT IS THAT YOU ARE NOT TO DISCUSS THIS CASE IN ANY WAY AMONG YOURSELVES UNTIL I TELL YOU TO. AGAIN, DON'T TALK ABOUT THE PEOPLE INVOLVED, THE TYPE OF CASE IT'S ALLEGED TO BE. DON'T TALK ABOUT THIS CASE IN ANY WAY UNTIL I TELL YOU TO. DON'T TALK ABOUT THIS CASE WITH ANYBODY ELSE, FAMILY MEMBERS OR FRIENDS OR ANYBODY ELSE UNTIL THE WEEK IS OVER AND THIS CASE IS ENDED AND YOU'VE BEEN SEATED ON ANY JURY YOU MIGHT POSSIBLY BE SEATED ON. IF ANYBODY ATTEMPTS TO CONTACT YOU AND DISCUSS THE CASE WITH YOU, REPORT TO IT TO ME SO I CAN DEAL WITH IT.

NOW, LADIES AND GENTLEMEN, THERE MAY BE MEDIA COVERAGE OF THIS TRIAL. I DON'T KNOW IF THERE WILL BE OR NOT. I NEVER KNOW IF THERE'S GONNA BE MEDIA COVERAGE UNLESS A TV STATION ASKS TO SET UP CAMERAS AND I HAVEN'T

HAD ANY REQUESTS LIKE THAT. BUT I HAVE TO GIVE YOU THIS INSTRUCTION. I GIVE IT IN EVERY CASE. DO NOT LET YOURSELVES BE EXPOSED TO ANY MEDIA COVERAGE OF THIS TRIAL. IF YOU ARE INADVERTENTLY EXPOSED TO ANY MEDIA COVERAGE, GET AWAY FROM IT. REPORT TO ME WHAT YOU SAW, HEARD OR READ THROUGH THE MEDIA AT THE FIRST OPPORTUNITY YOU HAVE TO TELL ME ABOUT IT. IF I BECOME AWARE OF ANY SPECIFIC MEDIA COVERAGE, I'LL TELL YOU TO AVOID THAT. LIKE FOR EXAMPLE, IF I KNOW THERE'S A PARTICULAR NEWSPAPER OR TELEVISION STATION THAT'S CONSIDERING WRITING SOMETHING OR BROADCASTING SOMETHING, I'LL TELL YOU SO THAT YOU'LL KNOW NOT TO GO NEAR THOSE THINGS. BUT JUST USE COMMON SENSE ON THAT TOO, FOLKS. IF YOU SEE SOMETHING ON THE 7 O'CLOCK NEWS INADVERTENTLY, GET AWAY FROM IT. DON'T WATCH THE 11 O'CLOCK NEWS ON THE SAME CHANNEL, OKAY?

NOW IT'S REALLY IMPORTANT THAT YOU UNDERSTAND THAT THERE ARE 2 JUDGES IN THIS COURTROOM. I'M THE JUDGE OF THE LAW. I TOLD YOU MY JOB IS TO DECIDE THE LAW THAT APPLIES TO THE CASE, TELL IT TO YOU AT THE END OF THE TRIAL. I ALSO HAVE TO MAKE OTHER LEGAL RULINGS AND PRESIDE OVER THE TRIAL. YOU'RE THE OTHER JUDGE. YOU MUST UNDERSTAND THAT YOU ARE THE ONLY JUDGE OF THE FACTS. SO ONLY YOU GET TO DECIDE SUCH THINGS AS WHETHER THE EVIDENCE IS BELIEVABLE OR NOT. AND ONLY YOU GET TO DECIDE SUCH THINGS AS WHETHER EVIDENCE SHOULD BE GIVEN ANY WEIGHT AND, IF SO, HOW MUCH. THAT'S ENTIRELY YOUR PREROGATIVE. YOU'RE THE ONLY JUDGE OF THE FACTS.

NOW, FOLKS, WHEN YOU LEAVE HERE TODAY, I PLAN TO LET YOU GO AND BE ON YOUR OWN. IF PROBLEMS DEVELOP, WHICH I DON'T ANTICIPATE, I HAVE TO PUT YOU IN A MOTEL ROOM SO I HAVE CONTROL OVER YOU. SO I'M TRUSTING YOU THAT YOU'RE GONNA FOLLOW THESE INSTRUCTIONS. IT'S PERFECTLY FINE IF YOU TELL A JURY – A

FAMILY MEMBER THAT YOU'RE ON THE JURY, BUT YOU CANNOT TELL THEM WHAT THE CASE IS ABOUT, AND IN THIS INSTANCE THEY MAY HEAR WHAT THE CASE IS BEING TRIED -- WHAT CASE IS BEING TRIED. SO IT'S REALLY IMPORTANT THAT YOU NOT TELL ANY FAMILY MEMBERS, FRIENDS, OR ANYBODY ELSE DISCUSS THE CASE WITH YOU. JUST TELL 'EM YOU CAN'T TALK ABOUT IT. JUST BLAME IT ON ME. THAT'S FINE. BLAME IT ON ME.

NOW THE LAST THING THAT I WANNA TELL YOU IN THESE GENERAL OPENING COMMENTS TO YOU IS THAT I WANT TO SAY THANK YOU. FOLKS, I'M NOT GONNA SIT UP HERE AND REPEATEDLY TELL YOU THANK YOU. THAT CHEAPENS IT IF I DO THAT. I KNOW YOU ALL HAVE OTHER PLACES TO BE AND OTHER THINGS TO DO, AND I SINCERELY APPRECIATE YOUR SERVICE. YOU MET IT HEAD ON. YOU HAVEN'T TRIED TO DODGE IT. I APPRECIATE. MY PROMISE TO YOU IS I'LL DO EVERYTHING IN MY POWER NOT TO WASTE YOUR TIME. IF YOU'RE BACK THERE WAITING ON US, I PROMISE YOU PEOPLE ARE WORKING. I CAN'T PROMISE YOU YOU WON'T HAVE TO WAIT, BUT I CAN PROMISE YOU PEOPLE WILL BE WORKING.

NOW I DO WANT TO GIVE YOU ONE INSTRUCTION BEFORE I TURN IT OVER TO THE ATTORNEYS BASED ON WHAT I ANTICIPATE MAY COME OUT IN THE OPENING STATEMENTS.

NOW AS I TOLD YOU, THE OPENING STATEMENTS ARE NOT EVIDENCE. WHAT COMES OUTTA LAWYERS' MOUTHS IS NOT EVIDENCE. BUT I DO ANTICIPATE THAT THE ATTORNEYS MAY REFER TO SOME THINGS IN THE OPENING STATEMENTS, AND THEN YOU'RE GOING TO PRESUMABLY HEAR SOME EVIDENCE AT SOME POINT THAT MIGHT CAUSE ME TO HAVE TO GIVE YOU AN INSTRUCTION AGAIN. BUT, FOLKS, THERE'S GOING TO BE EVIDENCE SUBMITTED, I SUSPECT THERE'S GOING TO BE EVIDENCE SUBMITTED, AND I'M NOT MAKING ANY COMMENTS ON THE FACTS. I DON'T HAVE ANYTHING TO DO

WITH THE FACTS.

BUT I SUSPECT THAT THERE'S GONNA BE AN ATTEMPT TO INTRODUCE EVIDENCE THAT MR. WILES -- RELATED TO MR. WILES ESCAPING FROM CUSTODY.

I WANT YOU TO UNDERSTAND, FOLKS, THAT EVIDENCE THAT MR. WILES WAS IN CUSTODY, EVIDENCE OF WHAT WE MAY REFER TO AS OTHER ACTS, THAT EVIDENCE IS NOT BEING ADMITTED IN THIS TRIAL TO SHOW IN ANY WAY; IT CANNOT BE USED BY YOU IN ANY WAY TO INFER THAT MR. WILES HAD A CHARACTER THAT WOULD CAUSE HIM TO ACT IN CONFORMITY WITH A PRIOR BAD ACT IN WHAT HE'S CHARGED WITH HERE IN SALUDA COUNTY.

BASICALLY, WHAT I'M TRYIN' TO TELL YOU IS THAT THIS EVIDENCE WILL BE ALLOWED INTO THE TRIAL OF THIS CASE ONLY FOR THE PURPOSE OF YOUR EVALUATING THE OTHER -- THE CHARGES HERE IN SALUDA, AND THEY'RE ALLOWED TO SHOW SUCH THINGS AS INTENT, WHETHER HE HAD AN INTENT TO DO CERTAIN THINGS OR NOT, MOTIVE, ABSENCE OF MISTAKE OR ACCIDENT, THINGS LIKE THAT.

THE STATE IS GONNA ATTEMPT TO INTRODUCE EVIDENCE RELATED TO THE FACT, IN THEIR VIEW, THAT MR. WILES WAS AN ESCAPEE FROM ANOTHER INSTITUTION AND YOU'LL SEE PIECES OF THE PUZZLE START BEING PRESENTED TO YOU, I THINK MAYBE THIS'LL MAKE MORE SENSE. BUT I FELT LIKE I HAD TO TELL YOU RIGHT NOW THAT IN GENERAL TERMS THE FACT THAT HE MAY HAVE BEEN IN CUSTODY IN ANOTHER AREA, THE FACT THAT HE MAY HAVE BEEN IN CUSTODY FOR SOMETHING ELSE DOESN'T HAVE ANYTHING TO DO WITH YOUR DECISION. YOU CAN'T HOLD THAT AGAINST HIM IN ANY WAY. THE FACT THAT HE -- THE EVIDENCE IS BEING ALLOWED RELATED TO AN ESCAPE IS ONLY ALLOWED TO BE USED FOR YOU TO EVALUATE WHAT HIS MOTIVES WERE, WHAT HIS INTENTS WERE, WHETHER THERE WAS A MISTAKE OR ACCIDENT, SOMETHING LIKE THAT. ALL RIGHT? HOPEFULLY THAT'LL MAKE MORE SENSE TO YOU AS WE GO ALONG

AND I'LL AT THE END OF THE TRIAL, I'LL GIVE YOU SOMETHING THAT I'VE HAD A CHANCE TO SIT DOWN AND WRITE OUT, MAYBE GIVE A LITTLE THOUGHT TO. ALL RIGHT? I INVITE YOUR CLOSE ATTENTION. SOLICITOR, YOU'RE RECOGNIZED FOR YOUR OPENING STATEMENT.

MR. YOUNG: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT?

THE COURT: YES, SIR.

MR. YOUNG: MR. FALGIONE. LADIES AND GENTLEMEN, MY NAME IS FRANK YOUNG. I WAS INTRODUCED EARLIER. I'M AN ASSISTANT SOLICITOR HERE IN THIS COUNTY. I WORK FOR SALUDA, EDGEFIELD AND MCCORMICK COUNTIES.

THIS WEEK, TODAY, WE ARE PRESENTING A CASE TO YOU BEGINNING TODAY REGARDING THE CONDUCT OF SHAWN WAYNE WILES WHO SITS OVER HERE NEXT TO MR. FALGIONE.

WE ARE ALLEGING A NUMBER OF THINGS THAT HE DID WRONG: THAT HE POSSESSED A STOLEN MOTOR VEHICLE IN THIS STATE; THAT HE RAN FROM LAW ENFORCEMENT AFTER THEY SIGNALED HIM TO STOP, AND THAT HE RAN INTO AND CAUSED SEVERE DAMAGE TO THIS CAR, THE PERSON WHO WAS DRIVING IT, MR. FRANK DANIELS, WHO IS A DEPUTY; AND THAT HE DID SO AT THE TIME IN SUCH A FASHION AND IN SUCH A MANNER THAT HE SHOULD BE HELD ACCOUNTABLE FOR ASSAULT AND BATTERY WITH INTENT TO KILL. THAT'S A SERIOUS CHARGE. AND WE'RE GONNA TALK TO YOU ABOUT THAT IN OUR EVIDENCE, AND WE'RE GONNA PRESENT EVIDENCE ON EACH ONE OF THOSE MATTERS.

WE HAVE A GENTLEMAN COMING HERE IN A FEW MOMENTS WHO WILL TALK TO YOU ABOUT THE CAR THAT HE OWNED. IT'S A POLICE VEHICLE. THAT HE DISCOVERED MISSING FROM HIS BUSINESS IN GEORGIA. THAT BUSINESS IS IN BYRON, GEORGIA. HE'LL COME AND TALK ABOUT THAT. SUBSEQUENTLY, THAT CAR WAS THE ONE THAT

MR. WILES WAS OPERATING WHEN IT WAS BEING CHASED BY THE LAW ENFORCEMENT. IT IS A RETIRED, IF YOU WANT TO CALL IT THAT, POLICE VEHICLE. HOW RETIRED IT WAS WE'RE GONNA HEAR ABOUT THE SPEEDS INVOLVED. YOU MIGHT DECIDE IT WASN'T VERY MUCH RETIRED AT ALL 'CAUSE IT WAS GOIN' AWFULLY FAST.

THERE WERE AT LEAST -- THERE WAS AT LEAST ONE PATROLMAN BEHIND HIM. THE FACTS ARE, FOLKS, WE'RE GONNA SHOW YOU THE MAP THAT PRETTY MUCH INVOLVES THE ROUTE THAT STARTED BASICALLY IN EDGEFIELD COUNTY ON 25 HEADED NORTH. IT GOT SLIGHTLY INTO GREENWOOD.

MR. WILES ESSENTIALLY PULLED OVER ON THE ROAD LONG ENOUGH TO GET HIS SEAT BELT FASTENED OR WHATEVER. I DON'T KNOW. BUT HE WAS DOIN' SOMETHIN' AND BY THE TIME THE POLICEMAN -- HIGHWAY PATROLMAN GOT OUT OF HIS CAR TO GO WHERE THAT CAR WAS WHEN IT STOPPED, HE DID A 180 AND STARTED HEADIN' BACK DOWN 25 FROM GREENWOOD TOWARD EDGEFIELD DOWN TO THE 378 JUNCTION WITH IT AND A HIGH SPEED CHASE ENSUED. EXTREMELY HIGH SPEEDS.

FOLLOWED HIM -- JUST THE KINDA MILES -- 17 MILES OR SO.

AT ONE POINT IN TIME I BELIEVE ANOTHER POLICE OFFICER BECAME INVOLVED IN THE CHASE. IT WAS SO DANGEROUS THEY BASICALLY TOLD 'EM TO STOP CHASIN' HIM. SO THEY BACKED OFF AT A DISTANCE FROM ABOUT 3 MILES, AND THEN ANOTHER OFFICER WORKS FOR THE SALUDA COUNTY SHERIFF'S DEPARTMENT WAS MONITORING THIS AND HAPPENED TO BE ALONG THAT SAME ROADSIDE, HE SPED UP TO MATCH SPEEDS WITH HIM. I THINK HE'S GONNA TESTIFY HE GOT UP ABOUT 70 OR 80 AND GOT PASSED LIKE A BULLET BY MR. WILES. HE WAS TOLD TO BACK OFF. HE OBSERVED CARS BEING RUN OFF THE ROAD OR A CAR BEING RUN OFF THE ROAD BY MR. WILES' BEHAVIOR. IT TOOK ITSELF ON INTO SALUDA. THE CHASE BASICALLY WAS AT THAT POINT JUST A FOLLOWING BY DEPUTY BYRD. THEY GOT RIGHT HERE AT THE CENTER OF

TOWN BASICALLY.

YOU COULD SEE HIM GO OVER THE TOP OF THE HILL. WAS WATCHING THAT HAPPEN. STILL BELIEVES AT A VERY, VERY HIGH RATE OF SPEED.

FROM THE SOUTH ON 121 HEADED TOWARD NEWBERRY RIGHT OUT HERE OUTSIDE THE COURTHOUSE, SGT. FRANK -- FRANK DANIELS FROM THE DEPUTY DEPARTMENT WAS ALSO MONITORING THAT WAS RESPONDING, AND HIS TESTIMONY IS PROBABLY GONNA BE HE PULLED UP INTO THIS INTERSECTION OUT HERE, WAS GONNA TURN LEFT.

ABOUT THE SAME TIME A LADY IN ANOTHER CAR WITH HER SON AND DAUGHTER AND CHILD WERE ALSO COMIN' ALONG BESIDE HIM RIGHT UP HERE AT THE 121 INTERSECTION WITH 378 IN FRONT OF THE COURTHOUSE AT WHICH TIME THE CAR CAME OVER THE HILL DRIVEN BY MR. WILES AND SHE TURNED RIGHT -- HER CAR TURNED RIGHT BECAUSE IT APPEARED THEY WERE GOIN' TO NEWBERRY BUT THEY WERE AFRAID OF WHAT MIGHT HAPPEN, SO THEY TURNED RIGHT.

DEPUTY DANIEL'S CAR IS IN THE INTERSECTION. BIG COLLISION. DEPUTY DANIEL'S CAR SPUN AROUND. WINDS UP BASICALLY YOU MIGHT SAY IN THE OTHER PART OF THE INTERSECTION, THREW HIS CAR OVER TO THE RIGHT FROM THE DIRECTION HE WAS HEADED; IT SPUN IT AROUND IN THE OPPOSITE DIRECTION OF TRAVEL. THE CAR IS POINTED NOW SOUTH. THE OTHER CAR, MR. WILES' CAR, WOUND UP IN THE BUILDING ACROSS THE STREET HERE, ACROSS THE CORNER AND WAS WEDGED IN IT. HE WAS IN IT ALONG WITH A PASSENGER. HE GETS OUT OF HIS CAR ALONG WITH THE PASSENGER AND HE GOES UP INTO THE ATTIC AND HIDES THERE UNTIL HE'S PULLED OUT. THE LADY THAT WAS IN THE CAR WITH HIM I BELIEVE SUBSEQUENTLY COMES OUT AND IDENTIFIES WHO IT IS INSIDE THE BUILDING.

MR. WILES' SITUATION IS WE'RE GONNA BRING IN SOME INFORMATION ABOUT

THE FACT THAT HE WAS – HAD BEEN IN CUSTODY IN ANOTHER INSTITUTION AT THAT TIME AND WAS – ESCAPED FROM IT. BUT WE'RE BRINGING THAT IN TO SHOW YOU HOW RECKLESS HIS BEHAVIOR WAS IN TERMS OF HIS DESIRE TO GET AWAY FROM THE POLICE, AND HIS DESIRE TO AVOID FURTHER CAPTURE, AND I THINK THAT'S CONSISTENT WITH EVERYTHING THAT HAPPENED. THE SLED TEAM HAD TO COME AND PULL HIM OUTTA THE ROOF. YOU'RE GONNA HEAR ABOUT THAT.

WE HAVE INVESTIGATOR ROBERT DENNIS FROM THE NEWBERRY POLICE DEPARTMENT – EXCUSE ME – SHERIFF'S DEPARTMENT WHO CAME TO INVESTIGATE THIS 'CAUSE WE NEEDED A COMPLETELY INDEPENDENT AGENCY TO COME AND DO THAT, AND WE HAD EVERYBODY INVOLVED FROM SLED TO CITY TO SALUDA COUNTY DEPUTIES TO THE HIGHWAY PATROL. WE NEEDED SOMEBODY FROM OUTSIDE THE COUNTY, AND HE DID AN ACCIDENT INVESTIGATION ON THIS AND HAD DETERMINED AS BEST HE COULD WHERE THE ACCIDENT OCCURRED AND SOME DISTANCES INVOLVED IN TERMS OF THE TRAVEL TIME AND THE APPROXIMATED SPEEDS. AND PEOPLE WHO OBSERVED WHAT HAPPENED WILL ALSO TESTIFY AS TO SPEED.

SO, FOLKS, THIS IS GONNA BOIL DOWN TO, BASICALLY, A JURY QUESTION THAT WE THINK YOU'RE GONNA HAVE TO ANSWER AT THE END OF ALL THE TESTIMONY THAT HAS TO DO WITH WHAT SOME WOULD CALL MALICE. AND THAT'S A – THAT'S A LEGAL TERM AND I'M NOT GONNA SIT HERE AND TRY TO IMPRESS YOU WITH MY GREAT LEGAL KNOWLEDGE, BUT THAT'S GONNA HAVE SOMETHIN' TO DO WITH WILFUL AND WANTON DISREGARD FOR THE SAFETY OF OTHERS. THAT'S WHAT IS GONNA LIE AT THE HEART OF IT. WE'RE GONNA ASK YOU TO BE CONSIDERING THAT THROUGHOUT THE TRIAL AS YOU HEAR THE EVIDENCE, NOT TO MAKE YOUR MIND UP, BUT TO JUST LISTEN TO THE EVIDENCE AND HOW IT COMES OUT ABOUT THE TYPE OF BEHAVIOR OR DRIVING THAT YOU SAW, THE TYPE OF CAR INVOLVED, ALL THE SPEEDS, THE NATURE OF HOW HE WAS

CARRYING ON AS HE DROVE.

ALL OF THAT HAS SOMETHING TO DO WITH THE MALICE INVOLVED. 'CAUSE THE JUDGE AT THE END OF THIS IS GONNA BE THE SOURCE OF THE LAW THAT YOU'RE GONNA HAVE TO FOLLOW. AND YOU MUST FOLLOW HIS INSTRUCTIONS AS TO WHAT HE TELLS YOU ABOUT WHAT THE LAW SAYS ABOUT MALICE.

BUT THAT IS GONNA BE, I THINK, ONE OF THE KEY ISSUES FOR YOU TO CONSIDER AND DETERMINE HERE IN THIS CASE.

AND IT WILL TAKE SOME TIME FOR US TO GET THROUGH ALL THIS, AND MAYBE TOMORROW WE'LL BE FINISHED WITH ALL OUR EVIDENCE. I CERTAINLY HOPE SO. WE'RE PROBABLY ONLY GONNA TAKE ONE WITNESS TODAY BECAUSE OF THE TIME. BUT REGARDLESS OF WHAT HAPPENS IN TERMS OF HOW FAR WE GET OR NOT, IT'S VERY IMPORTANT THAT YOU PAY ATTENTION TO WHAT THE WITNESSES SAY.

THE JUDGE HAS ALREADY TOLD YOU US LAWYERS WE DON'T GET TO DECIDE THESE CASES ON FACTS. WE'RE NOT IN CHARGE OF THAT. THIS IS THE JUDGE OF THE LAW. HE TELLS YOU WHAT THE LAW IS. YOU ARE THE JUDGE OF THE FACTS. YOU DECIDE WHAT THE FACTS ARE. YOU DECIDE THE CREDIBILITY IN ALL THIS. IT IS VERY IMPORTANT FOR YOU AND YOU ALONE TO BE LISTENING CAREFULLY AND MAKE YOUR OWN MIND UP ABOUT WHAT YOU HEAR IN THIS CASE AND WHAT YOU THINK HAPPENED. I KNOW THAT IT'S A VERY DIFFICULT THING TO BE TOLD YOU'RE GONNA COME TO COURT AND DO SOMETHIN'. IT'S DIFFICULT FOR ANYONE TO SAY TO ANOTHER PERSON YOU'VE GOTTA DO THIS. FOR ALL ADULTS IT'S HARD TO BE TOLD THAT, BUT IT'S ONE OF THE MOST IMPORTANT THINGS WE DO IN OUR COUNTRY WHEN WE LOOK AT A JURY AND WE SAY TO A JURY YOU GO OUT THERE AND YOU MAKE THESE HARD CALLS BECAUSE WE'RE THE PE -- YOU'RE THE PEOPLE WE TRUST TO MAKE THESE DECISIONS. MR. WILES IS ENTITLED TO A COMPLETELY FAIR TRIAL IN THIS COUNTRY JUST AS ANYONE ELSE

WOULD BE, AND IT'S ABSOLUTELY NECESSARY FOR YOU TO DO THE RIGHT THING IN THIS CASE AND ENSURE THAT YOU'VE HEARD THE EVIDENCE CAREFULLY. THAT'S WHY THE JUDGE EMPHASIZED THAT SO MANY TIMES. AND TO OBEY ALL OF THE INSTRUCTIONS ABOUT NOT TALKING ABOUT IT.

IT'S IMPORTANT FOR YOU TO KEEP IN MIND THAT THERE AREN'T A WHOLE LOTTA THINGS IN THIS COUNTRY THAT WE CAN TELL PEOPLE, YOU KNOW, NOWADAYS. WE HAVE A VOLUNTEER ARMY EVEN.

YOU KNOW, I THINK YOU'RE THE LAST SOURCE OF DRAFTEES WE GET. YOU GET DRAFTED. YOU DON'T GET A CHOICE. BUT IT'S SO IMPORTANT. YOU'RE THE BEDROCK OF WHAT WE HAVE IN OUR CRIMINAL JUSTICE SYSTEM. SO THAT'S THE OTHER HALF OF IT. IT'S A DUTY AND IT'S KIND OF AN HONOR AND AT THE SAME TIME IT'S HARD. BUT DUTY GOES ALONG WITH IT, AND THAT'S THE PART OF IT THAT'S GONNA BE AT THE END OF THIS YOUR -- YOUR RESPONSIBILITY, THE DUTY TO GO BACK THERE AND MAKE THIS CALL OF FACTS. SO ALL THIS REEMPHASIS OF LISTENING CAREFULLY, IT'S VERY IMPORTANT.

THERE'S ONE OTHER THING, AND I SUPPOSE ANY TIME A PERSON COMES IN A COURTROOM, THEY GET NERVOUS AND THEY WORRY ABOUT THINGS. THIS IS THE TIME TO PUT ASIDE ANYTHING YOU HAVE AS A PRECONCEIVED NOTION ABOUT ANYTHING AND LET IT GO, AND JUST REMEMBER WHAT THE JUDGE SAYS TO BE FAIR AND IMPARTIAL. LISTEN TO THE FACTS. MAKE IT ON THE FACTS, NOT ON ANYTHING THAT YOU BROUGHT HERE WITH YOU, BUT ON WHAT YOU HEAR FROM THAT WITNESS STAND AND WHAT THE EVIDENCE IS THAT WE'VE PRESENTED. THERE'LL BE PICTURES AND DIAGRAMS AND THE TESTIMONY. THOSE ARE THE THINGS THAT YOU'LL HEAR. PLEASE PAY VERY, VERY CAREFUL ATTENTION. IT'S IMPORTANT TO THE STATE; IT'S IMPORTANT TO MR. WILES. I THANK YOU FOR YOUR ATTENTION.

WOULD BE, AND IT'S ABSOLUTELY NECESSARY FOR YOU TO DO THE RIGHT THING IN THIS CASE AND ENSURE THAT YOU'VE HEARD THE EVIDENCE CAREFULLY. THAT'S WHY THE JUDGE EMPHASIZED THAT SO MANY TIMES... AND TO OBEY ALL OF THE INSTRUCTIONS ABOUT NOT TALKING ABOUT IT.

IT'S IMPORTANT FOR YOU TO KEEP IN MIND THAT THERE AREN'T A WHOLE LOTTA THINGS IN THIS COUNTRY THAT WE CAN TELL PEOPLE, YOU KNOW, NOWADAYS. WE HAVE A VOLUNTEER ARMY EVEN.

YOU KNOW, I THINK YOU'RE THE LAST SOURCE OF DRAFTEES WE GET. YOU GET DRAFTED. YOU DON'T GET A CHOICE. BUT IT'S SO IMPORTANT. YOU'RE THE BEDROCK OF WHAT WE HAVE IN OUR CRIMINAL JUSTICE SYSTEM. SO THAT'S THE OTHER HALF OF IT. IT'S A DUTY AND IT'S KIND OF AN HONOR AND AT THE SAME TIME IT'S HARD. BUT DUTY GOES ALONG WITH IT, AND THAT'S THE PART OF IT THAT'S GONNA BE AT THE END OF THIS YOUR -- YOUR RESPONSIBILITY, THE DUTY TO GO BACK THERE AND MAKE THIS CALL OF FACTS. SO ALL THIS REEMPHASIS OF LISTENING CAREFULLY, IT'S VERY IMPORTANT.

THERE'S ONE OTHER THING, AND I SUPPOSE ANY TIME A PERSON COMES IN A COURTROOM, THEY GET NERVOUS AND THEY WORRY ABOUT THINGS. THIS IS THE TIME TO PUT ASIDE ANYTHING YOU HAVE AS A PRECONCEIVED NOTION ABOUT ANYTHING AND LET IT GO, AND JUST REMEMBER WHAT THE JUDGE SAYS TO BE FAIR AND IMPARTIAL. LISTEN TO THE FACTS. MAKE IT ON THE FACTS, NOT ON ANYTHING THAT YOU BROUGHT HERE WITH YOU, BUT ON WHAT YOU HEAR FROM THAT WITNESS STAND AND WHAT THE EVIDENCE IS THAT WE'VE PRESENTED. THERE'LL BE PICTURES AND DIAGRAMS AND THE TESTIMONY. THOSE ARE THE THINGS THAT YOU'LL HEAR. PLEASE PAY VERY, VERY CAREFUL ATTENTION. IT'S IMPORTANT TO THE STATE; IT'S IMPORTANT TO MR. WILES. I THANK YOU FOR YOUR ATTENTION.

THE COURT: THANK YOU, MR. YOUNG. MR. FALGIONE, YOU'RE RECOGNIZED FOR YOUR OPENING STATEMENT.

MR. FALGIONE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT?

THE COURT: YES, SIR.

MR. FALGIONE: GOOD AFTERNOON.

(RESPONSE FROM THE JURY.)

YOU'RE GONNA HEAR A LOTTA BAD THINGS ABOUT SHAWN.

YOU'RE GONNA HEAR, AS THE JUDGE HAS ALREADY TOLD YOU, THAT HE ESCAPED FROM SOMEWHERE ELSE. THE SOLICITOR'S TOLD YOU.

YOU'RE GONNA HEAR THAT HE WAS DRIVING AT A HIGH RATE OF SPEED AND THAT HE WAS SCARED OF GETTING CAUGHT.

HAVE YOU EVER BEEN SO SCARED THAT YOU JUST MADE BAD, BAD DECISIONS BECAUSE YOU FELT LIKE YOU HAD NO OTHER ALTERNATIVES, NO OTHER OPTIONS. WHEN WE TALK ABOUT THAT I THINK YOU'RE GONNA FIGURE OUT AT THE END OF THIS THING THAT THAT'S SHAWN WILES. HE MADE TERRIBLE DECISIONS.

BUT WHAT REALLY BRINGS US HERE AND WHAT WE'RE REALLY GONNA FOCUS ON IS THE IDEA THAT HE'S BEEN CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO KILL. AT THE END OF THIS, THE JUDGE IS GONNA TELL YOU THAT'S MURDER EXCEPT THE VICTIM DIDN'T DIE. WELL, YOU'RE GONNA HAVE TO MAKE YOUR DECISION AT THE END OF THIS TRIAL AS TO WHETHER OR NOT WHEN SHAWN WILES WAS COMING THROUGH SALUDA AT A HIGH RATE OF SPEED AND COLLIDED WITH OFFICER DANIELS' VEHICLE THAT HE REALLY TRIED TO KILL HIM. BECAUSE THAT'S WHAT HE'S CHARGED WITH. ASSAULT AND BATTERY WITH THE INTENT TO KILL. THANKFULLY, OFFICER DANIELS DIDN'T SUFFER WHAT I WOULD DETERMINE AS A SERIOUS INJURY. I DON'T MEAN TO DIMINISH THAT BECAUSE GOODNESS KNOWS, WE DIDN'T WANT ANYBODY TO

GET HURT PERIOD. BUT FROM WHAT I UNDERSTAND, HE WAS TREATED AND RELEASED FROM THE HOSPITAL THAT VERY SAME NIGHT. HE WALKED AWAY FROM THIS ACCIDENT. ANOTHER OFFICER WALKED HIM ON DOWN THE BLOCK.

NOW I DON'T IN ANY WAY MEAN TO DIMINISH THE HURT FEELINGS AND THE PAIN THAT OFFICER DANIELS ENDURED BECAUSE OF WHAT HAPPENED HERE. BUT WE'VE CHOSEN, WE'VE TAKEN GREAT, GREAT CARE WITH Y'ALL TODAY, AND I APPRECIATE YOUR PATIENCE IN ANSWERING THESE QUESTIONS TRUTHFULLY AND HONESTLY, TO TRY AND SEAT A JURY THAT WOULD HAVE THE INTEGRITY AND THE HONESTY AND THE INTELLECT TO BE ABLE TO DIVIDE ALL THESE CHARGES BECAUSE IF YOU'RE GUILTY OF ONE, DOESN'T NECESSARILY MEAN THAT YOU'RE GUILTY OF ALL THE REST. AND I'M NOT HERE TO TELL YOU THAT SHAWN WILES WAS A SAINT AND SOME OF THIS DIDN'T HAPPEN BECAUSE OF HIM. BUT I AM HERE TO TELL YOU THAT SHAWN WILES NEVER INTENDED TO MURDER OFFICER DANIEL.

WE'RE GONNA GO AHEAD. WE'LL KEEP THE TRIAL MOVING, BUT PLEASE DEVOTE ALL THE TIME, ALL THE ATTENTION THAT YOU POSSIBLY CAN TO THIS AND DON'T MAKE UP YOUR MINDS UNTIL THE END OF THE CASE. YOU KNOW, IT'S TEMPTING BECAUSE THE PROSECUTION HAS THE BURDEN OF PROOF, THEY GET TO GO FIRST. YOU KNOW, THE PROSECUTOR GETS TO TALK TO YOU FIRST. THEY GET TO PUT UP ALL THEIR WITNESSES, AND THEY DEVELOP THEIR WHOLE CASE. SO THE FIRST THING THAT YOU HEAR IS ALL THE BAD STUFF. RIGHT? WELL, PLEASE, KEEP AN OPEN MIND; DON'T FORM YOUR OPINIONS UNTIL YOU'VE HEARD THE ENTIRE TRIAL EVIDENCE. AND THINK ABOUT THAT. THINK ABOUT THAT CHARGE. ASSAULT AND BATTERY WITH INTENT TO KILL. THANK YOU.

THE COURT: THANK YOU, MR. FALGIONE. CALL YOUR FIRST WITNESS, PLEASE, MR. YOUNG.

MR. YOUNG: THANK YOU, YOUR HONOR. WE CALL MR. GARY L. DAVIS.

GARY L. DAVIS, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. YOUNG

Q MR. DAVIS, WHERE DO YOU LIVE?

A I LIVE IN BON AIR, GEORGIA.

Q ALL RIGHT, SIR. DO YOU HAVE A BUSINESS OR WORK ANYWHERE?

A YEAH, I GOT A AUTO COLLISION SHOP IN BYRON, GEORGIA.

Q WHAT'S THE NAME OF THAT PLACE?

A PRECISION COLLISION.

Q AND WHAT'S THE NAME OF THE TOWN?

A BYRON, GEORGIA.

Q BYRON. IS IT B-Y-R-O-N?

A YES, SIR.

Q OKAY. AND DO YOU -- HOW LONG HAVE YOU OWNED THAT BUSINESS OR BEEN A PART OF THAT BUSINESS?

A SINCE '90 -- NOVEMBER OF '98.

Q OKAY. AND DO YOU HAVE MORE THAN ONE OWNER?

A YES. MY STEPSON ROBERT MICHAEL.

Q ALL RIGHT, SIR. NOW YOU -- DURING THE PERIOD OF TIME OF DECEMBER 2003 DID -- DID ONE OF YOUR VEHICLES COME UP MISSING?

A YES.

Q WOULD YOU TELL US WHAT HAPPENED AND HOW THAT HAPPENED.

A MY STEPSON WAS DRIVING THAT CAR THAT WEEK. WE WERE CLOSED THAT

WEEK. VACATION. WE CLOSE THE WEEK OF CHRISTMAS. WE LET EVERYBODY OFF. EVERYBODY GET THROUGH WITH THEIR VACATION. AND I WENT BY THERE ONE DAY DURIN' THE WEEK AND NOTICED THAT HE HAD SWAPPED VEHICLES.

Q UH-HUH.

A AND GOT HIS TRUCK.

Q IF YOU'RE REFERRIN' TO THAT VEHICLE, YOU -- DO YOU HAVE SOMETHIN' THAT MORE SPECIFICALLY DESCRIBES THAT VEHICLE THAT YOU'RE REFERRING TO?

A IT WAS A BLUE '97 CROWN VIC.

Q CROWN VICTORIA?

A UH-HUH.

Q DO YOU HAVE TITLE TO THAT VEHICLE?

A YES, SIR.

Q DO YOU HAVE A COPY OF THAT TITLE?

A YES, SIR.

MR. FALGIONE: WITHOUT OBJECTION, YOUR HONOR. (STATE'S EXHIBIT #19 RECEIVED IN EVIDENCE.)

Q MR. DAVIS, I'M GONNA PASS BACK TO WHAT'S BEEN OFFERED INTO EVIDENCE AS PROSECUTION EXHIBIT 19. NOW THAT'S IN EVIDENCE, WOULD YOU TELL ME WHAT IT SAYS, WHAT TYPE OF VEHICLE THIS IS SPECIFICALLY.

A IT'S A '97 FORD. IT'S A CROWN VICTORIA.

Q DOES IT HAVE A SPECIFIC VIN NUMBER ON THAT TITLE?

A YES, SIR.

Q OKAY. AND IS -- ON THAT TITLE DOES IT INDICATE WHEN YOU BOUGHT IT?

A THE DATE THE TITLE WAS ISSUED WAS 11-19-03.

Q OKAY. SO NOVEMBER 19TH OF 2003---

A UH-HUH.

Q —IS THAT WHAT YOU REFER TO AS 11-19-0[illegible]

A RIGHT.

Q AND THAT'S WHEN YOU HAD IT TITLED. DO YOU RECALL HOW MUCH YOU PAID FOR THE CAR?

A YES, SIR. $1500 PLUS TAX.

Q PLUS TAX. OKAY. THAT'D BRING IT UP TO WHAT? NEAR 1600?

A YEAH, 1600 AND—

Q ALL RIGHT, SIR. WHERE DID YOU PURCHASE THE CAR?

A CLINT BRANNON FORD.

Q YOU REFERRING TO SOME DOCUMENTS? THAT'S OKAY. I F YOU RECALL HOW MUCH IT WAS, THAT'S FINE.

A YEAH.

THE COURT: WHERE DID YOU BUY IT FROM, SIR?

A CLINT BRANNON FORD IN UNADILLA, GEORGIA.

Q ALL RIGHT. NOW WHAT KINDA CAR IS THIS? IT'S A CROWN VICTORIA. IS THERE ANYTHING SPECIAL ABOUT THIS CAR?

A IT WAS A OLDER POLICE CAR.

Q POLICE CAR. WAS IT FROM JUST THE HIGHWAY PATROL OR SOME PLACE ELSE THAT?

A MR. BRANNON RUNS A LEASING AND HE'S GOT LIKE GEORGIA'S CONTRACT WHERE HE SELLS POLICE CARS AND HE LEASES 'EM AND THEN HE TAKES 'EM BACK WHEN THEY COME OFF LEASE OR OFF THEY TRADE 'EM IN AND HE SELLS 'EM.

Q HOW DID YOU DISCOVER THIS CAR WAS MISSING?

A DIDN'T REALIZE IT UNTIL THE SHERIFF DEPARTMENT UP HERE CALLED [illegible]

WELL, THE -- THE POLICE CALLED ME AND THEN THEY GAVE ME THIS GUY'S NUMBER.

Q THIS GUY'S NUMBER BEIN' WHO? DO YOU KNOW?

A I CAN'T RECALL.

Q WAS IT SOMEBODY FROM THE POLICE DEPARTMENT CALLED YOU?

A YEAH.

Q AND WHAT'D THEY CALL YOU ABOUT?

A WHETHER OR NOT I OWED A 2000 -- I MEAN A '97 CROWN VIC.

Q ALL RIGHT. AND DID YOU SUBSEQUENTLY RECOVER THAT CAR?

A YES.

Q WHEN YOU -- WHEN YOU LAST SAW THE CAR WHAT KIND OF CONDITION WAS IT IN BEFORE IT--

A IT WAS TORE UP PRETTY BAD.

Q NO. I'M TALKIN' ABOUT BEFORE IT WAS MISSING.

A OH, IT WAS -- I MEAN DRIVEABLE. I MEAN THERE WAS NOTHIN' WRONG WITH IT.

Q IT WAS BEING DRIVEN?

A YES, SIR. MY SON WAS DRIVIN' IT EVERY DAY BACK AND FORTH TO WORK.

Q WAS THERE ANY SHEET METAL DAMAGE TO IT THAT YOU'RE AWARE OF?

A NOTHING. NO.

Q OKAY. WHEN YOU SUBSEQUENTLY SAW THAT CAR, WHEN WAS IT? DO YOU RECALL YOU LAST SAW IT NEXT?

A SHOULDA BEEN WITH CHRISTMAS THERE IT MESHED 2 SUNDAYS IN THERE. SO WE BEEN CLOSED. EITHER THE 23RD OR THE 24TH.

Q AND YOU'RE TALKIN' ABOUT WHEN YOU -- BEFORE IT WAS MISSING? IS THAT WHAT YOU'RE TALK--

A NO, WHEN I LAST SAW IT.

Q THAT'S BEFORE IT WAS MISSING OR AFTER IT WAS MISSING?

A THAT WAS BEFORE IT WAS MISSING.

Q OKAY. SO YOU THINK YOU SAW IT ON THE 23RD OR 24TH—

A RIGHT.

Q —AT YOUR SHOP?

A UH-HUH.

Q LET ME ASK YOU, WHEN -- WHEN YOU SAW IT AND IT WAS IN GOOD CONDITION, RIGHT? YOU SUBSEQUENTLY -- IT WAS REPORTED MISSING. IS THAT CORRECT?

A WE NEVER REPORTED IT 'CAUSE WE DID NOT KNOW IT UNTIL AFTER—

Q YES, SIR.

A —AND I COME TO THE SHOP AND CHECKED AND IT WAS GONE.

Q IT WAS GONE. AND YOU THINK THAT WAS THE 23RD OR 24TH. NOW MY QUESTION IS WHEN DID YOU NEXT SEE THE CAR.

A PROBABLY I THINK IT WOULD -- THEY RELEASED IT A COUPLE MONTHS LATER. I DON'T KNOW THE EXACT DATE, BUT AND WE SENT OUT A WRECKER AND IT COME BACK TO THE SHOP.

Q WHAT DID IT LOOK LIKE?

A IT WAS -- THE FRONT END WAS TORE OFF OF IT. THE BACK END WAS TORE UP PRETTY BAD ON IT, AND I MEAN NOTHIN' WAS REALLY USABLE ON THE CAR.

Q OKAY. AND WHERE DID YOU COME AND GET IT FROM?

A SOMEWHERE UP HERE IN SOUTH CAROLINA. I MEAN MY WRECKER DRIVER—

Q YOU GOT IT BACK. YOUR WRECKER WENT AND GOT IT FOR YOU?

A YEAH. I HIRED A—

Q OKAY. IS IT BACK IN YOUR SHOP NOW?

A NO. I'VE ACTUALLY GIVE IT BACK TO MR. BRANNON.

Q YOU HAVE? OKAY. DID YOU ACTUALLY SEE THE DAMAGE TO THE CAR?

A YES.

Q AFTER IT CAME BACK TO YOU?

A YES.

Q DO YOU THINK YOU'D BE ABLE TO DETERMINE THE PICTURE I SHOWED YOU AS BEING THE DAMAGE YOU SAW SUBSEQUENTLY THE SAME OR SIMILAR TO THE DAMAGE IN THE PICTURE?

A PROBABLY. YES.

MR. YOUNG: YOUR HONOR, WE HAVE A STIPULATION, I BELIEVE, AS TO THE PICTURES.

MR. FALGIONE: YOUR HONOR, WE'LL STIPULATE AS TO THE (INAUDIBLE)

MR. YOUNG: I'LL—

THE COURT: YOU STIPULATE WHAT?

MR. YOUNG: WE HAVE PICTURES OF THIS—

MR. FALGIONE: AS TO THE ADMISSIBILITY OF THE PHOTOGRAPHS.

THE COURT: ALL RIGHT. WHAT ARE THE NUMBERS?

MR. YOUNG: I WANT TO MAKE SURE WE HAVE IT CORRECT, YOUR HONOR. YOUR HONOR, WE HAVE AND WOULD OFFER INTO EVIDENCE STATE'S EXHIBITS -- STATE'S EXHIBITS 3 THROUGH 15 ARE PHOTOGRAPHS OF THE INCIDENT LOCATION AND SCENE OF THE VEHICLE AND STATE'S EXHIBIT #20 IS ALSO A PICTURE OF THAT SCENE.

THE COURT: THEY'RE ENTERED WITHOUT OBJECTION. (STATE'S EXHIBITS 3 THROUGH 15 AND #20 RECEIVED IN EVIDENCE.)

Q LET ME HAND UP TO YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT 20 AND ASK YOU, LOOK AT THAT PHOTO AND ALSO STATE'S EXHIBIT #15 AND ASK YOU, SIR, IF THOSE -- THAT VEHICLE LOOKS THE SAME OR SIMILAR TO THE ONE THAT YOU OWN --

OR OWNED AND WAS THE ONE THAT WAS REPORTED MISSING.

A ABOUT THE SAME I GUESS. I'M PRETTY SURE THAT'S IT.

Q OKAY.

A WHAT I GOT BACK DAMAGED.

Q SAME COLOR.

A RIGHT.

Q DOES THE DAMAGE LOOK SIMILAR?

A RIGHT.

Q AFTER YOU GOT IT BACK?

A YES.

Q ALL RIGHT, SIR. AND, SIR, AFTER YOU GOT THIS VEHICLE BACK, YOU SAID YO RETURNED TO THE OWNER OF THE VEHICLE IN UNISILLA (PHONETIC)—

A WELL, NAW, IT WAS THE MAN I BOUGHT IT FROM.

Q OKAY. JUST FOR THE RECORD, DO YOU RECALL SPECIFICALLY THEN IT WA EITHER THE 23RD OR 24TH YOU FEEL LIKE IT WAS DISCOVERED MISSING OR REPORTE MISSING.

A WELL, MY LAST TIME I SAW IT, AND THEN I THINK IT WAS SOMEWHERE AROUN AFTER CHRISTMAS THERE, THE DAY AFTER CHRISTMAS THAT THEY ACTUALLY CALL ME.

Q AND YOU GOT A CALL AFTER CHRISTMAS—

A YEAH.

Q —THE DAY AFTER CHRISTMAS.

A YEAH.

Q DID THEY CALL ME BEING THE SHERIFF'S—

A RIGHT—

Q —DEPARTMENT—

A AND THEN—

Q —OR SOMEONE IN LAW ENFORCEMENT?

A —I WENT BACK BY THE SHOP. SOMETHIN'—

Q I'M SORRY. CONTINUE YOUR ANSWER.

A I SAID THEY CALLED ME AND THEN I WENT BACK BY THE SHOP AND REALIZED THE CAR WAS GONE.

Q AND IT WAS NOT THERE ON THE NEXT—

A WASN'T—

Q —DAY.

A NO.

Q 26TH OF DECEMBER 2003.

A UH-HUH.

Q WOULD YOU, PLEASE ANSWER ANY QUESTIONS MR. FALGIONE HAS FOR YOU, SIR.

A OKAY.

THE COURT: CROSS.

MR. FALGIONE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT?

<u>CROSS-EXAMINATION</u>

<u>BY MR. FALGIONE</u>

Q MR. DAVIS?

A UH-HUH.

Q DID I UNDERSTAND CORRECTLY IN THAT YOU PAID $1500 FOR THIS VEHICLE?

A RIGHT. PLUS TAX.

Q PLUS TAX?

A (NODDED YES.)

Q AND THE TITLE THAT'S BEEN ENTERED IN HERE INDICATES IT HAD AN ODOMETER READING OF 89,530 MILES?

A YES.

Q WOULD THAT MOST LIKELY BE A HUNDRED—

A YES.

Q —AND 89 THOUSAND—

A NO, SIR. NO, IT ACTUALLY WAS NOT.

Q OKAY. AND IT WAS A POLICE CAR—

A —USED AS A DETECTIVE CAR.

Q ALL RIGHT. NOW YOU RESPONDED TO THE SOLICITOR A FEW MOMENTS AGO AND SAID YOU GAVE IT BACK TO MR. BRANNON?

A RIGHT.

Q DID MR. BRANNON GIVE YOU YOUR MONEY BACK?

A NO.

Q OKAY. YOU JUST DONATED IT TO HIM?

A I DONATE IT TO HIM.

Q DID YOU RECEIVE ANY INSURANCE PAY—

A NO. I GOT—

Q —MENTS—

A —A LETTER WHERE I DID NOT FILE NOTHIN' ON IT 'CAUSE I DIDN'T HAVE NOTHIN' BUT LIABILITY ON IT AND I—

Q YOU ONLY HAD GARAGE KEEPERS LIABILITY—

A RIGHT.

Q —INSURANCE—

A BECAUSE I—

Q SO YOUR— I'M SORRY.

A MY SON HAD BEEN USING IT FOR HIS—

Q OKAY. AND HE DROVE IT BACK AND FORTH TO WORK EVERY DAY I THINK YOU SAID.

A RIGHT.

Q FOR ABOUT A MONTH THEN.

A RIGHT.

Q IS THAT RIGHT?

A RIGHT.

Q THIS $1500 CAR.

A RIGHT.

Q RIGHT? AND IT WAS IN GEORGIA AT THE TIME IT WAS TAKEN?

A RIGHT. YES.

Q OKAY. ALL RIGHT. THANK YOU, SIR.

THE COURT: WAIT JUST A SECOND. REDIRECT?

MR. YOUNG: I DON'T HAVE ANY FURTHER QUESTIONS OF MR. DAVIS, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN. ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING TO START BACK TOMORROW AT 9:30. I NEED YOU IN THE JURY ROOM AT 9:30. WHEN YOU COME BACK, DON'T COME THROUGH THE COURTROOM. THEY'LL SHOW YOU HOW TO REPORT DIRECTLY TO THE JURY ROOM AS YOU LEAVE. SO WHEN YOU LEAVE HERE, GO INTO THE JURY ROOM AND THEY'LL SHOW YOU HOW TO COME IN IN THE MORNING.

NOW I NEED TO GIVE YOU A COUPLE MORE INSTRUCTIONS. I'M NOT GONNA

REPEAT WHAT I TOLD YOU EARLIER.

BUT I DO WANT TO POINT OUT TO YOU A FEW THINGS. IT'S ALWAYS BETTER WHEN YOU COME HERE IF YOU COME ON UP TO THE JURY ROOM. DON'T STAND AROUND OUTSIDE. IT MAY BE VERY TEMPTING ON A -- PARTICULARLY ON A DAY LIKE TODAY TO STAND OUTSIDE. DON'T DO IT. GET OUT OF YOUR CARS. COME ON UP TO THE JURY ROOM. THE BAILIFFS WILL BE HERE TO TEND TO YOUR COMFORT.

THE NEXT THING I WANT TO MAKE SURE YOU UNDERSTAND IS THAT THOSE JUROR BUTTONS I KNOW THEY'RE NOT AN ACCESSORY YOU WOULD CHOOSE TO GO OUT WITH, BUT, PLEASE, WEAR THEM WHEN YOU'RE ON THE COURTHOUSE PROPERTY AND IF YOU'RE OUT AT LUNCH AND THINGS LIKE THAT IN RESTAURANTS FOR LUNCH. IF ANYBODY ATTEMPTS TO DISCUSS ANYTHING ABOUT THIS CASE WITH YOU, I HAVE TO STOP AND HAVE A HEARING, AND I HAVE TO DETERMINE NOT ONLY WHAT WAS SAID, BUT WHY IT WAS SAID. IF YOU'VE GOT THAT BIG BUTTON SHOWING THAT YOU'RE A JUROR, I KNOW THAT THEY KNEW YOU WERE A JUROR WHEN THEY TALKED TO YOU. ALL RIGHT? SO THAT'S WHY YOU'VE GOT THOSE BUTTONS TO IDENTIFY YOU AND LET EVERYBODY ELSE KNOW FOR THIS WEEK I NEED TO KEEP MY DISTANCE FROM YOU, FROM THAT PERSON, ANYBODY IN THIS CASE. ALL RIGHT?

SO I HOPE YOU HAVE A PLEASANT EVENING. IF YOU HAVE SOME TRUE EMERGENCY ARISING THAT PREVENTS YOU FROM BEING HERE, PLEASE, MAKE SURE SOMEBODY CALLS THE CLERK'S OFFICE AND LETS US KNOW. BUT I NEED YOU HERE AT 9:30 IN THE MORNING. ALL RIGHT? THANK YOU. FOLLOW THE BAILIFF, PLEASE. (THE FOLLOWING OCCURRED OUTSIDE THE PRESENCE OF THE JURY.) ALL RIGHT. IS THAT IT?

MR. YOUNG: THAT'S IT, YOUR HONOR. (THE FOLLOWING OCCURRED THE NEXT DAY.) BRING THE JURY, PLEASE. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) CALL YOUR NEXT WITNESS, PLEASE, SOLICITOR.

HEATH DAVIS - DIRECT EXAMINATION BY MR. YOUNG

MR. YOUNG: STATE CALLS HEATH DAVIS.

HEATH DAVIS, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. YOUNG

Q MR. DAVIS, WILL YOU GIVE US YOUR FULL AND COMPLETE NAME SPELLING YOUR LAST.

A STANLEY HEATH DAVIS D-A-V-I-S.

Q THANK YOU, SIR. WHERE DO YOU WORK AT?

A I'M A BUSINESS OWNER NOW. I'M A RETIRED STATE PATROLMAN.

Q YES, SIR. AND YOU'VE WORKED IN THE PAST AS A LAW ENFORCEMENT OFFICER?

A YES, SIR.

Q WHEN WERE YOU A PATROLMAN?

A FROM JANUARY THE 3RD I WENT TO PATROL SCHOOL UNTIL OCTOBER OF 2 YEARS AGO, YES, SIR.

Q OKAY. SO WITHIN THE PAST 2 YEARS YOU'VE BECOME SEPARATE BUSINESS OWNER.

A YES, SIR.

Q WERE YOU ON DUTY AS A PATROLMAN ON DECEMBER 26TH OF 2003?

A YES, SIR.

Q OKAY. WHERE WERE YOU ON PATROL AND WHAT WERE YOUR DUTIES THAT DAY?

A MY DUTIES THAT DAY WAS JUST LIKE EVERY OTHER DAYS. I WAS PATROLLIN' THE HIGHWAYS OF EDGEFIELD, MCCORMICK AND SALUDA COUNTIES. AND THAT DAY I WAS PATROLLING U.S. 25 SOUTH OF GREENWOOD IN EDGEFIELD COUNTY.

Q OKAY, SIR. CAN I POSITION YOU ROUGHLY IN TIME SHORTLY AROUND NOON OR JUST AFTER NOON. WHERE WERE YOU ROUGHLY AT THAT TIME?

A AT THAT TIME I'D TURNED AROUND AT THE GREENWOOD LINE AND WAS HEADED BACK TOWARD EDGEFIELD, ABOUT A MILE, I GUESS, FROM THE GREENWOOD LINE. AND I CLOCKED TWO VEHICLES.

Q OKAY. AND YOU CAME INTO CONTACT WITH TWO VEHICLES?

A UH-HUH.

Q WOULD YOU DESCRIBE -- WAS THERE A CAR CHASE IN CONNECTION WITH THAT?

A ONE AFTERNOON I WAS DRIVING A SEMI MARKED CAMARO, HIGHWAY PATROL CAMARO, AND I WAS WORKING AND CLOCKED TWO VEHICLES AT A HIGH RATE OF SPEED AT 101.

THE FIRST VEHICLE WAS CLOCKED 101 MILES PER HOUR. I GUESS IT KNOWS THE CAMARO. SO THEY PASSED ME. I STILL HAD A CONSTANT SPEED OF 100 AT THE BACK VEHICLE. I TURNED AROUND AND I PROCEEDED AFTER 'EM AND STILL TRAVELIN' AT A HIGH RATE OF SPEED. BLUE LIGHT AND SIREN. FINALLY THE -- IT WAS A CAR AND A TRUCK. THE TRUCK FINALLY LOST CONTROL A LITTLE BIT, WENT OFF THE RIGHT SIDE OF THE ROAD BUT WAS OKAY. I MEAN DIDN'T WRECK OR ANYTHING AND SO I PROCEEDED TO CHASE THE LEAD VEHICLE AND STILL TRAVELING AT A GOOD RATE OF SPEED, AND FINALLY THE VEHICLE PULLED OVER. I NOTIFIED OUR DISPATCH WHAT WAS GOIN' ON. I WENT TO GET OUT OF MY CAR, STARTED AROUND THE DOOR. RIGHT WHEN I GOT TO THE APEX OF MY DOOR AROUND IT, THE CAR DID A 180 SPINNIN' TIRES AND ANYTHING, THROWIN' STUFF BACK ON THE CAR AND DID A COMPLETE TURNAROUND AND HEADED BACK TOWARD EDGEFIELD AGAIN.

Q COULD I STOP YOU AT THIS POINT AND ASK YOU SOME QUESTIONS ABOUT THIS VEHICLE. COULD YOU BE MORE SPECIFIC ABOUT THE DESCRIPTION OF THE VEHICLE AS

YOU DESCRIBED AS BEING INVOLVED IN THIS—

A THE CROWN VICTORIA ON THE FRONT CAR AND A TRUCK ON THE SECOND CAR.

Q TYPE OF MODEL, YEAR, POSSIBLY OR—

A AT THIS TIME I CAN'T REMEMBER WHAT YEAR. I KNEW IT WAS A OLDER TYPE PATROL CAR AND THAT'S ALL I COULD TELL YOU AT THE TIME. I DON'T KNOW WHAT YEAR.

Q IT LOOKED LIKE A PATROL CAR TO YOU.

A OH, YES, SIR.

Q OKAY. AND WHAT KIND OF PICKUP OR TRUCK WAS THIS?

A IT WOULD BE A FORD OR CHEVROLET, SIR. JUST A REGULAR CAB TRUCK.

Q OKAY. AT THE POINT IN TIME THIS CAR STOPPED INITIALLY AFTER YOU GOT OUT OF YOUR CAR—

A UH-HUH.

Q WHERE WERE YOU LOCATED AT THAT TIME?

A RIGHT INSIDE GREENWOOD COUNTY PROBABLY ABOUT A MILE MAYBE INSIDE GREENWOOD COUNTY. AND WHEN I GOT OUT OF THE CAR HE DID THE TURN AROUND AND HEADED BACK TOWARD EDGEFIELD COUNTY.

Q OKAY. AND DID YOU IDENTIFY THE – THE TYPE OF PERSONS IN THE CAR EITHER BY THEIR GENDER OR THEIR RACIAL MAKEUP OR ANYTHING? WERE YOU ABLE TO IDENTIFY ANYBODY?

A YES, I DID. IN FACT, I EVEN LET OUR DISPATCHER KNOW THAT IT WAS A MALE-FEMALE. MALE DRIVER.

Q MALE DRIVER?

A UH-HUH.

Q COULD YOU TELL IF THEY – A SPECIFIC RACE?

A I BELIEVED THEY WERE WHITE—

Q OKAY.

A —AT THE TIME, YES, SIR.

Q OKAY. AND WHO WAS THE DRIVER?

A IT WAS A MALE.

Q MALE DRIVER. WHERE WAS THE PASSENGER LOCATED?

A PASSENGER'S SEAT.

Q FRONT SEAT?

A YES, SIR.

Q OKAY. AND YOU SAID YOUR CAR WAS MARKED HOW?

A SEMI MARKED. IT HAD THE STRIPES ON THE SIDE OF THE CAMARO WITH THE HIGHWAY PATROL EMBLEM AND BLUE LIGHTS ON THE FRONT AND REAR, INSIDE AND WITH THE SIREN GOING.

Q OKAY. WERE THERE ANY EXPOSED LIGHTS ON THE UPPER TOP OF THE VEHICLE?

A RIGHT UNDER THE ROOF OF THE CAR AT THE SIDE THERE, THERE WERE STROBE LIGHTS INSIDE.

Q BUT IT'S INSIDE THE CAR; NOT OUTSIDE.

A YES, SIR.

Q OKAY. YOUR CAR WAS EQUIPPED WITH RADAR?

A YES, SIR.

Q AND ARE YOU CERTIFIED RADAR?

A YES, SIR, I WAS.

Q HOW LONG HAVE YOU BEEN CERTIFIED AT THAT—

A AT THAT TIME 10, MAYBE 10 AND A HALF YEARS.

Q OKAY. HAD YOU DONE THE PROPER THING TO CALIBRATE YOUR RADAR THA

MORNING?

A EVERYDAY WE CHECK, YES, SIR, TO MAKE SURE THE RADAR IS CALIBRATED WITH OUR SPEED AND WITH OTHER SPEEDS TO MATCH UP AND MAKE SURE IT IS.

Q OKAY. IF YOU WOULD, TELL ME WHEN YOU STEPPED OUT OF THE CAR, WERE YOU IN UNIFORM OR NOT IN UNIFORM?

A UNIFORM, YES, SIR.

Q OKAY. AND WOULD YOU JUST DESCRIBE GENERICALLY WHAT A TROOPER'S UNIFORM LOOKS LIKE SINCE YOU'RE IN CIVILIAN CLOTHES?

A YES, SIR. IT'S A GRAY UNIFORM. STRIPES DOWN THE PANTS. ALSO, I GRABBED MY PATROL HAT WHICH IS A CAMPAIGN HAT WITH A BADGE ON IT. I HAD A BADGE ON MY SHIRT ALSO WITH HIGHWAY PATROL PATCHES.

Q AND WOULD YOU DESCRIBE AGAIN, PICK IT UP FROM THE POINT YOU SAID WHEN YOU STEPPED OUT OF THE CAR, WHAT DID THE OTHER CAR DO?

A I STEPPED OUT OF THE CAR 'CAUSE I FIGURED, YOU KNOW, THE STOP WAS OVER WITH. I MEAN WE -- IT FINALLY CAME TO REST. GOT OUT OF THE CAR AND I STARTED AROUND THE DOOR, AND WHEN I GOT TO THE END OF THE DOOR, BASICALLY, WHERE IT'S OPENED AT, THAT'S WHEN HE KICKED IT AND DID A TURN AROUND AND HEADED BACK THE OTHER WAY. SO HE CAME RIGHT BY ME.

Q AND IS YOUR CAR EQUIPPED WITH A CAMERA?

A IT WAS BUT IT'S NOT -- IT WAS NOT IN OPERATION AT THAT TIME. IT WAS BROKE AT THE TIME.

Q NOT OPERABLE THAT DAY?

A YES, SIR.

Q SO YOU DON'T HAVE ANY VIDEO TO SHOW?

A NO, SIR.

Q IN TERMS OF WHAT HAPPENED AS YOU GOT OUT OF THE CAR, DID YO
DEACTIVATE YOUR LIGHTS OR TURN OFF YOUR SIREN?

A I BELIEVE I TURNED MY SIREN OFF AT THE TIME BECAUSE HE'D FINALL
STOPPED, BUT MY LIGHTS WERE CONTINUED. AFTER THEY TOOK BACK OFF, I INITIATE
MY SIREN AGAIN AND LET OUR DISPATCHER KNOW WHAT WAS GOIN' ON.

Q DID YOU HAVE ANY PROBLEM WITH YOUR SIREN OR YOUR LIGHTS OPERATIO
AT—

A NO, SIR.

Q AND YOU INITIALLY INDICATED THAT YOU ASSESSED THE SPEED AT 101 MILE PE
HOUR?

A YES, SIR.

Q ALL RIGHT. AND YOU SAID THERE WERE 2 VEHICLES?

A YES, SIR.

Q DID YOU -- AND DID YOU INDICATE THE SPEED OF THE -- WHO WAS -- WHI
WAS THE LEAD VEHICLE AND WHICH WAS THE FOLLOWING VEHICLE?

A THE CROWN VICTORIA WAS THE LEAD VEHICLE. THAT'S WHEN I CLOCKED IT A
101. WHENEVER IT PASSED ME THE OTHER ONE WAS DIRECTLY BEHIND IT, I STILL HAD
SPEED OVER 100 ON IT.

Q OKAY. AND WERE YOU IN OPPOSING LANES OF TRAFFIC AT THE POINT IN TI
YOU MET WITH THESE VEHICLES?

A YES, SIR, I WAS HEADED -- IT WOULD BE NORTH TOWARD EDGEFIELD, AND THE
WAS HEADED -- EXCUSE ME -- I'M TRYIN' TO -- THE LINE CHANGES. I WAS HEAD
TOWARD EDGEFIELD; THEY WAS HEADED TOWARD GREENWOOD.

Q OKAY. RIGHT AT THE POINT IN TIME YOU CAME INTO CONTACT WITH THEM, AR
THERE ANY LANDMARKS IN THAT AREA THAT—

A LIKE A CHURCH THAT WAS CLOSE BY.

Q OKAY. IS THIS NORTH OR SOUTH OF 378?

A THAT WOULD BE SOUTH OF -- GOIN' TOWARD GREENWOOD.

Q OKAY. I UNDERSTAND. BUT IN TERMS OF -- AT THE POINT IN TIME ON 25 WHEN YOU CAME INTO CONTACT WITH THEM, WERE YOU THEN NORTH OF THE 378 INTERSECTION OR SOUTH OF THE 378 INTERSECTION?

A OKAY. I WAS SOUTH -- I WAS HEADED TOWARD GREENWOOD. I WAS ON THE GREENWOOD SIDE OF 378.

Q YES, SIR.

A OKAY? THE LINE CHANGES. WHEN WE ALWAYS USE ON DISPATCH WE'D ALWAYS SAY 25 SOUTH IS WHEN YOU HEADED AWAY FROM GREENWOOD; GOING INTO EDGEFIELD YOU WOULD BE HEADED NORTH TOWARD GREENWOOD.

Q OKAY.

A THAT'S RIGHT.

Q BEFORE WE CAME TO COURT DID I ASK YOU TO ASSIST ME IN OUTLINING THE ROUTE YOU TOOK?

A YES, SIR.

Q AND WE USED A MAP PROGRAM TO DO THAT, DID WE NOT?

A YES, SIR.

Q AND WE CREATED A MAP, DID WE NOT?

A YES, SIR.

Q AND WOULD YOU BE ABLE TO RECOGNIZE THAT MAP AGAIN IF YOU SAW IT?

A YES, SIR.

Q OKAY. LET ME SHOW YOU WHAT I HAVE MARKED AS STATE'S EXHIBIT #16. IS THIS THE MAP THAT YOU ASSISTED ME IN CREATING?

A YES, SIR.

Q OKAY. DOES THIS MAP ACCURATELY REFLECT THE ROUTE THAT IS INVOLVED IN THE CHASE SEQUENCE WITH THE VEHICLES?

A YES, SIR, FROM THE BEST OF OUR KNOWLEDGE, YES, SIR.

Q AND THERE'S ALSO A YELLOW MARKING ALONG THE LINES OF THIS MAP. IS THAT -- WHAT DOES THAT REPRESENT?

A THE ROUTE WE TRAVELED.

Q IS THAT BEFORE OR AFTER THE CHASE?

A THAT'S DURIN' THE CHASE.

Q OKAY. SO THE YELLOW REPRESENTS THE CHASE ITSELF. ALL RIGHT. IF YOU WOULD JUST —

MR. YOUNG: STATE OFFERS THIS AS STATE'S EXHIBIT #16, YOUR HONOR.

THE COURT: WITHOUT OBJECTION. (STATE'S EXHIBIT #16 RECEIVED IN EVIDENCE.)

Q HERE IS A POINTER, SIR. WOULD YOU INDICATE ON THERE WHAT ROUTE YOU WERE ON AT THE TIME YOU FIRST MADE THE CONTACT. I'LL GIVE YOU THE POINTER.

A THIS IS U.S. 25. THIS IS 378. THIS IS WHERE I INITIALLY CLOCKED THE VEHICLES RIGHT HERE ABOUT THE AREA WHICH TURNED AROUND AND HEADED INTO GREENWOOD COUNTY THERE. THIS IS WHERE APPROXIMATELY CLOSE TO WHERE THE CROWN VICTORIA STOPPED. IT DID A U TURN ON ME. AND HEADED BACK DOWN 25 TOWARD EDGEFIELD WHICH THEN TOOK A LEFT ONTO 378 HEADED TOWARD SALUDA. TRAVELED AT HIGH RATES OF SPEEDS. THE SPEEDS WERE 120, 130 MILES PER HOUR. THE TOP SPEED I TRAVELED WAS 160 WAS THE MAX DUE TO TRAFFIC ON THE ROAD THAT HE PASSED AND I WAS UNABLE TO GET AROUND TO AT THE TIME. HIS DRIVING WAS REAL SPORADIC ALL OVER THE ROADWAY. HE WAS TRYING TO FLEE BASICALLY AND—

THE COURT: TRYIN' TO WHAT?

A TRYIN' TO FLEE FROM ME. BLUE LIGHTS AND SIREN WAS ACTIVATED AT ALL TIMES.

I WAS ON THE RADIO. I LET THE DISPATCHER KNOW WHERE WE WAS HEADED, ABOUT WHAT SPEEDS WE'D BE TRAVELIN' AT SO OTHER TROOPERS OR OTHER LAW ENFORCEMENT OFFICERS COMIN' THROUGH THE AREA WOULD BE CAREFUL.

THE TRAFFIC ON THE ROADS, ONE A GRAY COMING WE WERE IN A RURAL AREA, BUT WE DID PASS THE VEHICLES. WHEN WE PASSED THESE VEHICLES HE HAD NO SAFETY IN DOING SO. HE WOULD CUT SHARPLY IN FRONT OF THOSE VEHICLES RIGHT WHEN HE WAS PASSIN' MAYBE TO THE POINT OF, YOU KNOW, I DON'T KNOW, I MEAN -- IN OTHER WORDS HE DIDN'T HAVE CONTROL OF THE CAR. HE WASN'T CARIN' ABOUT THE SAFETY. WHEN I PROCEEDED TO CATCH UP BACK WITH HIM AGAIN, WE'RE STILL TRAVELIN' AT A HIGH RATE OF SPEED WHERE WE MET ANOTHER TROOPER THAT HAD CLOCKED US AT 120 SOME ODD MILES PER HOUR. IT'S THE FASTEST I'VE EVER BEEN IN MY LIFE IN A CAR. AND WE TRAVELED TOWARD SALUDA STILL 378 WHERE HE CAUSED SEVERAL CARS TO RUN OFF THE ROADWAY. WE WERE TRAVELIN' AT SO HIGH RATE OF SPEED, MY SUPERVISOR WHICH WAS A SGT. COX ADVISED ME I MEAN THE SPEED WE WAS GOIN' WE WAS -- I MEAN A MILE WAS NOTHIN' -- I MEAN YOU LOOK AT THE SPEEDS WHAT A NORMAL PERSON WOULD (INAUDIBLE)

THE COURT REPORTER: KEEP YOUR VOICE UP FOR ME, PLEASE.

A AT 3 MILES -- WELL, PROJECTED 3 MILES FROM SALUDA THE HIGHWAY PATROL WHICH WAS MYSELF AND THE SERGEANT TERMINATED THE CHASE BECAUSE WE KNEW THAT SALUDA WAS NEARBY AND WE DIDN'T WANT, YOU KNOW, FOR US TO BE TRAVELIN' AT A HIGH RATE OF SPEED GOIN' INTO SALUDA. I TOLD OUR DISPATCH THAT I WAS TERMINATIN' THE CHASE ALONG WITH THE HIGHWAY PATROL VEHICLE BEHIND

ME. WE TERMINATED THE CHASE APPROXIMATELY MAYBE 3 MILES OUTSIDE OF SALUDA. I BACKED DOWN TO 50 OR 60 MILES PER HOUR AND PROCEEDED IN THIS DIRECTION. WHEN I PROCEEDED INTO THE DIRECTION I GOT DOWN INTO SALUDA RIGHT HERE AT THE INTERSECTION WHERE I SEEN 2 VEHICLES AND PARTS OF THE VEHICLE IN THE ROADWAY AND SAW A CROWN VICTORIA WHICH I WAS CHASIN' HIM THROUGH A BUILDIN' IN SALUDA COUNTY. BUT THE VEHICLE -- THE VEHICLE HE STRUCK WAS A SALUDA COUNTY SHERIFF'S DEPARTMENT VEHICLE. AND AT THAT TIME THE PEOPLE IN THE VEHICLE WHICH OTHER PEOPLE SAW GETTIN' OUT WENT INTO A BUILDING THAT THE CAR ACTUALLY WRECKED INTO AND WE SET UP A PERIMETER AROUND THE AREA TO GET ALL THE CIVILIANS AWAY. WE DIDN'T KNOW WHAT WAS GOIN' ON AND WHAT THEY WERE RUNNIN' FOR, BUT WE DID SECURE THE AREA AND THE SHERIFF'S DEPARTMENT THEN TOOK OVER TRYIN' TO GET IN TOUCH WITH S.W.A.T. -- I BELIEVE SLED.

MR. FALGIONE: OBJECTION, YOUR HONOR.

THE COURT: HOLD ON JUST A SECOND. YES, SIR?

MR. FALGIONE: OBJECTION, YOUR HONOR. THIS ISN'T RESPONSIVE TO ANY QUESTION THAT WAS ASKED.

THE COURT: ASK QUESTIONS AND GET HIM TO ANSWER QUESTIONS.

Q LET ME STOP YOU RIGHT THERE. ALL RIGHT. IN TERMS OF THE TRAFFIC AND WEATHER CONDITIONS, COULD I ASK YOU WHAT TYPE OF WEATHER CONDITIONS WERE THERE AND WHAT KIND OF ROAD CONDITIONS WERE THERE?

A IT WAS CLEAR. AS I ADVISED, HE WAS IN A RURAL AREA ON A U.S. HIGHWAY, BUT HE DIDN'T HA[illegible] A HUGE AMOUNT OF TRAFFIC, BUT THE TRAFFIC WE DID HAVE MAYBE 6 VEHICLES, 7 VEHICLES AT THE MOST ANYTHING WOULD TRAVEL DOWN THE HIGHWAY AT THE TIME.

Q DID THIS INCLUDE BIG TRACTOR-TRAILER RIGS?

A I CAN'T REMEMBER IF THERE WAS ANY TRACTOR-TRAILER RIGS THAT DAY.

Q OKAY. DID YOU OBSERVE OTHER TYPES OF ORDINARY VEHICLES SUCH AS REGULAR PASSENGER VEHICLES ON THE ROAD?

A YES, SIR. YES, SIR.

Q AND WERE THEY IN THE SAME LANE OR OPPOSING LANE?

A SOME IN THE SAME LANE; SOME IN OPPOSING LANES.

Q OKAY. AND WHAT WAS HIS BEHAVIOR AS HE – DID YOU OBSERVE HIM PASS THESE VEHICLES?

A YES, SIR, HE PASSED 2 VEHICLES TO START WITH, A TRUCK AND A CAR, WHEN WE WAS HEADED TOWARD SALUDA STILL.

Q AS YOU OBSERVED HIM PASSING THESE VEHICLES, WHAT DID YOU SEE HIM DO WITH REGARD TO THE OTHER VEHICLES?

A HE WOULD PASS 'EM AND CUT IN FRONT OF 'EM REAL QUICK.

Q WHAT DID THE DRIVERS THAT—

A WHAT THEY—

Q WHAT DID THE DRIVERS DO IN RELATION—

A THEY HIT THE BRAKES.

Q OKAY. DID THEY LEAVE THE ROADWAY OR STAY ON THE ROADWAY?

A THE FIRST TWO I BELIEVE THEY JUST PUT ON THE BRAKES OR ANYTHING AND THEN THE GUY, LIKE I SAID, THE TRUCK PASSED THE OTHER VEHICLE ANYTHING, BUT ON DOWN THE ROAD OTHER VEHICLES WERE GOIN' OFF THE ROADWAY AND STUFF TO KEEP FROM HITTIN' THE SUBJECT.

Q OKAY. AND SO THEY LEAVE, ACTUALLY LEAVE THE ROAD SURFACE?

A YES, SIR.

Q OKAY. DID HE STAY IN HIS LANE OR—

A HE TRAVELED IN BOTH LANES AT A HIGH RATE OF SPEED. AND HE TRAVELED IN BOTH. HE DIDN'T HAVE CONTROL OF THE CAR.

Q OKAY. OKAY. DESCRIBE THE TERRAIN IN THIS AREA.

A WE -- U.S. 378 IS A PRETTY WIDE OPEN ROAD BUT IT DOES HAVE CURVES AND SOME HILLS ON IT.

Q OKAY. ARE THERE PLACES WHERE YOU CAN OBSERVE AND NOT OBSERVE TRAFFIC—

A YES.

Q —COMIN' OVER HILLS AND APPROACHING HILLS?

A YES, SIR.

Q OKAY. WAS HIS DRIVING BEHAVIOR DID IT CHANGE AT ALL IN RELATION TO THESE HILLS OR THE TERRAIN OR THE CURVING AREAS?

A NO, SIR. SOME OF THE CURVES HE HIT HE -- HE WOULD HIT THE BRAKES TO LET GO AROUND 'EM OR ANYTHING BUT HE WAS JUST BASICALLY TRYIN' TO GO AS FAST AS THAT CAR WOULD GO.

Q NOW THERE'S A YELLOW LINE THAT'S BEEN MARKED ON THERE, AND I THINK YOU TESTIFIED THAT THAT WAS THE LENGTH OF THE PURSUIT. IS THAT UNTIL THE TIME YOU WERE TOLD TO BREAK OFF PURSUIT?

A YES, SIR.

Q AND IS IT APPROXIMATELY 17 MILES?

A TO THE BEST OF MY KNOWLEDGE, YES, SIR.

Q DURING THIS PERIOD OF TIME THAT YOU WERE OBSERVING HIS DRIVING, DID YOU SEE THE PASSENGER IN THE CAR AT ALL VERY MUCH?

A SIR, TO BE HONES WITH YOU AND ANYTHING, WHEN WE WERE -- I SAW THE

DRIVER REACHIN' DOWN UNDER THE SEAT SOME. I WAS PAYING MORE ATTENTION TO THE DRIVER AND MORE ATTENTION TO THOSE HIGH RATE OF SPEEDS OF THAT VEHICLE. I MEAN THAT WAS MY MAIN CONCERN BECAUSE WE WAS JUST TRAVELIN' TOO HIGH RATE OF SPEED TO BE OBSERVIN' EVERYTHING THAT WENT ON THAT DAY.

Q OKAY. WERE YOU EVER IN A POSITION TO MAKE A PHYSICAL IDENTIFICATION OF THE DRIVER AT ALL?

A YES, SIR, WHEN HE TURNED AROUND ON ME HE CAME RIGHT BY ME WHEN I WAS IN UNIFORM ON THE ROAD.

Q DID YOU EVER SEE THE DRIVER OF THAT VEHICLE AGAIN AT THE SCENE OF THE COLLISION?

A AFTER HE WAS ARRESTED, YES, SIR.

Q AND WHO WAS HE?

A THE GENTLEMAN SITTIN' OVER THERE, SIR.

Q SITTIN' NEXT TO MR. FALGIONE?

A YES, SIR.

Q OKAY. AND YOU ALSO INDICATED THAT YOU WHEN YOU CAME TO THE SCENE, YOU OBSERVED A CAR IN A BUILDING AND ANOTHER CAR IN THE INTERSECTION. IS THAT CORRECT?

A YES, SIR.

Q WOULD YOU BE ABLE TO RECOGNIZE PHOTOGRAPHS OF THE SCENE?

A YES, SIR.

Q THESE ARE THE PICTURES THAT HAVE BEEN PREVIOUSLY ADMITTED INTO EVIDENCE. THEY INCLUDE STATE'S EXHIBITS 20 AND I BELIEVE 3 THROUGH 15. WOULD YOU TAKE A LOOK AT THOSE AND TELL ME IF YOU CAN IDENTIFY 'EM.

A YES, SIR. EXHIBIT 15 IS THE CROWN VICTORIA THAT I WAS—

Q STAND UP FOR A MINUTE. WOULD YOU MIND—

MR. YOUNG: YOUR HONOR, REQUEST PERMISSION TO PUBLISH THESE TO THE JURY.

THE COURT: FINE IF THEY'RE IN EVIDENCE.

Q STAND UP HERE IN FRONT OF THE JURY AND SHOW WHAT YOU'RE TALKIN' – HOLD THAT.

A THE CROWN VICTORIA I WAS CHASIN', LIKE I TOLD YOU, THAT WAS THROUGH THE BUILDIN'.

THAT'S THE CAR INSIDE THE BUILDIN' HERE TAKEN BY – I DON'T KNOW WHO IT WAS TAKEN BY. THAT IS THE VEHICLE I WAS CHASIN' THAT DAY. ANOTHER PICTURE OF IT. SAME CAR; DIFFERENT DIRECTION OF THE CAMERA LENS. THE INTERSECTION OF THE ROADWAY WHERE THE TWO CARS COLLIDED. STILL THE INTERSECTION. SAME INTERSECTION. SAME INTERSECTION WHERE YOU CAN SEE THE YAW MARKS. THE AREA AT THE INTERSECTION. AND THE PATROL CARS AROUND THERE. THIS IS THE DEPUTY'S CAR THAT I SAW THAT DAY. WHERE HE STRUCK THE CAR. THIS IS ANOTHER VIEW OF THE INTERSECTION. ALSO MY CAMARO THAT I WAS DRIVIN' THAT DAY. YOU CAN SEE THE IMPACT OF WHAT I SEEN WHEN I FIRST DROVE UP TO THE CARS. AND THE BLUE CAR INSIDE. ANOTHER PICTURE OF PATROL CARS. AND THE DAMAGE THAT WAS DONE. MORE OF THE PATROL CAR. MORE OF THE PATROL CAR. THIS WAS THE SCENE THAT DAY OF WHEN WE – IN THE TOWN OF SALUDA WHERE WE SET UP THE PERIMETER. AND ANOTHER SCENE THAT DAY.

Q THANK YOU, SIR. WOULD YOU RESUME YOUR SEAT. I HAVE AN OVERHEAD PROJECTION, STATE'S EXHIBIT #17. DO YOU RECOGNIZE THIS OVERHEAD PROJECTION AS HAVING AS HAVING ANYTHING TO DO WITH THIS CASE?

A I – I MEAN THIS IS THE FIRST TIME I'VE SEEN THE OVERHEAD PROJECTION. BUT I

BELIEVE THIS IS THE INTERSECTION. THAT'S 378 I BELIEVE. AND THEN THE INTERSECTION RIGHT THERE.

Q UH-HUH. OKAY. ALL RIGHT, SIR. AND WHAT IS THIS A REPRESENTATION OF, WHERE IS THIS PLACE?

A SALUDA COUNTY.

Q IS THE COURTHOUSE VISIBLE ON THIS?

A YES, SIR.

Q WHERE IS IT?

A TO YOUR RIGHT RIGHT HERE, YES, SIR.

Q IS THIS A FAIR AND ACCURATE REPRESENTATION OF THE STREETS AND THE AREA WHERE THE COLLISION OCCURRED?

A YES, SIR.

Q OKAY.

MR. YOUNG: WE OFFER STATE'S EXHIBIT #17, YOUR HONOR.

MR. FALGIONE: WITHOUT OBJECTION.

THE COURT: MARK IT IN EVIDENCE, PLEASE. (STATE'S EXHIBIT #17 RECEIVED IN EVIDENCE.)

Q I'M GONNA HAND YOU THIS POINTER BACK AGAIN. IF YOU WOULD, DESCRIBE -- I THINK WHAT WE'RE GONNA NEED IS WHERE NORTH IS, WHERE EAST AND WEST ARE AND I'LL PUT 'EM AGAIN WHERE YOU SAY NORTH IS. WHERE'S NORTH?

A WELL, THIS IS 378 (INAUDIBLE)

THE COURT REPORTER: I CAN'T HEAR HIM.

A THIS IS 378 RIGHT HERE. IF YOU KEPT ON YOU WOULD BE HEADED TOWARD COLUMBIA. THAT'D BE NORTH. CORRECT? I'M NOT SURE OF THE DIRECTIONS NOW. BUT THIS IS THE DIRECTION HE CAME FROM.

Q WHY DON'T WE JUST MAKE 'EM TOWARD COLUMBIA THEN.

A OKAY.

Q THAT'S THE DIRECTION TO COLUMBIA.

A YES, SIR.

Q WHAT DIRECTION IS MCCORMICK?

A THIS WAY, SIR.

Q TO THE LEFT SIDE. ALL RIGHT. WHICH DIRECTION WOULD BE NEWBERRY?

A IT WOULD BE THIS WAY, SIR.

Q AND TO THE SOUTH?

A EDGEFIELD. JOHNSTON.

Q WHAT DIRECTION DID YOU COME IN?

A FROM THIS WAY FROM MCCORMICK, SIR.

Q AND WHERE DID YOU SEE THE COLLISION IN THE INTERSECTION?

A WHEN I CAME, THERE'S A HILL CREST RIGHT HERE. WHEN I CAME OVER THE HILL CREST, I SAW THE VEHICLES WRECKED.

Q OKAY.

A IN THE ROADWAY.

Q WHERE IS THE BUILDING THAT THE VEHICLE WAS IMBEDDED IN?

A RIGHT HERE, SIR.

Q OKAY. WHERE IS THE COURTHOUSE?

A RIGHT HERE, SIR.

Q ALL RIGHT. THANK YOU, SIR. WOULD YOU RETURN TO YOUR SEAT. WOULD YOU ANSWER ANY QUESTIONS MR. FALGIONE HAS FOR YOU.

A YES, SIR.

MR. FALGIONE: MAY IT PLEASE THE COURT, YOUR HONOR?

THE COURT: YES, SIR.

CROSS-EXAMINATION

BY MR. FALGIONE

Q MR. DAVIS, AS I UNDERSTAND FROM YOUR TESTIMONY YOU'RE NO LONGER WITH THE HIGHWAY PATROL?

A I'M RETIRED, YES, SIR.

Q OKAY. AND THAT WAS IN NOVEMBER OF 2004?

A THAT I RETIRED?

Q YES.

A IT WAS OCTOBER.

Q OCTOBER OF 2004. THANK YOU. NOW WHEN YOU WENT TO THE ACADEMY AND ALL AND IN YOUR COURSES THAT YOU TOOK SUBSEQUENT TO THAT YOU WERE TAUGHT HOW TO TESTIFY BEFORE A JURY JUST LIKE THIS, WEREN'T YOU?

A YES, SIR.

Q OKAY. AND THAT'S WHY YOU'RE SO AT EASE WITH THESE PHOTOGRAPHS AND STANDING THERE TALKING TO THESE FOLKS. ISN'T THAT HELPFUL IN THAT REGARD?

A IT'S HELPFUL. IT'S JUST MY PERSONALITY A LOT OF IT, SIR.

Q OKAY. AND YOU'VE TESTIFIED OVER AND OVER AND OVER AGAIN DURING THE COURSE OF YOUR CAREER WITH THE HIGHWAY PATROL, HAVEN'T YOU?

A YES, SIR.

Q AND ALWAYS WITH THE AIM OF OBTAINING A CONVICTION. ISN'T THAT TRUE?

A NO, SIR. TELLIN' THE TRUTH.

Q OKAY. DID YOU -- DID YOU CHARGE PEOPLE IN THOSE CASES THAT YOU TESTIFIED IN?

A YES, SIR.

Q OKAY.

A MOST OF 'EM. I MEAN I WAS MAYBE THE SECOND OFFICER IN SOME OF 'EM OR SOMETHIN' LIKE THAT, SIR.

Q ALL RIGHT. NOW I BELIEVE YOU PREVIOUSLY TESTIFIED THAT YOUR VIDEO CAMERA WAS INOPERABLE THAT DAY?

A YES, SIR, IT HAD BEEN INOPERABLE FOR LIKE 2 OR 3 WEEKS AT THE TIME, YES SIR, IF I REMEMBER CORRECTLY.

Q OKAY. ALL THESE OBSERVATIONS THAT YOU MADE ABOUT – THAT YOU MADE ABOUT THIS PURSUIT, DID IT APPEAR TO YOU THAT THE DRIVER OF THE VEHICLE HAD PANICKED?

A WELL, HE WAS JUST TRYIN' TO GET AWAY FROM ME, YES, SIR.

Q OKAY. HE WAS – HE WAS OBVIOUSLY TRYING TO ALLUDE YOU. IS THAT CORRECT? IS THAT A FAIR STATEMENT?

A YES, SIR. FOR WHAT REASON I HAD NO EARTHLY IDEA AT THE TIME, SIR.

Q ALL RIGHT. NOW ISN'T IT ALSO FAIR TO SAY THAT AT THE TIME YOU WERE PURSUING HIM YOU HAD YOUR LIGHTS AND YOUR SIREN ON. IS THAT CORRECT?

A YES, SIR.

Q WELL, ISN'T IT POSSIBLE THAT YOU TESTIFIED THAT A COUPLE OF THE VEHICLES PULLED OVER ON THE SHOULDER OF THE ROAD THAT THAT WAS RESPONSIVE TO THEM SEEING YOUR SIREN AND YOUR LIGHTS, HEARING YOUR SIREN AND SEEING YOUR LIGHTS?

A I DON'T KNOW IF IT WAS THAT MUCH THAN HE WAS TRAVELING ON AND OFF THE ROAD SOMETIMES AND THEY MIGHTA SEEN HIM.

Q COULDA BEEN EITHER. COULDN'T IT?

A YES, SIR.

Q SO AS YOU SIT THERE RIGHT NOW YOU CAN'T TESTIFY UNDER OATH TRUTHFULLY THAT THOSE VEHICLES PULLED OVER ON THE SHOULDER OF THE ROAD BECAUSE OF THE CAR THAT YOU WERE PURSUING.

A NO, SIR, EXCEPT THE ONES HE RAN OFF THE ROAD OR SOMETHIN'.

Q ALL RIGHT. NOW YOU ALSO TESTIFIED THAT THE DRIVER OF THAT VEHICLE DIDN'T HAVE CONTROL OF HIS VEHICLE?

A IN OTHER WORDS, AT A HIGH RATE OF SPEED HE WAS ALL OVER THE ROADWAY, YES, SIR.

Q OKAY. BUT HE NEVER LEFT THE ROADWAY WHILE YOU WERE PURSUING HIM. IS THAT TRUE?

A HE MIGHTA WENT OFF A LITTLE BIT OF THE ROAD SOMETIME, BUT I MEAN THAT WAS BECAUSE HE WAS TRYIN' TO BRAKE OR SOMETHING, BUT, NO, HE DIDN'T GO OFF -- ALL THE WAY OFF THE ROADWAY.

Q AND I BELIEVE YOU TESTIFIED THESE WERE REALLY HIGH RATES OF SPEED THAT YOU WERE---

A YES, SIR.

Q ----ENGAGED IN AT THAT TIME. IS THAT RIGHT?

A YES, SIR.

Q OKAY. WELL, LET ME ASK YOU THIS: WAS THERE A LOG ABOUT HOW LONG IN TIME DURATION THAT THIS PURSUIT ACTUALLY LASTED?

A IT WAS ON OUR DISPATCH LOG, SIR.

Q OKAY. WOULD YOU AGREE THAT THAT WHOLE PURSUIT LASTED 12 MINUTES?

A WHATEVER THE DISPATCH LOG SAYS, SIR. I'M UNFAMILIAR AT THIS TIME.

Q OKAY.

MR. FALGIONE: YOUR HONOR, I'D LIKE TO APPROACH THE WITNESS AT THIS

TIME.

THE COURT: YES, SIR.

Q NOW, OFFICER DAVIS, WOULD DOWN HERE BE A SUMMARY THAT WAS PERFORMED BY YOU OR WRITTEN BY YOU IN RESPONSE TO THIS MATTER?

A YES, SIR.

Q OKAY. SECOND LINE FROM THE BOTTOM DOES THAT TELL YOU HOW LONG THIS PURSUIT LASTED IN TIME?

A SECOND LINE FROM—

Q SECOND LINE FROM THE BOTTOM. I'M SORRY, MR. DAVIS.

A PATROL CAR VIDEO CAMERA NOT -- THE VEHICLE PURSUIT LASTED 12 MINUTES BEFORE IT WAS TERMINATED 3 MILES WEST OF THE TOWN LIMITS OF SALUDA.

Q OKAY. THANK YOU, SIR.

A YES, SIR.

Q SO YOU WOULD AGREE THAT YOUR RECORDS ANYHOW INDICATE THAT THIS PURSUIT LASTED 12 MINUTES. CORRECT?

A YES, SIR.

Q AND I BELIEVE YOU TESTIFIED EARLIER THAT YOU TRAVELED A DISTANCE OF 17 MILES. IS THAT CORRECT?

A AS FAR AS I KNOW, YES, SIR. ESTIMATED.

Q LET ME ASK YOU THIS: IF A CAR IS TRAVELING 60 MILES AN HOUR, HOW FAR WOULD IT GO IN 12 MINUTES?

A 60 MILES PER HOUR IT SHOULD BE 12 MILES.

Q SO AT 60 A CAR WOULD GO 12 OF THOSE 17 MILES. IS THAT CORRECT?

A YES, SIR.

Q ALL RIGHT. NOW I BELIEVE YOU ALSO TESTIFIED THAT YOU ENDED YOUR

PURSUIT 3 MILES OUTSIDE OF SALUDA. IS THAT CORRECT?

A BEST TO OUR KNOWLEDGE, YES, SIR.

Q AND THAT WAS RESPONSIVE TO INSTRUCTIONS YOU RECEIVED FROM YOUR SUPERIORS—

A PER MY SERGEANT COX, YES, SIR.

Q —WASN'T IT? OKAY. IS SGT. COX IS HE – WAS HE YOUR IMMEDIATE SUPERVISOR?

A AT THE TIME I BELIEVE HE WAS THE ONE OUT, YES, SIR, AS IMMEDIATE, YES, SIR.

Q I'M SORRY, SIR?

A AT THE TIME THAT HE WAS OUT – I HAVE A CORPORAL THAT'S UNDER HIM.

Q OKAY.

A I BELIEVE HE WAS THE – MY ONLY SUPERVISOR AT THE TIME.

Q ALL RIGHT. AND DID SERGEANT -- AT THAT TIME HE WAS SGT. E.K. COX. IS THAT CORRECT?

A YES, SIR.

Q OKAY. DID SGT. COX WRITE A REPORT AS A RESULT OF THIS PURSUIT?

A YES, SIR, I BELIEVE HE DID, YES, SIR.

Q OKAY. DO YOU RECALL THAT SGT. COX INSPECTED YOUR VEHICLE AFTER THE PURSUIT?

A YES, SIR. AFTER THE PURSUIT HE CHECKED MY BLUE LIGHTS AND HE CHECKED MY SIREN. I HAD A TIRE ON THE BACK THAT WAS FLAT, AND THEY ALSO CHECKED THE VIDEO CAMERA TO MAKE SURE IT WAS NOT WORKING.

Q OKAY. I'D LIKE TO SHOW YOU A REPORT ON SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY LETTERHEAD, AND IT'S TO CAPTAIN J.R. JONES FROM SGT. E.K. COX DATED 12-26-03, ISN'T IT?

A YIES, SIR.

Q DOES THAT APPEAR TO BE A REPORT THAT WAS WRITTEN BY SGT. COX?

A IT SEEMS TO BE, YES, SIR. IT'S GOT HIS NAME ON IT, YES, SIR.

Q OKAY. ON THE SECOND PAGE, MR. DAVIS, I'VE HIGHLIGHTED A SENTENCE THERE FROM SGT. COX. WOULD YOU, PLEASE, READ THAT BEFORE WE TALK ABOUT IT.

A OKAY. LANCE CORPORAL DAVIS WAS DRIVIN' A 2000 MODEL CHEVROLET CAMARO AND HIS IN CAR CAMERA WAS NOT OPERABLE AT THE TIME. I INSPECTED HIS VEHICLE AFTER PURSUIT AND EVERYTHING WAS IN WORKING ORDER AND HE HAD NO DAMAGE TO HIS VEHICLE.

Q OKAY. THANK YOU, SIR. SGT. COX'S REPORT STATES THAT I INSPECTED HIS VEHICLE AFTER THE PURSUIT AND EVERYTHING WAS IN WORKING ORDER. IS THAT RIGHT?

A EXCEPT FOR THE CAMERA.

Q OKAY. EVERYTHING WAS IN WORKING ORDER. RIGHT?

A EXCEPT FOR THE CAMERA.

Q EXCEPT FOR THE CAMERA?

A YES, SIR.

Q ALL RIGHT. NOW HOW LONG HAD THAT CAMERA BEEN INOPERABLE?

A I'M NOT SURE. NORMALLY WE FILL OUT A THING, SIR, AND I'M NOT SURE AT THIS TIME BECAUSE IT'S BEEN SO LONG AGO. I BELIEVE A WEEK OR TWO OR SOMETHIN'. DON'T KNOW. I'LL BE HONEST WITH YOU.

Q DID THEY EVER FIX THAT CAMERA?

A YES, SIR.

Q OKAY. HOW LONG AFTER THIS?

A I COULD NOT TELL YOU, SIR.

Q ALL RIGHT. NOW YOU ENDED YOUR PURSUIT AT THE INSTRUCTIONS OF SGT. COX. IS—

A YES, SIR.

Q —THAT CORRECT?

A WHICH I WOULDA ENDED IT MYSELF ANYWAY. WE WAS JUST COMIN' UP TOO FAST.

Q BECAUSE IT WAS A SMART THING TO DO, WASN'T IT?

A SAFETY WISE, YES, SIR.

Q OKAY. DID YOU CONTINUE TO FOLLOW?

A I BACKED OFF. MY OFFICERS THAT WAS BEHIND ME BACKED OFF. WE PROCEEDED AT MAYBE 60 MILES PER HOUR TO THE TOWN OF SALUDA, YES, SIR.

Q OKAY. AND DID YOU HAVE RADIO COMMUNICATIONS WITH THE POLICE OFFICERS IN SALUDA?

A NO, SIR. THE ONLY COMMUNICATIONS WE HAD WAS THROUGH OUR DISPATCH TALKIN' TO MAYBE THEIRS, BUT OUR IN CAR RADIO DOES NOT TALK TO THEM. WE CAN ONLY TALK WITH OTHER HIGHWAY PATROL OFFICERS.

Q OKAY. WELL, LET ME PHRASE IT THIS WAY: WAS THAT INFORMATION THAT YOU HAD TERMINATED YOUR PURSUIT RELAYED TO SALUDA EITHER THROUGH THE HIGHWAY PATROL DISPATCHER OR OTHERWISE?

A IF THE DISPATCH NOTIFIED 'EM, YES, SIR. IF THE DISPATCH NOTIFIED 'EM, YES, SIR.

Q ALL RIGHT. THANK YOU.

A THANK YOU.

THE COURT: REDIRECT?

MR. YOUNG: JUST A COUPLE QUESTIONS.

REDIRECT EXAMINATION

BY MR. YOUNG

Q I BELIEVE YOU INDICATED THAT DURING THE PURSUIT AND TOWARD SALUDA AND TOWARD INTO SALUDA COUNTY THAT THERE WERE OTHER CARS THAT YOU OBSERVED AT LEAST ONE OTHER CAR DIRECTLY GET OUT OF THE WAY OR TRY TO GET OUT OF THE WAY BECAUSE OF WHAT MR. WILES WAS DOING?

A YES, SIR.

Q OKAY. AND WAS THIS CAR FORCED FROM THE ROADWAY?

A YES, SIR. HE WAS IN THE MIDDLE OF THE ROAD, THAT'S WHAT I WAS TRYIN' TO EXPLAIN TO HIM IN A CAR PROBABLY -- I MEAN HE -- THE SIREN, BLUE LIGHTS OR WHATEVER, BUT HE WAS IN THE MIDDLE OF THE ROAD SOME TIMES AND THAT CAR, I BELIEVE, WENT OFF THE RIGHT SIDE OF THE ROAD. YOU KNOW, THEY DIDN'T WRECK, I BELIEVE, BUT THEY WENT OFF THE SIDE OF THE ROAD TO KEEP FROM -- FROM HITTING OR -- OR BEING HIT.

Q AT THE TIME THEY WENT OFF THE ROAD, MR. WILES WAS IN THE MIDDLE OF THE ROAD?

A YES, SIR. YES, SIR.

Q ACROSS -- ACROSS--

A CENTER LINE.

Q --THE CENTER LINE?

A YES, SIR. ACROSS THE CENTER LINE.

Q AND HOW MANY TIMES DID YOU CLOCK HIM IN SPEEDS DO YOU SUPPOSE?

A WELL, PACIN' HIM THAT'S WHERE I GOT THE SPEEDS FROM AND ALSO THE RADAR WHAT WE WAS RUNNIN'. BUT INITIALLY WAS THE FIRST TIME THAT I ACTUALLY GOT HIM ON RADAR. THE OTHER TIMES WAS ME BEHIND HIM AND LETTIN' OUR

DISPATCHER KNOW WHAT SPEED HE WAS TRAVELIN' DUE TO THE PACE AND -- AND WHAT THE RADAR WAS SAYIN' THAT MY SPEED WAS.

Q NOW I WANT TO USE A WORD THAT MAY NOT BE DESCRIPTIVE ENOUGH, BUT IF YOU DON'T UNDERSTAND, JUST SAY YOU DON'T UNDERSTAND. WAS THIS AN ACCORDION-LIKE CHASE WHERE YOU SPED UP TO CATCH HIM AND HE SLOWED DOWN-- FOR TRAFFIC OR DID NOT SLOW DOWN FOR TRAFFIC? HOW DID THIS OCCUR?

A HE DIDN'T SLOW DOWN, NO, SIR. THE ONLY TIME I HAD TO REALLY SPEED UP WAS TO GET AROUND THOSE 2 VEHICLES THAT WE FIRST PASSED, AND THAT'S THE TIME I HAD TO REALLY SPEED UP AND WAS NOT ON HIM AT, YOU KNOW, USUALLY I KEPT BEHIND HIM MAYBE, YOU KNOW, 5 OR 6 CAR LENGTHS ANYTHING BUT THE CONSTANT SPEED. BUT AT THAT TIME WAS THE ONLY TIME I WASN'T BEHIND HIM BECAUSE I HAD THE SAFETY OF THOSE VEHICLES I HAD TO GET AROUND.

Q SO EXCEPT FOR A POINT IN TIME WHERE YOU WERE HAVING TO PASS OTHER VEHICLES AND SLOWED, YOU WERE USUALLY WITHIN IN WHAT DISTANCE FROM HIM?

A 5 OR 6 CAR VEHICLES.

Q AND HOW FAST WAS YOUR CAR RUNNING MOST OF THE TIME?

A 120, RIGHT AT 130 MOST OF THE TIME.

Q ALL RIGHT, SIR. NO FURTHER QUESTIONS.

THE COURT: RECROSS?

MR. FALGIONE: NOTHING FROM THE DEFENSE, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

A THANK YOU, JUDGE.

MR. YOUNG: YOUR HONOR, WE ASK THAT THIS WITNESS BE EXCUSED.

THE COURT: ANY OBJECTION TO THE WITNESS BEING EXCUSED?

MR. FALGIONE: NO, YOUR HONOR.

THE COURT: YOU'RE FREE TO GO, MR. DAVIS. THANK YOU. CALL YOUR NEXT WITNESS, PLEASE.

MR. YOUNG: DEPUTY STEPHEN BYRD.

STEPHEN BYRD, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. YOUNG

Q NOW YOU'RE GONNA NEED TO TALK UP.

A OKAY.

Q YOU'RE ACTING -- YOU'RE WALKING GINGERLY. ARE YOU IN PAIN?

A LITTLE BIT.

Q WHATCHU IN PAIN FROM?

A PULLED MUSCLES IN MY BACK.

Q ON THE JOB INJURY?

A YES, SIR.

Q TALK UP SO THAT THE PERSON ON THE END CAN HEAR YOU.

A YES, SIR.

Q TALK ALL THE WAY TO ME.

A YES, SIR.

Q ALL RIGHT. WHERE DO YOU WORK?

A SALUDA COUNTY SHERIFF'S OFFICE.

Q AND HOW LONG HAVE YOU WORKED THERE?

A 5 YEARS.

Q OKAY. AND HOW LONG HAVE YOU BEEN CERTIFIED AS A POLICE OFFICER?

A 4 AND A HALF YEARS.

STEPHEN BYRD - DIRECT EXAMINATION BY MR. YOUNG

Q ALL RIGHT, SIR. WERE YOU ON DUTY AS A SHERIFF'S DEPUTY ON DECEMBER 26TH 2003?

A YES, SIR.

Q OKAY. WHAT WAS YOUR JOB THAT DAY?

A ROAD DEPUTY HANDLIN' CALLS.

Q OKAY. WERE YOU MONITORING DISPATCH AROUND NOON OF THAT DAY?

A YES, SIR.

Q DID YOU RECEIVE NOTIFICATION THAT THERE WAS A CAR CHASE COMIN' FROM 378 TOWARD SALUDA?

A YES, SIR.

Q WHERE WERE YOU WHEN YOU HEARD THAT?

A I WAS IN THE TOWN OF SALUDA WHEN I HEARD IT.

Q WHERE DID YOU GO AFTER YOU HEARD THAT?

A UP 378 WEST TOWARD MCCORMICK.

Q OKAY. DID YOU STOP, TURN AROUND, WHAT'D YOU DO?

A YES, SIR, I STOPPED AND TURNED AROUND ON A PULL OFF. I BELIEVE IT WAS RIGHT PAST FIRE TOWER ROAD.

Q RIGHT BETWEEN IT -- DID YOU SAY FIRE TOWER?

A YES, SIR, RIGHT PAST FIRE TOWER.

Q OKAY. AND YOU SAID A TURN OFF.

A YES, SIR.

Q ALL RIGHT. SO WHAT DIRECTION WOULD YOUR CAR BE POINTED AT THAT POINT? WHAT DIRECTION WOULD THE FRONT OF YOUR CAR BE GOING?

A EAST TOWARD SALUDA.

Q SO YOUR CAR'S POINTED TOWARD SALUDA ON 378.

A YES, SIR.

Q AT THAT TIME DID YOU COME INTO CONTACT WITH A CAR AT A HIGH RATE OF SPEED?

A YES, SIR.

Q WOULD YOU DESCRIBE WHAT HAPPENED.

A I PULLED OUT ONTO 378 IN THE EASTBOUND LANE HEADED TOWARD SALUDA WITH MY LIGHTS AND SIREN ON TO TRY TO DO A ROADBLOCK WITH THE HIGHWAY PATROL ON THE CAR. IT COME PAST ME. I WAS AT 70 MILES AN HOUR. AND IT FLEW PAST ME, RUN A CAR OFF THE ROAD, RIGHT BETWEEN ABLE AND FIRE TOWER ROAD POND. THE CAR VEERED OFF THE ROAD TO KEEP FROM GETTIN' HIT HEAD ON. THE GREEN CROWN VIC -- IT WAS A GREEN CROWN VIC -- PULLED BACK INTO MY LANE. MY LIEUTENANT THAT WAS OFF DUTY GOT ON THE RADIO AND SAID FOR US NOT TO CHASE SO I SLOWED IT DOWN. COME INTO TOWN. I CAUGHT A GLIMPSE OF THE CAR. OFFICER DENNY WAS TRYIN' TO GET OUT THE STOP STICKS. I CALLED INTO TOWN AND I LOST SIGHT OF IT. WHEN I COME INTO TOWN I SAW MR. FRANK'S CAR AND I SAW THE CROWN -- THE OTHER CROWN VICTORIA PARKED.

Q OKAY. SO YOU -- YOU -- WHAT WAS THE HIGHEST RATE OF SPEED YOU THINK YOU WERE?

A 80.

Q MAYBE 80 MILES AN HOUR?

A YES, SIR.

Q OKAY. AND THE CAR CAME AROUND YOU AT THAT POINT OR---

A YES, SIR.

Q ---WAS IT BEFORE YOU HAD REACHED 80? DID YOU BACK OFF AND HE PASSED YOU OR WERE YOU AT 80 WHEN HE PASSED YOU?

A THAT WAS ABOUT 80 WHEN HE PASSED ME.

Q ALL RIGHT. DID YOU -- HOW LONG -- YOU WERE TRYING TO ESTIMATE SPEEDS. CORRECT?

A YES, SIR.

Q DID YOU ESTIMATE HIS SPEED AT THAT TIME TO BE FASTER?

A WELL OVER 100.

Q ALL RIGHT. AT THE TIME HE CAME AROUND YOU, YOU INDICATED THERE WAS ANOTHER CAR---

A YES, SIR.

Q —COMING FROM THE OPPOSITE DIRECTION?

A YES, SIR.

Q ALL RIGHT. NOW DESCRIBE WHAT HAPPENED THAT YOU SAW HAPPENED.

A I SAW THE PEOPLE TRYIN' TO GET OFF THE SHOULDER OF THE ROAD SO THEY WOULDN'T GET HIT HEAD ON. IT WAS A MALE AND FEMALE HEADED UP 378 WEST.

Q OKAY.

A THEY PULLED ALL THE WAY OFF THE ROAD. I NEVER SAW 'EM GET BACK ON THE ROAD.

Q I THINK YOU MENTIONED FIRE TOWER AND ABLE ROADS.

A YES, SIR.

Q WHAT KIND OF TERRAIN IS IN THAT AREA?

A HILLY.

Q OKAY. WERE YOU AT THE TOP OF THE HILL OR NEAR THE BOTTOM OF THE HILL WHEN YOU FIRST STOPPED. WHERE WERE YOU? WERE YOU TOP OF THE HILL, BOTTOM OF THE HILL? WHERE WERE YOU?

A JUST ABOUT AT THE BOTTOM OF THE HILL.

Q OKAY. AND SO THAT'S WHEN YOU ACCELERATE FROM A BOTTOM OF A HILL UP TO THE TOP OF -- WOULD THE NEXT ROAD WOULD BE ABLE?

A THE NEXT ROAD WOULD'VE BEEN FIRE TOWER.

Q FIRE TOWER.

A YES, SIR.

Q OKAY. SO YOU GO UP TO THE TOP OF FIRE TOWER. WHEN DOES HE PASS YOU?

A BEFORE WE GET TO FIRE TOWER GOIN' OVER THE TOP OF THE HILL.

Q OKAY. STOP RIGHT THERE. I WANT TO ASK YOU A QUESTION. YOU'RE AT THE TOP OF THE HILL AT FIRE TOWER. WHAT DOES THE ROAD LOOK LIKE IMMEDIATELY AHEAD OF YOU AT THAT POINT?

A CAR COMIN'.

Q WELL, WHAT DOES THE ROAD LOOK LIKE? JUST THE ROAD ITSELF. REGARDLESS OF CARS WHAT DOES THE ROAD LOOK LIKE? IS IT A STRAIGHT ROAD, CURVING ROAD, UPHILL, DOWNHILL, WHAT'S THE TERRAIN THERE?

A IT LOOKS HILLED AND CURVY.

Q HILL AND CURVE.

A YES, SIR.

Q CURVE TO THE RIGHT OR THE LEFT?

A TO THE RIGHT.

Q IF YOU'RE HEADED TO SALUDA IT TURNS TO THE RIGHT?

THE COURT: HOLD ON A SECOND. SLOW DOWN.

MR. YOUNG: SORRY.

THE COURT: WHAT WAS YOUR ANSWER? TO THE RIGHT?

A YES, SIR.

MR. YOUNG: I'M SORRY. I WAS GETTIN' A LITTLE FAST FOR YOU. I APOLOGIZE.

WHERE WAS THIS OTHER CAR COMIN' FROM IN RELATION TO THE CURVE AND
L THAT YOU'RE ON?

I'M SORRY. WILL YOU ASK THAT AGAIN.

IF YOU'RE ON A HILL—

YES, SIR.

—WAS THE CAR APPROACHING YOU OR GOING AWAY – GOING WITH YOU? THE
ER CAR.

IT WAS APPROACHING.

IT WAS APPROACHING.

YES.

OKAY. AND YOU MENTIONED SOMETHIN' ABOUT RUNNIN' OFF THE RIGHT SIDE OF THE ROAD. IS THERE – WHAT IS TO THE – IF YOU'RE STANDIN' AT THE TOP OF THE HILL AND LOOKING TO YOUR LEFT, WHAT'S TO THE RIGHT OVER THERE? WELL, TO YOUR LEFT, TO THE LEFT SIDE OF THE ROAD, WHAT DO YOU SEE?

A POND DAM AND A DITCH.

Q AND A DITCH. OKAY. WHERE DID THIS CAR THAT YOU SAID WENT OFF THE ROAD GO? WHERE DID IT GO?

A RIGHT THERE AT THE POND DAM AND THE DITCH.

Q IT WENT INTO THE DITCH?

A YES, SIR.

Q AND WHERE WAS MR. WILES – EXCUSE ME – WHERE WAS THIS OTHER CAR AT THAT TIME, THE CAR THAT PASSED YOU?

A IN THE OPPOSITE LANE OF ME.

Q HE WAS IN THE -- OKAY, HE WAS IN YOUR OPPOSITE PAST YOU?

A YES, SIR.

Q AND SO HE WAS IN THE OTHER -- THE APPROACHING CAR'S VEHICLE'S LANE?

A YES, SIR.

Q ALL RIGHT. DID THAT OTHER CAR HAVE APPARENTLY ANY CHOICE TO MAKE?

A NO. GET OFF THE ROAD.

Q THANK YOU. ALL RIGHT. THEN YOU -- YOU WERE INSTRUCTED TO STOP THE PURSUIT HOW SOON AFTER THAT HAPPENED?

A IMMEDIATELY.

Q OKAY. SO ABOUT THE SAME TIME—

THE COURT: I DIDN'T HEAR HIM.

MR. YOUNG: I'M SORRY.

A IMMEDIATELY.

Q THANK YOU. AFTER YOU WERE TOLD TO STOP THE PURSUIT, DID YOU FOLLOW, DID YOU REDUCE YOUR SPEED; DID YOU SPEED UP; WHAT DID YOU DO?

A I REDUCED MY SPEED; FOLLOWED HIM INTO TOWN.

Q ALL RIGHT. COULD YOU SEE HIM FROM THAT POINT FORWARD AFTER HE -- I THINK YOU SAID IT CURVED TO THE RIGHT. COULD YOU SEE HIM AROUND THE CURVE?

A AFTER I GOT AROUND THE CURVE.

Q OKAY.

A I SAW HIM ONE LAST TIME.

Q ALL RIGHT. WELL, TELL ME ABOUT WHAT HAPPENS TO THE SPEED LIMITS AROUND THAT CURVE AREA AS YOU GO INTO SALUDA.

A YOU COME INTO A -- WHEN YOU COME INTO THE TOWN YOU COME INTO A 45 THAT INTERSECTION, WHICH WOULD'VE BEEN THE LAST TIME I SAW HIM, IT DROPS TO A 40 I BELIEVE.

Q OKAY. WHEN YOU WERE ON -- THE POSITION YOU WERE AT RIGHT THERE AT,

THINK YOU SAID BETWEEN ABLE AND FIRE TOWER.

A YES, SIR.

Q WHAT'S THE SPEED LIMIT THERE?

A I BELIEVE IT'S PROBABLY 55.

Q ALL RIGHT. IS THAT THE SPEED LIMIT ON 378?

A YES, SIR.

Q ALL RIGHT. OUTSIDE OF TOWN.

A YES, SIR.

Q SO ONCE YOU MADE THE CURVE, IT WENT TO 45?

A YES, SIR.

Q AND THEN WHAT HAPPENED AFTER THAT IN TERMS OF SPEED LIMITS.

A IN TERMS OF SPEED LIMITS?

Q YES, SIR. WHAT HAPPENS TO THOSE SPEED LIMITS AS YOU GO TOWARD THE CENTER OF SALUDA?

A IT DECREASES DOWN. IT GOES—

Q ALL RIGHT.

A —FROM A 35 TO A 25 IN TOWN.

Q ALL RIGHT. YOU SAID YOU LOST SIGHT OF HIM AT SOME POINT.

A YES, SIR.

Q CAN YOU DESCRIBE THE LOCATION APPROXIMATELY WHERE YOU LOST SIGHT OF HIM.

A I LOST SIGHT OF HIM—

Q YES, SIR.

A —GOIN' INTO THE CURVE—

Q RIGHT.

A —COMIN' INTO TOWN.

Q YES, SIR.

A THEN WHEN I GOT INTO TOWN I SAW HIM AGAIN AT 378 AND -- I CAN'T REMEMBER THE INTERSECTION OF THE ROAD.

Q OKAY. WAS THERE ANY MARKER OR LIGHTS IN THAT AREA THAT WOULD HELP YOU REMEMBER WHERE THAT SPOT WAS THAT YOU LOST SIGHT OF HIM?

A WELL, IT'S A SCHOOL ZONE RIGHT THERE AT THE—

THE COURT: A WHAT?

A SCHOOL ZONE.

Q WELL, LET ME ASK YOU THIS: ARE THERE ANY LIGHTS THAT YOU SEE AS YOU APPROACH THE CENTER OF SALUDA? DO YOU COME UPON LIGHTS?

A YES, SIR.

Q WHERE ARE THOSE LIGHTS IF THERE ARE ANY?

A THERE'S A CAUTION LIGHT AT I THINK IT'S JEFFERSON.

Q OKAY, SIR. KEEP YOUR VOICE UP.

A JEFFERSON. I BELIEVE IT'S JEFFERSON.

Q ALL RIGHT. DID YOU SEE HIM BEFORE OR AFTER THAT CAUTION LIGHT AT JEFFERSON?

A I DIDN'T SEE HIM.

Q AFTER JEFFERSON OR BEFORE JEFFERSON?

A I SAW HIM BEFORE JEFFERSON.

Q OKAY. ALL RIGHT. WAS THAT CAUTION LIGHT NEAR WHERE YOU LOST SIGHT OF HIM?

A YES, SIR.

Q OKAY SO APPROXIMATELY THAT AREA IS WHERE YOU LOST SIGHT OF HIM.

A YES, SIR.

Q AND IS THIS A LEVEL PIECE OF ROAD LEADING UP TO THAT CAUTION LIGHT OR IS IT SLOPED, AND IF IT'S SLOPED, WHAT DIRECTION?

A WELL, IT'S SLOPED GOIN' BACK OUTTA TOWN, BUT WHEN YOU COMIN' INTO TOWN IT GETS LEVEL GOIN' INTO IT.

Q OKAY. SO AS YOU COME INTO TOWN IT'S LEVEL?

A YEAH.

Q NOW AFTER YOU -- YOU SAY YOU LOST SIGHT OF HIM. WHY DID YOU LOSE SIGHT OF HIM AFTER YOU CAME INTO TOWN? DOES THE TERRAIN CHANGE?

A WELL, THE TERRAIN CHANGED A LITTLE BIT. HE WAS DRIVIN' FAST.

Q OKAY. WELL, IS AFTER THIS CAUTION LIGHT DOES IT GO DOWN OR DOES IT GO UP? IS IT LEVEL BEYOND THAT?

A IT'S LEVEL.

Q OKAY. ALL RIGHT. SO AT THE POINT IN TIME THAT YOU SAW HIM, I BELIEVE YOU SAID HE PASSED YOU AT FIRE TOWER. AM I CORRECT ON THAT?

A BEFORE YOU GET TO FIRE TOWER, YES, SIR.

Q JUST BEFORE. OKAY. YOU FOLLOWED HIM INTO TOWN. CAN YOU TELL US WHAT ROUTE YOU TOOK AFTER THAT. WHAT ROUTE DID YOU TAKE?

A I STAYED ON 378 TILL I GOT TO MAIN STREET.

Q OKAY. AND HOW LONG AFTER YOU SAW HIM DISAPPEAR, SO TO SPEAK, OUT OF YOUR SIGHT THE LAST TIME UNTIL YOU CAME INTO THE CENTER OF TOWN?

A A COUPLE SECONDS.

Q RIGHT BEHIND HIM THEN. YOU'RE NOT VERY FAR.

A NOT VERY FAR.

Q OKAY. AND WHEN YOU GOT TO THE CENTER OF TOWN, WHAT DID YOU SEE?

A A DEPUTY'S CAR SITTIN' IN THE OPPOSITE LANE WITH SMOKE COMIN' OUT FROM IT. ANOTHER CROWN VIC PARKED SIDE OF A BUILDIN' ON MAIN STREET.

Q PARKED IN A BUILDING?

A YES, SIR.

Q IT WAS PARKED IN A BUILDING?

A THAT'S WHERE IT ENDED UP AT.

Q OKAY. I GOTCHU. ALL RIGHT. LET ME ASK YOU A QUESTION ABOUT THE SPEED OF THE DEFENDANT'S CAR WHEN YOU WERE WATCHING HIM DISAPPEAR SO TO SPEAK WHEN YOU WENT AROUND THE CURVE WHEN YOU SAY YOU LOST SIGHT OF HIM BRIEFLY?

A YES, SIR.

Q WHAT -- WHAT WAS HIS -- HAD HIS SPEED CHANGED AT THAT POINT MUCH?

A NOT MUCH.

Q DID HE GO UP OR DOWN? DO YOU KNOW?

A I THINK IT STAYED ABOUT THE SAME.

Q ALL RIGHT. WHEN YOU SAW HIM GO OVER THE TOP OF WHATEVER OR WHEN YOU LOST SIGHT OF HIM, WHAT WAS HIS SPEED LIKE AT THAT POINT?

A 80S OR 90S.

Q OKAY. WHEN YOU LAST SAW HIM?

A YES, SIR.

Q OKAY. IN THE 90S. SO HE MAY HAVE BACKED OFF SOME.

A MIGHT HAVE.

Q THIS IS WHAT -- HOW FAR AWAY ARE YOU GETTIN' A CHANCE TO SEE HIM? THE LAST GLANCE SO TO SPEAK. HOW FAR AWAY IS HE FROM YOU?

A QUARTER OF A MILE MAYBE.

Q QUARTER OF A MILE.

A ABOUT.

Q ALL RIGHT.

A JUST A GOOD LITTLE DISTANCE.

Q ALL RIGHT. AT ANY TIME AFTER YOU REDUCED YOUR -- YOU SAID YOU REDUCED YOUR SPEED?

A YES, SIR.

Q WERE YOU CLOSING -- AT ANY TIME CLOSING THE DISTANCE ON HIM IN TERMS OF YOUR SPEED VERSUS HIS?

A NO.

Q OKAY. AND ABOUT WHAT SPEED DID YOU COME INTO TOWN AT?

A 50, 60 MILES AN HOUR.

Q OKAY. WERE YOU ABLE TO SEE ANYBODY IN THE CAR THAT PASSED YOU AT THE TIME THEY PASSED YOU? EVER SEE ANYBODY?

A YES, SIR.

Q WHO'D YOU SEE IN THE CAR?

A MALE AND FEMALE. MALE DRIVER.

Q RACE? WHAT KINDA RACE WERE THEY?

A WHITE.

Q OKAY. DID YOU SEE THAT SAME CAR IN THE INTERSECTION AGAIN?

A YES, SIR.

Q WOULD YOU BE ABLE TO IDENTIFY PICTURES OF IT IF YOU SAW IT AGAIN?

A YES, SIR.

Q I'M GONNA PASS UP STATE'S EXHIBITS 20, STATE'S EXHIBIT 15, 14, 13 AND 8. WOULD YOU TAKE A LOOK AT THOSE AND TELL ME IF YOU CAN IDENTIFY ANYTHING IN

THOSE.

A YES, SIR.

Q WHAT ARE THOSE?

A PICTURES OF THE -- PICTURES OF THE ACCIDENT.

Q ALL RIGHT. WHAT -- SPECIFICALLY WOULD YOU HOLD UP THE PICTURE AND SHOW THE JURY WHAT YOU'RE REFERRING TO. JUST STAND THERE RIGHT WHERE YOU ARE. ALL RIGHT. I'LL HOLD IT. TELL ME WHAT YOU'RE REFERRING TO ABOUT THE PICTURES OF THE ACCIDENT. WHAT DO YOU MEAN?

A THIS WOULD BE THE GREEN CAR THAT'S PARKED INSIDE THE BUILDING OR INTO THE SIDE OF THE BUILDING.

MR. FALGIONE: EXCUSE ME, YOUR HONOR.

THE COURT: YOU HAVE TO KEEP YOUR VOICE UP.

MR. FALGIONE: SORRY, SIR.

THE COURT: YOU CAN'T HEAR HIM OR WHAT?

MR. FALGIONE: NO, YOUR HONOR. THIS HAS ALREADY BEEN PUBLISHED TO THE JURY ONE TIME.

THE COURT: WHY ARE YOU SHOWIN' 'EM AGAIN?

MR. YOUNG: SO HE CAN DESCRIBE WHAT HE SAW WHEN HE GOT TO THE SCENE AND IDENTIFY THE SAME CAR, YOUR HONOR.

Q IS THAT THE SAME CAR IN THESE PICTURES, THE BLUE CAR? IS THAT THE SAME BLUE CAR THAT YOU SAW GO PAST YOU AT FIRE TOWER?

A YES, SIR.

Q OKAY. THANK YOU. ALL RIGHT. WITH REGARD TO - HOW MUCH TIME LAPSED ROUGHLY BETWEEN THE TIME YOU FIRST SAW THE CAR UNTIL YOU GOT TO THE CENTER OF TOWN?

A JUST A MINUTE OR TWO.

Q SAY AGAIN.

A JUST A MINUTE OR SO.

Q ALL RIGHT. AND WHEN -- HOW LONG DO YOU THINK YOU WERE OUT OF SIGHT OF HIM AFTER YOU GOT TO THE CENTER OF TOWN?

A COUPLE OF SECONDS.

Q OKAY. NOW WHEN YOU GOT THERE, YOU SAID THERE WAS A PATROL VEHICLE OR SHERIFF'S DEPUTY VEHICLE?

A YES.

Q WAS ANYBODY IN THAT VEHICLE?

A YES, SIR.

Q WHO?

A MR. FRANK DANIEL.

Q ALL RIGHT. WHO IS MR. FRANK DANIEL?

A HE'S A -- ONE OF THE DEPUTIES OF THE SALUDA COUNTY SHERIFF'S OFFICE.

Q OKAY. HE WAS A DEPUTY AT THE TIME?

A YES, SIR. WE WORKED TOGETHER.

Q YOU WORK WITH HIM?

A YES, SIR.

Q WHEN YOU GOT TO HIM WHERE WAS HE?

A IN THE CAR.

Q IN THE CAR? WHAT WAS HIS CONDITION AT THE TIME IN TERMS OF HIS ABILITY TO TALK TO YOU?

A HE COULDN'T. HE DIDN'T KNOW WHERE HE WAS AT. HE WAS SHAKEN UP REAL BAD.

Q ALL RIGHT. WHERE WAS HE IN THE CAR?

A SITTIN' IN THE DRIVER'S SEAT.

Q WAS HIS SEAT BELT ON?

A YES, SIR.

Q OKAY. WAS HE CAPABLE OF STANDING ON HIS OWN TWO FEET?

A YES, SIR, HE WAS. I HELPED HIM OUT OF THE CAR.

Q YOU HELPED HIM OUT OF THE CAR? IF YOU LET GO OF HIM WOULD HE BE ABLE TO STAND UP?

A NO, SIR, I DIDN'T BELIEVE SO.

Q OKAY. WHAT HAPPENED TO HIM?

A WE HAD A AMBULANCE -- I CALLED AN AMBULANCE TO COME PICK HIM UP AT THE JAIL BECAUSE WE WERE SETTIN' UP A PERIMETER RIGHT THERE ON MAIN STREET AND THE AMBULANCE COULD NOT COME IN THE PERIMETER. SO I WALKED HIM UP TOWARD THE JAIL AND SOMEBODY GOT HIM AND GOT HIM THE REST OF THE WAY UP THERE.

Q ALL RIGHT. TOWARD THE JAIL MEANS WHAT?

A EAST CHURCH STREET BY MAIN STREET.

Q ALL RIGHT. IS THAT IN THE DIRECTION OF COLUMBIA -- OR THE DIRECTION OF COLUMBIA THAT YOU'RE TALKIN' ABOUT?

A DIRECTION OF COLUMBIA.

Q OKAY. SO YOU WENT -- IN -- IN TERMS OF WHERE WE ARE IN THIS PARTICULAR BUILDING RIGHT NOW, IN THAT DIRECTION OF CHURCH STREET?

A YES, SIR.

Q AND I'M POINTIN' TO MY LEFT.

A THAT'S CORRECT.

Q YOUR RIGHT. AND WHO DID YOU TURN HIM OVER TO?

A I'M NOT SURE.

Q OKAY. WERE THERE E.M.T. PEOPLE THERE ALREADY?

A YES, SIR.

Q OKAY. BUT YOU TURNED HIM OVER TO SOMEBODY WITH E.M.T.?

A I BELIEVE SO.

Q WAS HE TALKIN'?

A YES, SIR.

Q DID HE -- DID HE -- WAS HE RESPONSIVE? YOU ASKED HIM A QUESTION. DID HE KNOW WHAT HE WAS SAYIN'?

A I DON'T KNOW IF HE KNEW WHAT HE WAS SAYIN' OR NOT.

Q OKAY. BUT DID HE -- DID HE RESPOND TO YOUR QUESTIONS LIKE IF I ASKED YOU WAS THE -- WAS THE SUN SHINING, WAS HE -- SAY YES OR NO AND IT WAS AN ACCURATE ANSWER?

A YES, SIR. I ASKED HIM IF ANYTHING HURT SO I COULD GET HIM OUT OF THE CAR. HE SAID HE DIDN'T THINK NOTHIN' WAS HURTIN' HIM.

Q OKAY. SO YOU GOT HIM OUT OF THE CAR. DID THE AIRBAGS DEPLOY?

A YES, SIR. BOTH OF 'EM.

Q ALL RIGHT. LET ME SHOW YOU STATE'S EXHIBIT 9. DOES THAT FAIRLY REPRESENT THE CONDITION OF THE CAR OF MR. DANIELS AT THE TIME?

A YES, SIR.

Q ALL RIGHT. IS THAT HOW IT LOOKED TO YOU WHEN YOU GOT THERE?

A YES, SIR.

Q WERE HIS EMERGENCY VEHICLE LIGHTS ACTIVATED AT THAT TIME?

A YES, SIR.

Q THEY WERE? MR. – MR. DANIEL'S VEHICLE'S LIGHTS WERE ACTIVATED?

A YES, SIR.

Q OKAY. DURIN' THE PROCESS OF GETTIN' HIM OUT OF THE CAR, DID YOU MOVE ANYTHING AS FAR AS YOU KNOW?

A NO, SIR.

Q OKAY. WHEN YOU GOT HIM OUT OF THE CAR AND YOU TOOK HIM BACK TO THE E.M.T., DID YOU SEE HIM AGAIN THAT DAY?

A I DON'T BELIEVE I DID.

Q OKAY. AND WHAT WAS YOUR JOB AFTER THAT? WHAT DID YOU DO?

A PERIMETER.

Q OKAY. DID YOU MAKE ANY OTHER – YOU DIDN'T DO ANY ACTUAL INVESTIGATION OF THE ACCIDENT ITSELF, DID YOU?

A NO, SIR.

Q AND YOUR JOB IS JUST TO SECURE THE SCENE FROM THAT POINT FORWARD?

A YES, SIR.

Q AND THEN LATER IN THE DAY DID YOU – DID YOU SEE ANYBODY YOU LATER RECOGNIZED OUT OF THAT VEHICLE?

A YES, SIR.

Q WHO'D YOU SEE?

A MR. SHAWN WILES.

Q MR. SHAWN WILES? IS THAT THE GENTLEMAN SITTIN' OVER THERE WITH MR. FALGIONE?

A YES, SIR.

Q WHO WAS MR. SHAWN WILES IN RELATION TO THIS CAR THAT YOU SAW?

A THE DRIVER.

Q HE WAS THE DRIVER.

A YES, SIR.

Q PLEASE, ANSWER ANY QUESTIONS THAT MR. FALGIONE HAS FOR YOU.

MR. FALGIONE: MAY IT PLEASE THE COURT?

THE COURT: YES, SIR.

CROSS-EXAMINATION

BY MR. FALGIONE

Q DEPUTY BYRD, WOULD IT BE MORE COMFORTABLE FOR YOU IF YOU STOOD FOR JUST A SECOND BEFORE WE WENT ON?

A I'M OKAY.

Q WOULD THAT HELP YOU?

A NO, THANK YOU. NO, SIR, I'M FINE.

Q OKAY. NOW, DEPUTY BYRD, LET'S – LET'S TALK A LITTLE BIT ABOUT THIS ORDER YOU RECEIVED NOT TO PURSUE THIS SPEEDING VEHICLE INTO SALUDA.

A YES, SIR.

Q OKAY. WHERE DID YOU RECEIVE THAT ORDER FROM?

A BEFORE I GOT TO HIGH TOWER ROAD.

Q WAS THAT OVER YOUR POLICE RADIO?

A YES, SIR.

Q AND WAS THAT FROM YOUR DISPATCHER OR FROM WHO?

A NO, IT WAS FROM MY LIEUTENANT.

Q FROM YOUR LIEUTENANT? WHO WAS THAT?

A ROBBIE FREEMAN.

Q ROBERT FREEMAN?

A YES, SIR.

Q THANK YOU, SIR. DO ALL THE SHERIFF DEPUTIES IN SALUDA COUNTY MONITOR THE SAME FREQUENCIES IN THEIR RADIOS, THEIR CAR RADIOS?

A YES, SIR.

Q SO ALL DEPUTIES SHOULD'VE RECEIVED THAT SAME MESSAGE, SHOULDN'T THEY? NOT TO PURSUE THIS VEHICLE THROUGH SALUDA. IS THAT CORRECT?

A YES, SIR.

Q ALL RIGHT. NOW LET'S GO RIGHT TO THE COLLISION.

A YES, SIR.

Q OKAY? WHEN YOU ARRIVED AT THE COLLISION IT HAD ALREADY OCCURRED, HADN'T IT?

A YES, SIR.

Q SO YOU DIDN'T SEE THE COLLISION.

A NO, SIR, I DID NOT.

Q YOU DIDN'T SEE THE POSITION OF THE VEHICLES BEFORE THE COLLISION, CORRECT?

A NO, SIR, I DID NOT.

Q AND YOU DIDN'T SEE OFFICER OR DEPUTY DANIEL'S VEHICLE BEFORE THE COLLISION. CORRECT?

A NO, SIR, I DID NOT.

Q ALL RIGHT. NOW I WANT YOU TO -- AND I KNOW THIS HAS BEEN 3 YEARS AGO ALMOST, HASN'T IT?

A YES, SIR.

Q THAT WAS 2003 WHEN ALL THIS HAPPENED. I WANT YOU TO SEARCH YOUR MEMORY THOUGH, AND I'M GONNA ASK YOU DO YOU REMEMBER CLEARLY THAT OFFICER DANIEL'S LIGHTS WERE OPERATING AND WERE ON OR NOT? HIS FLASHING

LIGHTS.

A I BELIEVE THEY WERE ON.

Q TO THE BEST OF YOUR RECOLLECTION?

A YES, SIR.

Q OKAY. NOW WHEN YOU CAME UP TO THE VEHICLE, OFFICER DANIEL'S VEHICLE, YOU HELPED HIM OUT OF THE CAR. IS THAT TRUE?

A YES, SIR.

Q HAD THE AIR BAGS GONE OFF?

A YES, SIR.

Q OKAY. AND HE HAD HIS SEAT BELT ON.

A YES, SIR.

Q CORRECT?

A YES, SIR.

Q AND IF I UNDERSTOOD YOUR TESTIMONY CORRECTLY YOU ASKED HIM IF HE WAS HURT AND HE RESPONDED NOTHING WAS HURT. IS THAT TRUE?

A TRUE. SO I COULD GET HIM OUT OF THE CAR.

Q SIR?

A YES, SIR, THAT'S TRUE.

Q OKAY. SO—

A I JUST DIDN'T WANNA GET HIM OUT OF THE CAR AND SOMETHING BE BROKE.

Q I UNDERSTAND. YOU SAW FLUIDS AND THINGS COMING OUT OF THAT CAR AND YOU WANTED TO GET HIM AWAY FROM THERE. RIGHT?

A YES, SIR.

Q NOW IN YOUR TRAINING YOU'VE HAD SOME E.M.T. TRAINING. CORRECT?

A A LITTLE BIT.

Q OKAY. AND YOU WERE RELYING ON OFFICER DANIEL'S STATEMENT TO YOU THAT HE WASN'T HURT. IS THAT TRUE?

A YES, SIR.

Q ALL RIGHT. NOW YOU GOT HIM OUT OF THE CAR, AND YOU WALKED WITH OFFICER DANIEL SOME DISTANCE, DID YOU NOT?

A YES, SIR.

Q HOW FAR DID Y'ALL WALK?

A PROBABLY ABOUT ONE BLOCK BEFORE SOMEBODY PICKED HIM UP AND TOOK HIM THE SECOND BLOCK.

Q OKAY. SO YOU WERE DELIVERING OFFICER DANIELS OVER TO THE E.M.T. PEOPLE—

A YES, SIR.

Q —ISN'T THAT TRUE?

A YES, SIR.

Q THE SAME AS YOU WOULD DO IN ANY COLLISION. CORRECT? YOU'D MAKE SURE THAT THE PEOPLE INVOLVED IN THE COLLISION WERE TAKEN CARE OF BY E.M.T. PERSONNEL—

A YES, SIR.

Q —WOULDN'T YOU?

A YES, SIR.

Q OKAY. NOW DURING THIS WALK OF -- OF A BLOCK OR SO, WITH DEPUTY DANIELS, I UNDERSTOOD YOUR TESTIMONY TO BE THAT YOU TALKED WITH HIM. CORRECT?

A YES, SIR.

Q AND HE UNDERSTOOD WHAT YOU WERE SAYING. CORRECT?

A I GUESS HE UNDERSTOOD.

Q OKAY. HE RESPONDED TO YOUR QUESTIONS—

A YES, SIR.

Q ---DIDN'T HE?

A YES, SIR.

Q AND HE DIDN'T CALL YOU MOTHER OR UNCLE JOE OR ANYTHING LIKE THAT. ALL RIGHT? HE KNEW WHO YOU WERE, DIDN'T HE?

A YES, SIR.

Q OKAY. SO WHILE HE WAS SHAKEN UP, HE SEEMED COHERENT, DIDN'T HE?

A YES, SIR.

Q OKAY. DID YOU SEE HIM DRAGGING A LEG OR FAVORING AN ARM OR ANYTHING LIKE THAT IN THAT WALK?

A HE WOULDN'T -- HE COULDN'T WALK BY HISSELF.

Q OKAY. HE WAS LEANING ON YOU?

A YES, SIR.

Q DID HE HAVE HIS ARM AROUND YOU?

A I THINK I HAD HIM BY BOTH HIS SHOULDERS. HE WAS WALKIN'.

Q OKAY. YOU HAD YOUR ARM AROUND HIM. IS THAT CORRECT?

A YES, SIR.

Q LIKE THAT. NOW YOU'RE NOT TESTIFYING YOU WERE HOLDING THE WEIGHT OF OFFICER DANIELS UP---

A NO, SIR.

Q ---BY ANY MEANS, ARE YOU?

A NO, SIR.

Q YOU WERE PROVIDING A STEADY FORCE FOR HIM. IS THAT TRUE?

A YES, SIR.

Q WHILE YOU WERE WALKING HIM UP TO THE E.M.T.

A RIGHT.

Q OKAY. WHEN DID YOU NEXT SEE OFFICER DANIELS?

A I DON'T KNOW WHEN I NEXT SAW HIM.

Q OKAY. DO YOU KNOW WHEN OFFICER DANIELS CAME BACK TO WORK?

A NO, SIR, I COULDN'T TELL YOU OFF THE TOP OF MY HEAD.

Q OKAY. THANK YOU, DEPUTY BYRD. I APPRECIATE IT.

THE COURT: REDIRECT?

MR. YOUNG: I HAVE NO FURTHER QUESTIONS OF DEPUTY BYRD, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

MR. YOUNG: I ASK THAT HE BE EXCUSED UNLESS THERE IS AN OBJECTION.

MR. FALGIONE: NO OBJECTION.

THE COURT: YOU'RE FREE TO GO. THANK YOU, SIR.

MR. YOUNG: YOUR HONOR, WE'RE READY TO PROCEED WITH ANOTHER WITNESS UNLESS THE COURT WANTS TO TAKE A BREAK.

THE COURT: I THINK IT'S TIME FOR A BREAK. LADIES AND GENTLEMEN, WE'LL TAKE A 10-MINUTE RECESS. DON'T DISCUSS THE CASE. PLEASE, STEP TO THE JURY ROOM. (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.) COURT'S IN RECESS FOR 10 MINUTES.

MR. YOUNG: THANK YOU, YOUR HONOR. (THERE WAS A BRIEF RECESS.)

THE COURT: DEFENSE READY?

MR. FALGIONE: YES, SIR.

THE COURT: BRING THE JURY IN, PLEASE. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) CALL YOUR NEXT WITNESS, PLEASE.

MR. YOUNG: THE STATE CALLS MS. MARY RUTH HOLMES.

MARY RUTH HOLMES, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. YOUNG

Q MS. HOLMES, WOULD YOU SPELL YOUR LAST NAME FOR THE—

A H-O-L-M-E-S.

Q THANK YOU, MA'AM. WHERE DO YOU LIVE AND HOW LONG HAVE YOU LIVED THERE?

A I LIVE IN SALUDA 104 DUFFY (PHONETIC) ROAD. I BEEN THERE ABOUT, PROBABLY ABOUT 10 MONTHS, BUT I BEEN IN SALUDA FOR LONGER THAN THAT.

Q YES, MA'AM. CAN I TAKE YOU BACK TO DECEMBER 2003. WERE YOU LIVIN' IN SALUDA THEN?

A YES, I WAS.

Q OKAY. AND ON DECEMBER 26TH OF 2003, THAT'S THE DAY AFTER CHRISTMAS, DID YOU OBSERVE A COLLISION IN THE CENTER OF SALUDA?

A YES, I DID.

Q OKAY. CAN YOU TELL US WHERE YOU WERE COMIN' FROM AT THAT TIME?

A I WAS COMIN' FROM AUGUSTA BUT I, YOU KNOW, INTO SALUDA. WE HAD COME THROUGH JOHNSTON AT THAT TIME BUT I WAS IN SALUDA ABOUT THAT TIME.

Q YOU KNOW THE HIGHWAY NUMBER YOU WERE ON?

A OUT ON 121.

Q OKAY. WERE YOU -- WHAT DIRECTION WERE YOU HEADED FROM -- ON 121 -- WHERE WERE YOU PLANNIN' ON GOIN'?

A LIKE STRAIGHT UP 121 TOWARD NEWBERRY.

Q YOU WERE GONNA GO TO NEWBERRY, IS THAT WHERE YOU WERE PLANNIN' ON GOIN'?

A WELL, I WAS GOIN' HOME BUT I LIVE UP NEWBERRY HIGHWAY.

Q YES, MA'AM. SO YOU LIVE ON THE OTHER SIDE—

A YES.

Q —OF SALUDA ON NEWBERRY HIGHWAY.

A YES.

Q AND WHAT KINDA CARE WERE YOU IN AND WHO WAS DRIVING?

A I WAS IN A CROWN VICTORIA, AND MY DAUGHTER-IN-LAW WAS DRIVIN'.

Q OKAY. WHO WAS IN THE FRONT SEAT?

A MY DAUGHTER-IN-LAW AND MY SON.

Q OKAY. AND WHERE WERE YOU?

A I WAS IN THE BACK SEAT BEHIND THE DRIVER.

Q OKAY. WAS ANYBODY ELSE IN THE BACK SEAT WITH YOU?

A MY GRANDDAUGHTER AND ANOTHER FRIEND OF MY DAUGHTER-IN-LAW.

Q OKAY. AND WHERE – WHERE DID YOU – WHERE WERE YOU WHEN YOU SAW THE COLLISION OCCUR? WHERE WERE YOU AT THE TIME?

A I WAS APPROACHIN' THE RED LIGHT, AND AS I WAS APPROACHIN' THE RED LIGHT WE SEEN THIS CAR COMIN' FROM 378 TO THE RED LIGHT.

Q OKAY. YOU SAID A RED LIGHT. DID Y'ALL HAVE THE GREEN LIGHT OR WAS THE LIGHT RED FOR YOU?

A THE LIGHT WAS RED AT FIRST AS WE WERE APPROACHIN' IT, BUT THEN IT TURNED GREEN.

Q OKAY. AND SO YOU COULD GO ON THROUGH THE INTERSECTION WITH THE LIGHT Y'ALL HAD?

A YES.

Q OKAY. AND WHEN YOU SAW THAT GREEN LIGHT, HAD YOU ALREADY SEEN THE CAR?

A AS WE WAS APPROACHIN' THE GREEN LIGHT, WE WAS GETTIN' READY TO TURN AND MY SON NOTICED COMING DOWN FROM 378 AND HE NOTICED HE WASN'T GONNA STOP. SO HE, YOU KNOW, HE TOLD HIS WIFE TO TURN TO THE RIGHT.

Q OKAY. SO YOU CHANGED DIRECTIONS?

A YEAH.

Q WHAT DIRECTION DID YOU GO AFTER THAT?

A WE JUST WENT TO THE RIGHT LIKE WE WAS GOIN' BACK UP IN FRONT OF THE COURTHOUSE.

Q SO IN OTHER WORDS, YOU JUST TURNED TO THE RIGHT.

A TURNED TO THE RIGHT.

Q TO GET IN FRONT OF THE COURTHOUSE.

A YES, AND WE PULLED OVER TO THE SIDE.

Q OKAY. NOW YOU SAID THERE WAS A COLLISION. WHERE WAS THE OTHER CAR THAT WAS INVOLVED -- THERE WERE TWO CARS IN THE COLLISION OR THREE CARS? HOW MANY?

A THERE WAS TWO CARS. THERE WAS A POLICE CAR AND THE OTHER CAR COMIN' FROM 378.

Q OKAY. WHERE WAS THE POLICE CAR?

A HE WAS IN THE LEFT HAND LANE AND HE HAD PULLED UP BESIDE US AND HE PULLED ON OUT -- WELL, WE BOTH PULLED ON OUT. HE PULLED OUT LIKE HE WAS GONNA TURN, BUT HE HAD STOPPED BUT WE -- AFTER WE NOTICED THE CAR WASN'T GONNA STOP, SO WE TURNED TO THE RIGHT AND JUST PULLED OVER TO THE RIGHT.

Q OKAY. THIS IS GONNA BE A LITTLE CONFUSING BECAUSE IT HAPPENED PRETTY FAST?

A YEAH.

Q OKAY. LET'S GO BACK TO SOME OF WHAT YOU JUST SAID AND SEE IF I CAN BREAK IT DOWN SO THE JURY WILL UNDERSTAND IT AS WELL AS POSSIBLE.. YOU'RE APPROACHING THE INTERSECTION.

A UH-HUH.

Q AND THIS IS -- THE INTERSECTION IS IN THE FRONT OF THE COURTHOUSE. THIS COURTHOUSE. RIGHT?

A ON THE SIDE, YEAH.

Q OVER HERE TO THIS SIDE OF THE COURTHOUSE.

A ABOUT THERE, YEAH.

Q OKAY. AND AS YOU COME UP TO THIS INTERSECTION, YOU SAID A POLICE CAR CAME UP BESIDE YOU?

A YEAH.

Q OKAY. WHEN DID YOU FIRST NOTICE THAT POLICE CAR? YOU REMEMBER?

A I NOTICE 'CAUSE I -- IT WAS PULLED UP BESIDE OF THERE, HAD A LITTLE NOISE OR SIREN OR SOMETHIN' IT PULLED UP BESIDE US OR SOMTHIN'. AND WE LOOKED AND WE WAS WONDERIN' WHAT HE WAS DOIN', YOU KNOW, AND THAT'S WHEN WE NOTICED THE OTHER CAR COMIN' DOWN THE ROAD, AND WE NOTICED HE WASN'T GONNA STOP 'CAUSE HE WAS GOIN' AT A -- I MEAN HE WAS DRIVIN' PRETTY FAST.

Q OKAY. WHO WAS DRIVIN' PRETTY FAST?

A THE OTHER CAR THE ONE COMIN' FROM 378. THE DRIVER OF THE OTHER CAR.

Q YES, MA'AM. NOW LET ME ASK YOU IN TERMS OF WHERE YOU WERE IN THE CAR. NOW, YOU'RE IN THE REAR SEAT BEHIND THE DRIVER?

A YEAH.

Q AND WHEN YOU FIRST NOTICED THE POLICE CAR, WHAT DREW YOUR ATTENTION TO IT? ANYTHING SPECIFIC? DO YOU RECALL ANYTHING?

A TO THE POLICE CAR THAT WAS BESIDE ME?

Q WHAT DREW YOUR ATTENTION TO IT, YES, MA'AM.

A I DON'T KNOW. I JUST -- I THINK I JUST HEARD A SIREN AND I JUST LOOKED AND WONDERED WHAT HE WAS DOIN' YOU KNOW.

Q OKAY. AND YOU'RE IN -- YOU'RE BEHIND THE PASSENGER'S SEAT. CORRECT?

A YES.

Q AND YOU'RE IN THE BACK. OKAY. DO YOU HAVE TO TURN TO YOUR RIGHT OR YOUR LEFT TO LOOK AT THIS CAR?

A I TURNT TO MY LEFT.

Q OKAY. SO YOU LOOKED OVER YOUR LEFT SHOULDER AND YOU LOOKED OUT THE BACK GLASS OF THE CAR?

A YES.

Q OKAY. IS IT TINTED SO YOU CAN'T SEE OUT VERY WELL OR IS IT--

A NO, IT'S NOT TINTED.

Q OKAY. ALL RIGHT. AND SO WHEN YOU LOOK OUT THE BACK YOU SEE THE POLICE CAR.

A UH-HUH.

Q OKAY. AND THAT'S THE FIRST THING YOU SEE AS YOU COME TO THE INTERSECTION? IS THAT KINDA LIKE THE FIRST PART OF THE EVENTS THAT LED UP TO THE COLLISION--

A WELL, I SAW THE POLICE CAR WHEN WE WAS COMIN' THROUGH THE INTERSECTION. THE POLICE CAR WAS PULLED UP RIGHT BESIDE US AS WE, YOU KNOW,

Q OKAY. AND WHICH CAR WAS IN THE BUILDING?

A THE ONE THAT WAS COMIN' FROM 378.

Q OKAY. DID YOU SEE WHAT HAPPENED TO THE POLICE CAR AFTER IT WAS HIT? WHAT HAPPENED TO IT?

A IT WAS -- WHEN HE HIT THE CAR IT WAS -- I MEAN HE WAS HEADED STRAIGHT LIKE HE WAS GONNA TURN, BUT WHEN HE HIT IT, HIS CAR WAS TURNED AROUND FACIN' 121 GOIN' BACK TOWARD JOHNSTON.

Q SO IT TURNED THE POLICE CAR ALL THE WAY AROUND?

A YES, SIR.

Q OKAY. AND THEN IT -- WHAT -- WHERE WAS YOUR CAR BY THAT TIME?

A WE WAS ON THE SIDE IN ONE OF THE PARKIN' SPACES IN FRONT OF THE COURTHOUSE.

Q SO OUT HERE IN FRONT OF THIS COURTHOUSE YOU--

A YEAH, THAT--

Q --PULLED OVER.

A --STREET RIGHT THERE.

Q OKAY. ALL RIGHT. NOW COULD I GO BACK JUST FOR A MOMENT HERE. DID YOU SEE THE PERSON INSIDE THE SHERIFF'S CAR?

A I BARELY COULD SEE HIM BECAUSE THE CAR WAS ALL FOGGED UP OR SMOKED UP, AND, YOU KNOW, I MEAN I SAW A SHADOW THAT HE WAS SLUMPED OVER. THAT'S THE ONLY THING I COULD SEE OF HIM.

Q OKAY. YOU COULD SEE A SHADOW OF THE PERSON THAT WAS SLUMPED OVER.

A YEAH.

Q AND SMOKE INSIDE THE CAR TOO?

A YEAH.

Q OKAY. DID YOU SEE ANY AIRBAGS INSIDE THE CAR AT ALL? COULD YOU SEE THOSE?

A I'M NOT SURE. THAT MIGHTA BEEN WHAT I SAW; IT MIGHTA BEEN JUST SMOKE. I JUST KNEW IT—

Q OKAY.

A —WAS JUST REAL WHITE FOGGY OR SOMETHIN'.

Q ALL RIGHT. DID YOU EVER SEE ANY POLICEMAN GET OUTTA THAT CAR?

A NO.

Q NOW, MS. MAE, CAN WE GO BACK – YOU GO BY MS. MAE?

A UH-HUH.

Q I'M SORRY. I'LL REFER TO THAT IF THAT'S OKAY WITH YOU.

A THAT'S FINE.

Q I WANNA MAKE SURE I GET THE POSITION HERE. I GOT A DIAGRAM HERE. CAN I GIVE YOU A PEN AND YOU SHOW US WHERE YOU WERE AND WHAT DIRECTIONS. I'M GONNA SHOW YOU THIS IS -- CAN YOU STEP DOWN FOR A SECOND, PLEASE, MA'AM. THIS HAS BEEN PREVIOUSLY ADMITTED. THIS IS MCCORMICK DIRECTION. THIS IS THE JOHNSTON DIRECTION.

A UH-HUH.

Q THIS IS TOWARD COLUMBIA AND THIS IS TOWARD NEWBERRY.

A UH-HUH.

Q AND THAT'S THE COURTHOUSE. ALL RIGHT? NOW WHAT DIRECTION WERE Y'ALL COMIN' FROM?

A COMIN' FROM JOHNSTON.

Q ALL RIGHT. AND YOU SAY YOU GOT IN -- GOT IN WHICH LANE? IS THERE MORE THAN ONE LANE IN THAT INTERSECTION?

A YES, SIR. IT'S ONE LANE UNTIL YOU GET UP TO TOWN HERE. YOU GOT TURNIN' LANES.

Q UH-HUH.

A AND, WELL, YOU KNOW, TWO LANES BUT THEN YOU GOT THE LEFT TURN LANE IN HERE.

Q SO RIGHT OUTSIDE THE COURTHOUSE HERE IS A LEFT HAND TURNIN' LANE.

A YES.

Q WHICH -- WHICH LANE WAS THE POLICE CAR IN?

A IN THE LEFT.

Q OKAY. AND YOU WERE IN THE RIGHT LANE GOIN' TOWARD NEWBERRY.

A YES.

Q OKAY. AND WHEN YOU -- DID Y'ALL JUST TURN RIGHT TO GO IN FRONT OF THE COURTHOUSE WITHOUT STOPPIN' OR DID YOU STOP AT ANY TIME? YOU REMEMBER STOPPIN' BEFORE THE COLLISION?

A NO, WE DIDN'T ACTUALLY STOP. AS WE APPROACHIN' THE RED LIGHT IT TURNT GREEN.

Q UH-HUH.

A SO, YOU KNOW, SHE -- I MEAN THE DRIVER WAS DRIVIN' PRETTY SLOW BECAUSE AFTER WE SAW THE CAR COMIN' WE DIDN'T KNOW WHETHER TO KEEP STRAIGHT OR TURN. SO WE THOUGHT IT WASN'T GONNA STOP SO MY SON TOLD HER TO TURN TO THE LEFT. JUST, YOU KNOW, TURN, TURN, TURN.

Q OKAY. SO WHEN YOU TURNED LEFT YOU GOT IN FRONT OF THE COURTHOUSE. IS THIS CORRECT?

A YES.

Q OKAY WOULD YOU TAKE YOUR SEAT BACK, PLEASE. DO YOU KNOW -- YOU CAN

SEE ON THAT MAP THERE. DO YOU KNOW HOW FAR UP THE STREET WAS THIS CAR THAT WAS COMING FROM 378? HOW FAR UP THE STREET WAS IT WHEN YOU SAW IT?

A HOW FAR IT WAS UP THE STREET WHEN I SAW IT?

Q YEAH—

A IT WAS—

Q —HERE'S THIS BUILDING HERE AND 2 MORE BUILDINGS. HOW FAR UP THE STREET? DO YOU RECALL?

A IT WAS UP THERE BY THE OLD POST OFFICE. COMIN' – WHAT I CALL IT IS THE OLD POST OFFICE.

Q OKAY. WOULD THAT BE FURTHER UP HERE?

THE COURT: YOU GOT HALF THE JURY BLOCKED OUT, MR. YOUNG.

MR. YOUNG: I'M SORRY. I APOLOGIZE.

Q WOULD THAT BE UP HERE OR USE A PENCIL, YOU POINT OUT WHERE YOU THINK IT IS.

A OKAY. IT WOULD BE – I THINK THIS WOULD BE THE OLD POST OFFICE. I THINK THIS WAY. YEAH. I THINK THIS IS WHERE THE OLD POST OFFICE IS LOCATED.

Q ALL RIGHT.

A IT WAS LIKE RIGHT IN BETWEEN THE OLD POST OFFICE AND THE ONE – THE ONE - - THE ONE BUILDIN' YOU KNOW AND THE LOAN COMPANIES RIGHT UP IN THAT AREA.

Q CAN I PUT AN X THERE FOR YOU?

A UH-HUH.

Q IN THIS AREA?

A UH-HUH.

Q THANK YOU. ALL RIGHT. NOW WHEN YOU SAW IT WAS IT IN ITS LANE?

A YES. IT WAS IN THE RIGHT HAND LANE COMIN' DOWN.

MARY HOLMES - DIRECT EXAMINATION BY MR. YOUNG

Q OKAY. HOW LONG HAVE YOU BEEN -- DO YOU DRIVE AN AUTOMOBILE?

A YES.

Q HOW LONG HAVE YOU BEEN DRIVIN' AUTOMOBILES?

A SINCE I WAS ABOUT 12 PROBABLY.

Q OKAY. AND IN THE PAST YOU'VE HAD THE ORDINARY EXPERIENCE DRIVIN' A CAR?

A YES.

Q DO YOU THINK YOU CAN REASONABLY FORM AN OPINION AS TO THE SPEED OF AUTOMOBILES AS A DRIVER?

A MY EXPERIENCE I WOULD SAY IT WAS GOIN' MORE THAN 80.

Q OKAY. ALL RIGHT. THAT'S WHEN YOU SAW IT AT THAT FIRST TIME?

A YES.

Q DID YOU SEE IT CHANGE DIRECTIONS, SLOW DOWN OR DO ANYTHING?

A NO.

Q DID IT STAY IN ITS LANE?

A YES.

Q OKAY. NOW I WANT TO ASK YOU WHEN YOUR CAR TURNS RIGHT, OKAY? AND THIS OTHER POLICE VEHICLE PULLS UP---

A UH-HUH.

Q DOES IT BLOCK YOUR VIEW OF THIS CAR? CAN YOU STILL SEE THE CAR OR YOU JUST SEE THE POLICE -- POLICE CAR?

A WELL, AT THAT TIME I JUST SAW -- AFTER WE TURNED OFF, I JUST SAW THE POLICE CAR HAD PULLED RIGHT THERE AND WE HAD TURNED OFF.

Q OKAY. COULD YOU SEE THIS OTHER CAR THOUGH BEFORE IT STRUCK IT? IN OTHER WORDS, DID YOU SEE THE IMPACT ITSELF OR WAS YOUR---

A NO, I DIDN'T SEE THE IMPACT ITSELF.

Q OKAY. SO YOUR VIEW IS BLOCKED BY THE POLICE CAR.

A YES.

Q OKAY. AT THE TIME OF THE IMPACT. BUT YOU SAW THE POLICE CAR BEING STRUCK. CORRECT?

A YES.

Q AND THEN YOU SAW THE OTHER CAR GO VEERIN' OFF?

A WELL, WHEN WE TURNED I JUST SAW THE CAR OVER IN THE, YOU KNOW, THAT POINT AFTER WE TURN JUST SAW THE CAR OVER IN THE BUILDIN'.

Q ALL RIGHT. AT THE POINT IN TIME THAT YOU SAW THE POLICE CAR PULL INTO THE INTERSECTION, WAS THE POLICE CAR AHEAD OF YOU SLIGHTLY?

A WHAT NOW?

Q IN OTHER WORDS, IF THE POLICE IS TO YOUR LEFT IN YOUR LEFT LANE WHICH YOU DESCRIBED—

A UH-HUH.

Q —WAS IT SLIGHTLY AHEAD OF YOUR CAR?

A YES.

Q OKAY. BUT YOU WERE PRETTY CLOSE TO IT.

A YES.

Q ALL RIGHT. SO IN ESSENCE WHEN YOU'RE LOOKIN' OVER YOUR LEFT SHOULDER, YOUR VISION THEN CHANGES AS IT MOVES BUT BESIDE YOU?

MR. FALGIONE: OBJECTION, YOUR HONOR.

THE COURT: HOLD ON JUST A MOMENT. LEADING?

MR. FALGIONE: LEADING.

THE COURT: SUSTAINED. DON'T LEAD

MR. YOUNG: THANK YOU.

Q HOW -- DID YOUR -- DID YOUR, SO TO SPEAK, FOCUS ON WHAT YOU WERE LOOKIN' AT CHANGE AS THE POLICE CAR MOVED PAST YOU?

A NO.

Q OKAY. WHAT WAS YOUR FOCUS ON?

A THE OTHER CAR.

Q THE OTHER CAR.

A YES.

Q SO IT SHIFTED FROM THE POLICE CAR TO THE OTHER CAR.

A YES.

Q I SEE. SO YOUR VIEW OF THAT CAR AS IT CAME OVER THAT HILL WAS NOT OBSTRUCTED BY THE POLICE CAR IN ANY WAY, WAS IT?

A NO, NOT THEN.

MR. FALGIONE: OBJECTION, YOUR HONOR.

THE COURT: HOLD ON.

MR. FALGIONE: CONTINUING TO LEAD.

THE COURT: DON'T LEAD, MR. YOUNG.

MR. YOUNG: THANK YOU, YOUR HONOR.

Q AT ANY TIME WAS YOUR VIEW OF THAT CAR AT THE TOP OF THAT HILL WHEN YOU FIRST SAW IT AS BEING THE OTHER CAR AND NOT THE POLICE CAR, AT ANY TIME WAS IT OBSTRUCTED BY THE POLICE CAR?

A NO.

Q OKAY. ALL RIGHT. AT THE TIME YOU SAW THIS COLLISION AND YOU TURNED TO THE RIGHT, WHAT WOULD'VE HAPPENED TO YOUR CAR IF YOU'D A KEPT GOIN' THROUGH THE INTERSECTION AS Y'ALL WERE PLANNIN' ON DOIN'?

A HE WOULD'VE HIT US.

Q OKAY. WOULD YOU -- DID YOU -- YOU SAW THE IMPACT OF WHAT HAPPENED TO THIS POLICE CAR?

A I JUST SAW -- WHERE I SAW IT, JUST SAW PICTURES OF IT. I HAVEN'T HAD REALLY SEEN THE POLICE CAR YET.

Q NO, I'M TALKIN' ABOUT AT THE TIME. YOU -- DID YOU SEE THE -- YOU SAW THE COLLISION. RIGHT?

A YES.

Q DID YOU SEE THE FORCE OF THE COLLISION AND THE IMPACT AS IT CAUSED THIS CAR TO TURN AROUND?

A I DIDN'T REALLY SEE THE HIT, YOU KNOW, SO.

Q DID YOU SEE THE CARS MOVING AFTER THEY WERE HIT?

A YEAH, I SAW THE CAR TURN AFTER IT HIT.

Q SO DO YOU THINK YOUR CAR WOULD'VE BEEN DAMAGED SEVERELY BY THAT?

A I THINK WOULD BE DAMAGE IF WE'D BEEN HIT.

Q DO YOU THINK YOUR LIFE WAS IN DANGER?

A YES, I DO.

Q DO YOU THINK THE LIVES OF THE OTHER PEOPLE IN THE CAR WERE IN DANGER?

A YES.

Q DO YOU THINK YOU WERE IN DANGER TO THE POINT YOU COULD'VE BEEN KILLED?

MR. FALGIONE: OBJECTION, YOUR HONOR.

THE COURT: HOLD ON.

MR. FALGIONE: CALLS FOR SPECULATION. NO BASIS FOR THAT.

THE COURT: THAT OBJECTION IS OVERRULED.

A NO.

Q DID YOU SEE THAT SPEEDING VEHICLE TAKE SOME TYPE OF ACTION TO TRY AND HIT -- OR MISS THAT CAR? MISS THE OFFICER'S CAR.

A NO.

Q OKAY. AND THE OFFICER'S CAR WAS PARKED RIGHT DEAD CENTER IN THE MIDDLE OF THE INTERSECTION?

A YES.

Q IS THAT TRUE?

A YES.

Q OKAY. NOW, MS. HOLMES, YOU GAVE THE POLICE SOME STATEMENTS ABOUT THIS, OBVIOUSLY, DIDN'T YOU?

A YES.

Q OKAY. AND YOU DON'T NORMALLY SPEAK IN TERMS OF SOMEONE TRAVELING AT A HIGH RATE OF SPEED, DO YOU? THAT'S NOT A PHRASE THAT'S NORMALLY IN YOUR VOCABULARY, IS IT?

A SOMETIMES.

Q OH, SOMETIMES? IS IT FAIR TO SAY THAT THE POLICE HAVE TALKED TO YOU A GOOD BIT ABOUT THIS?

A NO.

Q THAT'S NOT FAIR? DID THEY TALK TO YOU IMMEDIATELY AFTERWARDS?

A NO.

Q DID THEY TAKE YOUR WRITTEN STATEMENT?

A AFTER THE ACCIDENT?

Q YES.

A NO.

Q WELL, HOW ABOUT THE SOLICITOR'S OFFICE, DID THEY SPEAK TO YOU?

A AFTER THE ACCIDENT?

Q YEAH.

A NO.

Q AND THEY DIDN'T TAKE YOUR WRITTEN STATEMENT?

A NO. THE POLICE OFFICER CAME OUT TO MY HOUSE AND GOT A STATEMENT.

Q OKAY. HE CAME OUT TO YOUR HOUSE.

A YES.

Q OKAY. ALL RIGHT. HAVE YOU EVER BEEN INVOLVED IN AN AUTOMOBILE COLLISION?

A NO.

Q ARE YOU AWARE THAT WHEN THE AIR BAGS GO OFF IN A VEHICLE THEY'RE PACKED IN TALCUM POWDER SO THAT IT LOOKS LIKE WHITE SMOKE IN THE CAR?

A NO.

Q DID YOU SEE WHAT APPEARED TO BE WHITE SMOKE INSIDE THE CAR?

A YES.

Q OKAY. THANK YOU, MS. HOLMES.

THE COURT: REDIRECT.

<u>REDIRECT EXAMINATION</u>

<u>BY MR. YOUNG</u>

Q JUST MAKE SURE I UNDERSTAND, MS. MAE. YOU SAID YOU WERE MAKIN' A RIGHT HAND TURN.

A YES.

Q AND YOU WERE ASKED TO PUT A MARK UP THERE ON THAT MAP, I THINK WITH A BLUE INK PEN.

A YES.

Q AS TO WHERE YOU WERE. WHEN THE IMPACT OCCURRED, HAD YOU COMPLETED THE TURN OR WERE YOU MAKING THE TURN?

A WE HAD COMPLETED THE TURN.

Q OKAY. SO YOU'D GOTTEN -- HOW FAR HAD YOU GOTTEN AFTER THE TURN? HAD YOU ACTUALLY GOTTEN STRAIGHT IN THE STREET?

A STRAIGHT IN THE STREET.

Q DID YOU KINDA -- DID SHE KINDA DO THAT IN A HURRY? WAS IT A HURRIED MOTION TO TRY TO GET OUT OF THE WAY OR WAS IT CASUAL OR HOW WAS IT?

A ACTUALLY I THINK SHE WAS GOIN' PRETTY SLOW.

Q OKAY.

A IT HAPPENED SO FAST IT JUST SEEMED LIKE SHE WAS IN SLOW MOTION.

Q SO TIME KINDA SLOWED DOWN FOR YOU?

A YEAH.

Q SO IF YOU SAY IT TOOK A FEW SECONDS, TIME WAS REALLY SLOWIN' DOWN?

A YEAH. YES.

Q OKAY. I UNDERSTAND. THANK YOU, MA'AM.

THE COURT: ALL RIGHT. RECROSS?

MR. FALGIONE: NONE, YOUR HONOR.

THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN. CALL YOUR NEXT WITNESS.

MR. YOUNG: DEPUTY FRANK DANIELS. WE'D ASK THAT MS. MAE BE EXCUSED, YOUR HONOR.

THE COURT: ANY OBJECTION TO THE WITNESS BEING EXCUSED?

MR. FALGIONE: NO, YOUR HONOR.

THE COURT: YOU'RE FREE TO GO, MA'AM. THANK YOU. COME AROUND AND BE SWORN, PLEASE.

FRANK DANIEL, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. YOUNG

Q DEPUTY DANIELS, WOULD YOU GIVE US YOUR FULL NAME AND SPELL THE LAST NAME, PLEASE.

A MY NAME IS FRANK DANIEL. D-A-N-I-E-L.

Q THANK YOU, SIR. AND, DEPUTY DANIELS, WHERE DO YOU WORK AND FOR HOW LONG?

A I'VE BEEN OFFICIALLY WITH THE SALUDA COUNTY SHERIFF DEPARTMENT FOR ROUGHLY 2 YEARS.

Q OKAY. LET ME ASK YOU ON DECEMBER 26TH OF 2003, WERE YOU THEN WORKING FOR THE SALUDA COUNTY SHERIFF'S DEPARTMENT?

A YES, SIR.

Q AND WERE YOU ON DUTY THAT DAY?

A YES, SIR.

Q WHAT KINDA VEHICLE WERE YOU OPERATING, IF ANY?

A I WAS DRIVIN' -- I WAS OPERATIN' A '91 CROWN VICTORIA FORD.

Q OKAY. AND IS IT MARKED?

A YES, SIR.

Q IS IT EQUIPPED WITH EMERGENCY EQUIPMENT?

A YES, SIR.

Q AND WHAT TYPE DOES IT HAVE?

A IT HAS BLUE LIGHTS, A SIREN, FIRST AID KIT, A FIRE EXTINGUISHER AND 25 FEET OF ROPE.

Q OKAY. AND WHAT WAS THE CONDITION OF YOUR VEHICLE ON THE DAY YOU BEGAN DUTY THAT DAY?

A MY CAR WAS IN TOP SHAPE. IT WASN'T ANY DENTS OR ANYTHING ON IT. IT WAS DRIVABLE.

Q ALL RIGHT. WERE YOU MONITORING COMMUNICATIONS ON THAT DAY?

A YES, SIR.

Q DID YOU BECOME AWARE AROUND NOON OF THAT DAY THAT A CAR CHASE WAS ON 378 AND APPROACHING SALUDA?

A YES, SIR.

Q OKAY. WHERE WERE YOU WHEN YOU HEARD THAT?

A I WAS TRAVELIN' HIGHWAY 39 SOUTH TOWARD RIDGE SPRING.

Q OKAY. AND WHAT ACTION DID YOU TAKE AT THAT TIME?

A UPON HEARIN' THE DISPATCH I IMMEDIATELY TURNED AROUND, ACTIVATED MY BLUE LIGHTS AND TURNED ON MY SIREN AND I HEADED NORTH TOWARD SALUDA.

Q OKAY. WHAT ROAD DID YOU TAKE, IF ANY?

A AFTER I -- I WAS TRAVELIN' 39 TOWARD SALUDA AND I APPROACHED HIGHWAY 178 INTERSECTION AND I MADE A LEFT COMIN' IN TOWARD SALUDA. UPON REACHIN' SALUDA, THE TOWN LIMIT, I BROKE MY SPEED DUE TO THE CONGESTED AREA BECAUSE I WAS RUNNING UPON A YIELD. 121 WAS COMIN' UP ON ME.

Q OKAY. AND AS YOU -- DID YOU -- WHAT DIRECTION DID YOU TAKE AFTER YOU APPROACHED 121?

A AFTER I APPROACHED 121 I MADE A RIGHT AND WAS HEADIN' NORTH ON 121 APPROACHIN' THE RED LIGHT

Q OKAY. WHERE IS THAT RED LIGHT LOCATED?

A IT'S LOCATED ON EAST CHURCH STREET.

Q OKAY. IS THAT ALSO KNOWN AS 378?

A YES, SIR.

Q OKAY. IS THAT RIGHT OUT HERE IN FRONT OF THE COURTHOUSE?

A YES, SIR.

Q ALL RIGHT. AS YOU APPROACHED THIS INTERSECTION, WHAT WAS YOUR SPEED?

A MY SPEED WAS ROUGHLY COMIN' INTO TOWN THERE, ROUGHLY, ABOUT 45 COMIN' THROUGH THERE.

Q OKAY. AS YOU CAME UP TO THE INTERSECTION, DID YOU SLOW OR KEEP YOUR SAME SPEED?

A I SLOWED UP DUE TO THE FLOW OF TRAFFIC COMIN' IN, BIG TRUCKS AND CARS. IT WAS THE DAY AFTER CHRISTMAS SO IT WAS A LOTTA TRAFFIC.

Q LET ME ASK YOU A QUESTION ABOUT THE INTERSECTION ITSELF AT THIS POINT. HOW MANY LANES ARE IN THE INTERSECTION ITSELF AT THE TRAFFIC SIGNAL?

A WE HAVE 2 LANES. A REGULAR TRAVELIN' LANE AND A TURNIN' LANE.

Q OKAY. WHICH LANE WERE YOU IN?

A I WAS IN THE LEFT TURNIN' LANE.

Q OKAY. WHEN YOU ENTERED THAT LANE, WERE YOU KEEPIN' THE SAME SPEED AT 45 OR HAD YOU REDUCED IT?

A I HAD TO COME TO A COMPLETE STOP. BIG TRUCKS WAS COMIN' THROUGH, AND I WAS IN THE LEFT TURNIN' LANE BUT I HAD TO WAIT ON THE ONCOMIN' TRAFFIC. SO I SAT THERE AND WAITED, AND WHEN THE TRAFFIC CLEARED UP, I WAS ATTEMPTIN' TO GO UP WEST ON 378, BUT THAT WAS IT.

Q OKAY. WELL, LET'S STOP AND GO BACK JUST A TINY BIT. YOU WERE INTENDING

ON TURNING LEFT AT THE INTERSECTION INTO A STREET AND -- WHICH IS 378?

A YES, SIR, I HAD GOT IN THE LEFT TURNIN' LANE AND I STOPPED AND THAT WAS MY INTENTIONS BUT--

Q OKAY. AND HOW FAR IN THIS INTERSECTION DID YOU GO?

A I WENT OUT JUST ENOUGH TO -- TO MAKE MY LEFT TURN AND--

Q WOULD THAT HAVE PLACED YOUR CAR TOWARD THE CENTER OF THE INTERSECTION?

A YES, SIR.

Q OKAY. 'CAUSE THE FRONT OF YOUR CAR WOULD'VE BEEN MORE TOWARD THE CENTER?

A YES, SIR.

Q OKAY. IS THERE A RED LIGHT AT THIS INTERSECTION?

A YES, SIR.

Q AND WAS THE LIGHT IN YOUR FAVOR IN TERMS OF--

A YES, SIR. WHEN I APPROACHED THE LIGHT, THE LIGHT WAS GREEN IN MY LANE.

Q OKAY. MR. DANIEL, YOU WERE OPERATIN' THIS VEHICLE AND YOU HAD COME TO A STOP. AT THIS POINT DID YOU NOTICE ANOTHER VEHICLE ENTER THE INTERSECTION?

A NO, SIR, NOT FROM MY LEFT.

Q OKAY. DID YOU EVER SEE A CAR ENTER THE INTERSECTION?

A NO, SIR.

Q OKAY. WERE YOU INVOLVED IN A COLLISION AT THE INTERSECTION?

A YES, SIR.

Q OKAY. WHAT'S YOUR LAST RECOLLECTION OF BEING IN THAT INTERSECTION?

A THE LAST THING I CAN REMEMBER AT THE INTERSECTION WAS THAT I PULLED UP

THERE AND STOPPED.

Q OKAY. DO YOU RECALL -- YOU DON'T RECALL A CAR STRIKING YOU?

A NO, SIR.

Q OKAY. NOW LATER AFTER THE COLLISION, DID YOU SEE YOUR CAR?

A NO, SIR. I -- THE PARAMEDIC HAD ME IN THE VAN AND THEY TRANSPORTED ME.

Q OKAY. SO WHAT IS YOUR NEXT RECOLLECTION AFTER STOPPING IN THAT INTERSECTION?

A WAKIN' UP IN THE PARAMEDICS.

Q OKAY. AND THEN AFTER THAT?

A THEY TOOK ME ON TO LEXINGTON MEDICAL CENTER.

Q ALL RIGHT. HOW -- WHAT WAS THE EXTENT OF YOUR INJURIES, IF ANY?

A MY SHOULDER, I COMPLAINED OF SHOULDER INJURY, AND LATER ON WHEN I WAS DISMISSED I HAD HEAD PAINS DUE TO THE AIR BAGS JUMPIN' OUT ON ME. BUT--

Q DO YOU HAVE RECOLLECTION OF THE AIR BAGS DEPLOYIN' ON YOU?

A NO, SIR. IT JUST HAPPENED SO QUICK ON ME.

Q OKAY. NOW AT THE SCENE YOU DON'T HAVE ANY RECOLLECTION, BUT DID YOU EVER SEE YOUR CAR AGAIN?

A AFTER I CAME BACK FROM -- AFTER THEY LET ME OUTTA LEXINGTON HOSPITAL, WHEN I CAME BACK TO SALUDA, I HAD A CHANCE TO VIEW THE CAR.

Q AND DID YOU SEE YOUR CAR? WHAT'D IT LOOK LIKE THEN?

A IT WAS TORE UP. THE FRAME AND---

Q LET ME SHOW YOU STATE'S EXHIBIT 9. DID IT LOOK LIKE THIS? STATE'S EXHIBIT 9.

A YES, SIR.

Q YOUR POLICE CAR WAS DAMAGED IN THAT FASHION?

A YES, SIR.

Q AND IT HADN'T BEEN DAMAGED BEFORE THAT. RIGHT?

A NO, SIR.

Q AT THE TIME YOU ENTERED THAT INTERSECTION, TO THE BEST OF YOUR RECOLLECTION, WERE YOUR -- WAS YOUR EMERGENCY EQUIPMENT STILL ACTIVATED?

A YES, SIR.

Q DOES THAT MEAN BLUE LIGHTS AND SIREN?

A BLUE LIGHTS. WHEN I ENTERED THAT INTERSECTION MY LIGHTS WERE WORKIN'.

Q OKAY. HOW LONG DID YOU REMAIN IN THE HOSPITAL?

A THEY KEPT ME FOR ABOUT 3 HOURS.

Q OKAY. WHEN DID YOU RETURN TO DUTY?

A MAYBE ABOUT 5 DAYS LATER.

Q OKAY. DO YOU RECALL ANY OTHER CARS TO YOUR RIGHT AS YOU ENTERED THAT INTERSECTION?

A NO, SIR. I WAS CONCENTRATIN' ON THE TRAFFIC AHEAD OF ME. I DIDN'T NOTICE ANY CARS TO THE RIGHT OF ME.

Q WOULD YOU ANSWER ANY QUESTIONS MR. FALGIONE HAS FOR YOU.

MR. FALGIONE: THANK YOU. MAY IT PLEASE THE COURT, YOUR HONOR?

THE COURT: YES, SIR.

CROSS-EXAMINATION

BY MR. FALGIONE

Q DEPUTY DANIELS, IF I UNDERSTAND YOUR TESTIMONY CORRECTLY, YOU DID NOT SEE THE CAR THAT HIT YOU BEFORE IT HIT YOU.

A NO, SIR.

Q OKAY. SO YOU CAN'T SIT THERE AND TESTIFY, CAN YOU, WHETHER THAT CAR

TRIED TO MISS COLLIDING WITH YOU OR INTENTIONALLY TRIED TO HIT YOU, CAN YOU?

A ALL I CAN SAY I WAS OUT THERE MAKIN' A LEFT TURN.

Q OKAY. BUT YOU – YOU REALLY HAVE NO IDEA IF THAT CAR TRIED TO MISS COLLIDING WITH YOU OR IF THEY DROVE DIRECTLY AT YOU, DO YOU?

A NO, SIR, I COULDN'T SAY THAT.

Q YOU COULDN'T SAY THAT. THANK YOU. NOW WERE YOU MONITORING YOUR RADIO TRAFFIC AT THE TIME OF THIS COLLISION?

A YES, SIR.

Q OKAY. HAD YOU HEARD THAT THE PURSUIT OF THIS SPEEDING VEHICLE HAD BEEN CALLED OFF BY THE HIGHWAY PATROL?

A I KNOW IT WAS GETTING CLOSE TO TOWN, BUT I DIDN'T HAVE ANY IDEA IF IT WAS THAT CLOSE IN THE TOWN.

Q YOU DIDN'T KNOW WHERE THE VEHICLE WAS?

A I KNEW IT WAS COMING INTO TOWN.

Q OKAY.

A I WAS LISTENING AT MY RADIO.

Q ALL RIGHT. DID YOU – DID YOU MONITOR ANY TRANSMISSIONS FROM OFFICER BYRD?

A YES, SIR. I – I REMEMBER I HAD MY RADIO ON. I WAS – YOU KNOW, I WAS MONITORING.

Q OKAY. WELL, DID YOU HEAR OFFICER BYRD SAY THAT HE WAS FOLLOWING THE VEHICLE AND IT WAS COMING INTO TOWN?

A I PROBABLY DID.

Q OKAY. SO IS IT FAIR TO SAY THAT YOU HAD A PRETTY GOOD IDEA ABOUT THE LOCALE OF THAT VEHICLE WHERE IT WAS HEADED, DIDN'T YOU?

A WHERE IT WAS HIT?

Q YEAH. WHICH WAY IT WAS GOING AS IT WAS COMING THROUGH TOWN?

A OH, YEAH, I—

THE COURT: YOU SAID HEADING; HE SAID HIT.

MR. FALGIONE: I'M SORRY, YOUR HONOR. I DIDN'T UNDERSTAND THAT.

Q OKAY. LET ME -- LET ME MAKE IT CLEAR, OFFICER DANIELS. YOU KNEW WHICH DIRECTION THE SPEEDING VEHICLE WAS TRAVELING, WHERE IT WAS HEADING. H-E-A-D-I-N-G---

A YES, SIR.

Q —AT THE TIME, DIDN'T YOU?

A YES, SIR.

Q WHEN YOU WERE RESPONDING TO THIS. WHAT WERE YOUR INTENTIONS WHEN YOU PULLED OUT INTO THAT INTERSECTION?

A WELL, WHEN I PULLED OUT THERE, I HAD PULLED IN THE LEFT LANE AND MY INTENTIONS WERE TO GO LEFT BUT I SAT THERE DUE TO THE TRAFFIC COMIN'.

Q OKAY.

A LIKE I SAID, IT ALL HAPPENED SO QUICK ON ME. IT ALL HAPPENED SO QUICK.

Q DID YOU INTEND TO SET UP A ROADBLOCK TO STOP—

A NO, SIR.

Q —THAT VEHICLE?

A NO, SIR, THAT WASN'T MY INTENTIONS. NO, SIR. I WAS JUST RESPONDING TO THE CALL.

Q ALL RIGHT. NOW, OFFICER DANIELS, IF YOU WERE TURNING LEFT IN THAT INTERSECTION, YOU WOULD'VE BEEN -- AND COMPLETED THAT LEFT HAND TURN -- YOU WOULD'VE BEEN GOING IN THE DIRECTION OPPOSITE OF WHERE THE SPEEDING VEHICLE

WAS GOING, WOULD YOU NOT?

A IF I HAD MADE A LEFT, I PROBABLY WOULD APPROACH -- HAD MET THE VEHICLE COMING INTO SALUDA. YES, SIR.

Q AND WHAT PURPOSE WOULD THAT HAVE BEEN FOR?

A WELL, I'D A PROBABLY -- IF I'D A RAN UP ON IT, I'D A PULLED OVER. I'D A PULLED OVER.

Q YOU'D A PULLED OVER AND LET IT GO BY?

A YES, SIR, BECAUSE WASN'T NO SENSE IN ME TRYIN' TO STOP IT. IT WAS, YOU KNOW, IT WAS COMIN' LIKE THAT.

Q ALL RIGHT. NOW, OFFICER DANIELS, AT THE TIME OF THE COLLISION YOUR AIR BAGS WENT OFF, DIDN'T THEY?

A YES, SIR.

Q OKAY. AND ISN'T IT TRUE THAT YOU TOLD OFFICER BYRD THAT YOU WERE NOT HURT?

A WELL, DUE TO THE IMPACT, THAT'S ALL I REMEMBER. WHEN I WOKE UP I WAS IN THE EMERGENCY VEHICLE. I DON'T KNOW I WAS IN A DAZE. I CAN'T REMEMBER IF I SAID ANYTHING. I CAN'T REMEMBER.

Q OKAY. SINCE YOU WERE HURT ON THE JOB, THIS WAS CONSIDERED A WORKER'S COMPENSATION CLAIM, WASN'T IT?

A YES.

Q DID YOU FILE A WORKER'S COMP CLAIM?

A NO, SIR. I -- AFTER THE HOSPITAL LET GO OF ME---

Q OKAY.

A ---I -- I ~~DID~~N'T GO ANY FURTHER.

Q ALL RIGHT. ISN'T IT TRUE, OFFICER DANIELS, THAT NO DOCTOR HAS FOUND ANY

PERMANENT IMPAIRMENT TO YOU OR TO YOUR BODY AS A RESULT OF THIS COLLISION?

A NO, SIR.

Q OKAY. NOW, OFFICER DANIELS, YOU WERE SEEN AT THE HOSPITAL—

A YES, SIR.

Q —AND THEN YOU WERE RELEASED THAT SAME DAY, WEREN'T YOU?

A YES, SIR.

Q I THINK YOU INDICATED MAYBE IT TOOK ABOUT 3 HOURS—

A RIGHT.

Q —FOR THEM TO DO THE—

A RIGHT.

Q —X-RAYS AND ALL—

A RIGHT.

Q —THOSE KINDS OF THINGS?

A RIGHT.

Q AND THE TESTS THAT WERE PERFORMED INDICATED YOU HAD NO BROKEN BONES—

A RIGHT.

Q —CORRECT?

A RIGHT, SIR.

Q AND HAD NO PROBLEMS THAT WARRANTED KEEPING YOU IN THE HOSPITAL OVERNIGHT FOR OBSERVATION—

A RIGHT.

Q —ISN'T THAT—

A RIGHT, SIR.

Q AND, OFFICER DANIELS, IF I UNDERSTAND CORRECTLY, YOU CAME BACK FROM

THE HOSPITAL AND WENT MORE OR LESS IMMEDIATELY TO LOOK AT YOUR PATROL CAR, DID YOU NOT?

A MY BROTHER-IN-LAW BROUGHT ME BACK—

Q OKAY.

A —HOME, AND I TOLD HIM I SAID LET'S GO TO SALUDA BECAUSE AFTER WHAT HAD HAPPENED, I WANTED TO -- I WANTED TO SEE.

Q OKAY.

A I DIDN'T -- I DIDN'T -- NOBODY HADN'T REALLY INFORMED ME WHAT WENT ON. SO I DIDN'T KNOW AT THE TIME.

Q ALL RIGHT. THANK YOU, OFFICER DANIEL.

A YES, SIR.

THE COURT: REDIRECT?

MR. YOUNG: BRIEFLY.

REDIRECT EXAMINATION

BY MR. YOUNG

Q OFFICER DANIEL, I SHOWED YOU A PICTURE OF YOUR PATROL CAR.

A YES, SIR.

Q AND I BELIEVE MR. FALGIONE ASKED YOU ABOUT YOUR INTENTIONS ABOUT GOING THROUGH THE INTERSECTION FURTHER AND GOING LEFT AND IF YOU'D CONTINUED TO GO LEFT. WHEN YOU SAW THE DAMAGE TO YOUR CAR, I HAND YOU WHAT I SHOWED YOU BEFORE: STATE'S EXHIBIT #9, A PICTURE OF YOUR CAR.

A YES, SIR.

Q IS IT FAIR TO SAY THAT THE DAMAGE IN THAT VEHICLE IS ABOVE YOUR LEFT WHEEL?

A YES, SIR, RIGHT UP ABOVE MY LEFT WHEEL.

Q THANK YOU, MA'AM. WOULD YOU ANSWER ANY QUESTIONS--

THE COURT: CROSS.

MR. FALGIONE: YES, YOUR HONOR.

CROSS-EXAMINATION

BY MR. FALGIONE

Q MS. DEASON, DID YOU FILL OUT A DEHEC PATIENT CARE FORM?

A I DID.

Q RELATED TO THAT RUN. DO YOU HAVE IT WITH YOU?

A I DO.

Q WOULD YOU MIND GETTING THAT, PLEASE, SO WE CAN TALK ABOUT IT. NOW, MS. DEASON, YOU FILL OUT ONE OF THESE REPORTS OR YOU DID WHEN YOU WERE WORKING FOR THE E.M.S. ON EVERY RUN, DON'T YOU?

A CORRECT.

Q OKAY. NOW THIS REPORT THAT I'M LOOKING AT WAS FILLED OUT REGARDING JAMES F. DANIEL. IS THAT THE SAME REPORT YOU'RE LOOKING AT?

A CORRECT.

Q DID YOU NOTE IN THAT REPORT THAT THERE WERE NO OBVIOUS INJURIES NOTED IN TRAUMA ASSESSMENT?

A NO OBVIOUS MEANT -- INJURIES MEANING NO OUTSIDE PHYSICAL INJURY.

Q OKAY. SO THERE WAS NO OUTSIDE EVIDENCE OF PHYSICAL INJURY. CORRECT?

A CORRECT.

Q OKAY. DID YOU ALSO NOTE THAT THE PATIENT WAS -- IS THAT C-A-D TIMES 3?

A CONSCIOUS, ALERT AND ORIENTED.

Q OKAY. THAT'S TIMES 3. RIGHT?

A RIGHT.

Q 3 AXIS?

A RIGHT.

Q IS THAT CORRECT? HIS SKIN WAS WARM AND DRY?

A UH-HUH.

Q WHAT DOES THAT TELL YOU? THAT SOMEONE'S SKIN IS WARM AND DRY AFTER GOING TO A COLLISION. DOES IT TELL YOU THEY'RE NOT IN SHOCK?

A CORRECT.

Q OKAY. ISN'T IT AN INDICATION OF SHOCK THEIR SKIN IS CLAMMY AND COOL? YES?

A YES.

Q OKAY. BUT MR. DANIEL'S SKIN WAS WARM AND DRY, WASN'T IT?

A CORRECT.

Q AND HIS LUNG SOUNDS WERE EQUAL. WHAT DOES THAT TELL YOU?

A THAT HE'S BREATHING PROPERLY.

Q OKAY. SO HE DIDN'T HAVE RESPIRATORY PROBLEMS WITH HIS LUNGS—

A CORRECT.

Q —AS INDICATED IN THAT RUN. IS THAT RIGHT?

A CORRECT.

Q OKAY. NOW WHAT DOES P-E-A-R-R-L STAND FOR?

A HIS PUPILS WERE EQUAL AND REACTIVE TO LIGHT.

Q OKAY. NOW WHAT DOES THAT TELL YOU?

A THAT HIS PUPILS WERE EQUAL AND REACTIVE TO LIGHT.

Q OKAY. WELL, IF THEY'RE NOT EQUAL AND NOT REACTIVE TO LIGHT, DOES THAT INDICATE THAT THERE'S A HEAD TRAUMA?

A IT DOES.

Q OKAY. BUT OFFICER DANIEL'S PUPILS WERE EQUAL. CORRECT?

A CORRECT.

Q AND THEY WERE REACTIVE TO LIGHT. CORRECT?

A CORRECT.

Q ALL RIGHT. WHAT DOES THIS MEAN WHEN IT SAY 4 ABDOMINAL QUADRANTS PALPATED? IS THAT HOW YOU PRONOUNCE THAT?

A UH-HUH.

Q AND NO -- WHAT ARE THOSE LETTERS FOR? D-C-A-P-B-T-L-S NOTED?

A DEFORMITIES, CONTUSIONS, ABRASIONS, PUNCTURE WOUNDS, BLOOD, TENDERNESS, LACERATIONS AND SWELLING.

Q SO NONE OF THOSE WERE NOTED.

A NONE NOTED.

Q OKAY. SO THERE WEREN'T ANY TO YOUR OBSERVATION. CORRECT?

A TO MY OBSERVATION, NO.

Q ALL RIGHT.

A BUT I DON'T HAVE EQUIPMENT TO DETERMINE WHETHER HE HAS ANY TYPE OF INTERNAL INJURIES.

Q ALL RIGHT. BUT DURING YOUR TRAUMA ASSESSMENT AS YOU'RE TRAINED TO PERFORM IT, THERE WAS NO INDICATION---

A NO.

Q ---THAT HE SUFFERED ANY INJURY TO THOSE AREAS. RIGHT?

A NO.

Q IS THAT TRUE?

A TRUE.

Q THANK YOU. AND HE BEGAN TALKING TO YOU, DIDN'T HE, ON THIS RUN?

A YES.

Q OKAY. NOW YOU TOLD ME THAT HE WAS DELIVERED TO YOU AT THE DETENTION CENTER?

A THAT'S CORRECT.

Q HOW FAR AWAY IS THAT DETENTION CENTER FROM THIS COURTHOUSE?

A ABOUT A BLOCK I BELIEVE.

Q OKAY. HOW DID HE GET THERE?

A LAW ENFORCEMENT TOOK HIM OUT OF THE CAR AND BROUGHT HIM TO US.

Q HE ACTUALLY WALKED THERE WITH LAW ENFORCEMENT.

A I'M NOT SURE.

Q YOU DIDN'T SEE HIM ARRIVE?

A NO. I WAS IN THE TRUCK PREPARING.

Q OKAY. AND YOU DELIVERED HIM TO THE HOSPITAL.

A YES.

Q IS THAT RIGHT? DID YOU LEAVE SHORTLY THEREAFTER THEN?

A YES. I GAVE MY REPORT AND WE CAME BACK TO THE COUNTY.

Q OKAY. THANK YOU, MA'AM.

THE COURT: REDIRECT?

MR. YOUNG: YES, SIR.

<u>REDIRECT EXAMINATION</u>

<u>BY MR. YOUNG</u>

Q WAS HE ABLE TO STAND WITHOUT ASSISTANCE?

A NO.

Q OKAY. WAS HIS CONFUSION THAT YOU MENTIONED EARLIER ABOUT WHAT HAPPENED, WAS THAT INDICATIVE OF ANYTHING -- POTENTIAL PROBLEM?

A YES.

Q WHAT WAS IT INDICATIVE OF?

A ANY TYPE OF HEAD INJURY. NOT REMEMBERING THE INCIDENT AT ALL.

Q THANK YOU.

THE COURT: RECROSS?

MR. FALGIONE: YES, YOUR HONOR.

RECROSS EXAMINATION

BY MR FALGIONE

Q NOW, MS. DEASON, THE TASK THAT YOU WERE TRAINED TO PERFORM TOLD YOU THAT HE DIDN'T HAVE A HEAD INJURY AT THAT TIME, DIDN'T IT?

A THE SIGNS OF – THAT I ASSESSED DID NOT; HOWEVER, NOT REMEMBERING THE INCIDENT IS A SIGN OF A HEAD INJURY.

Q OKAY. SO YOU BASE THAT STATEMENT UPON HIS RECOLLECTION OF THE INJURY AT THE TIME.

A CORRECT.

Q OKAY. ISN'T IT TRUE THAT DURING THE COURSE OF THAT TRANSPORT HE WAS REMEMBERING THE INCIDENT?

A HE DID START TO TALK ABOUT THE INCIDENT THROUGH TRANSPORT.

Q OKAY. SO WHAT DOES THAT TELL YOU? DOES THAT TELL YOU ANYTHING AT ALL ABOUT YOUR EARLIER CONCLUSIONS?

A WELL, WE HAD TALKED ABOUT THE INCIDENT THROUGHOUT TRANSPORT.

Q OKAY. THANK YOU.

THE COURT: ANYTHING FURTHER OF THE WITNESS?

REDIRECT EXAMINATION

BY MR YOUNG

Q DID THAT ALLEVIATE YOUR FEARS OF HIS CONFUSION?

A I'M SORRY?

Q DID THAT -- DID HIS RESPONSES -- DID HIS CONVERSATION WITH YOU ABOUT THE INCIDENT ALLEVIATE YOUR CONCERNS ABOUT HEAD TRAUMA?

A NO.

Q THANK YOU. NO FURTHER QUESTIONS.

THE COURT: ANYTHING ELSE?

MR. FALGIONE: NOTHING FROM DEFENSE.

THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN. CALL YOUR NEXT WITNESS.

MR. YOUNG: CAPTAIN ROBERT SHORTER, PLEASE, YOUR HONOR.

THE COURT: WOULD Y'ALL ASK CAPTAIN SHORTER TO COME IN, PLEASE.

MR. YOUNG: YOUR HONOR, WE ASK THAT MS. DEASON BROWN UNLESS THERE'S A NEED FOR HER.

MR. FALGIONE: NO OBJECTION.

THE COURT: YOU'RE FREE TO GO, MA'AM.

CAPTAIN SHORTER, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. YOUNG

Q GIVE US YOUR NAME, SIR, SPELLING YOUR LAST.

A ROBERT SHORTER. SHORTER S-H-O-R-T-E-R.

Q WHERE DO YOU WORK?

A SALUDA COUNTY SHERIFF'S OFFICE.

Q HOW LONG?

A SINCE 2001.

Q OKAY, SIR. YOU WERE ON DUTY AS A SHERIFF'S DEPUTY DURING THE PERIOD OF TIME OF DECEMBER 26TH 2003?

A YES, SIR.

Q OKAY.

A I WAS ON CALL THAT DAY AND I WAS SUMMONED TO DUTY.

Q WHERE WERE YOU SUMMONED TO, SIR?

A TO DUTY. TO AN INCIDENT RIGHT HERE IN FRONT OF THE COURTHOUSE IN SALUDA COUNTY.

Q ALL RIGHT. DID YOU RESPOND TO THIS LOCATION?

A YES, SIR, I DID.

Q AND WHEN YOU GOT HERE WHAT'D YOU SEE?

A I OBSERVED A CROWN VICTORIA POLICE TYPE VEHICLE IMPALED INTO THAT LAW OFFICE ACROSS THE STREET OVER THERE.

Q OKAY. WAS THERE ANOTHER CAR IN THE INTERSECTION?

A YES, SIR. ONE OF OUR SHERIFF'S OFFICE PATROL CARS WAS PARKED IN THE INTERSECTION. IT HAD BEEN INVOLVED IN A CRASH.

Q WERE THERE SIGNS OF A COLLISION?

A YES, SIR.

Q ALL RIGHT. NOW WHAT WAS YOUR ROLE WHEN YOU RESPONDED? WHAT WAS YOUR PRIMARY ROLE?

A I TOOK UP A POSITION BEHIND THE VEHICLE ON A PERIMETER RIGHT HERE IN FRONT OF THE -- RIGHT IN THE MIDDLE OF THIS INTERSECTION HERE FACING THE LAW OFFICE IN QUESTION.

Q OKAY. WHAT WAS THE SITUATION THAT YOU WERE PRESENTED WITH BASED

UPON THE ACCIDENT? WHAT WAS THE SITUATION?

A I WAS ADVISED TO COME TO WORK BY DISPATCH, THAT THERE HAD BEEN A CHASE AND A COLLISION INVOLVING ONE OF OUR OFFICERS OR DEPUTY DANIELS AND THAT IT WAS A STATEMENT THAT THE PERSON DRIVIN' THE VEHICLE WAS BARRICADED INSIDE THE LAW OFFICE. WE DIDN'T REALLY KNOW WHAT WE HAD AT THAT TIME OR THE REASON WHY THE INDIVIDUAL WAS RUNNIN'.

Q OKAY. NOW DID YOU HAVE ANY INDICATION AS TO HOW MANY PEOPLE WERE IN THE VEHICLE THAT WAS IMBEDDED IN THE BUILDING ACROSS THE STREET?

A THE INFORMATION I HAD WAS GIVEN WAS TWO OCCUPANTS OF THE VEHICLE.

Q OKAY. DID YOU HAVE ANY DESCRIPTION OF THESE PEOPLE?

A A MALE AND A FEMALE WAS ALL WE HAD.

Q DO YOU HAVE THEIR RACE?

A IT WAS SUSPECTED THAT THE FEMALE WAS HISPANIC.

Q OKAY.

A AND A WHITE MALE.

Q IT WAS SUSPECTED. DO YOU KNOW WHAT THAT WAS BASED ON?

A I THINK IT WAS A VISUAL OBSERVATION BY ONE OF THE OFFICERS.

Q OKAY. NOW AT THE POINT IN TIME THAT YOU WERE POSITIONED OUT HERE, DID YOU GET CALLED UPON TO TALK TO THE PERSON THAT CAME OUT OF THAT BUILDING?

A YES, SIR. I HAD THE OCCASION TO TALK WITH A MELISSA MILLER. LATER IDENTIFIED AS MELISSA MILLER.

Q OKAY. AND DID SHE INDICATE WHO SHE WAS?

A YES, SIR.

Q WHO WAS SHE?

A MELISSA MILLER.

Q AND WHAT WAS SHE -- HOW WAS SHE CONNECTED WITH THIS MAN IN ANY WAY?

A SHE WAS A FRIEND OF THE DEFENDANT AND SHE WAS RIDING IN THE CAR WITH HIM WHEN IT CRASHED.

Q SHE WAS IN THE CAR. OKAY. DID SHE INDICATE WHO WAS IN THE BUILDING?

A YES, SIR.

Q WHO?

A SHAWN WILES.

Q OKAY. NOW AT THIS POINT IN TIME, WHAT -- WHAT AGENCIES HAD YOU HAD INVOLVED IN THIS MATTER?

A SOUTH CAROLINA HIGHWAY PATROL, SALUDA COUNTY SHERIFF'S OFFICE, SALUDA POLICE DEPARTMENT.

Q ALL RIGHT, SIR. AND AT THE POINT IN TIME THAT YOU DISCOVERED THAT SHAWN WILES WAS IN THERE, DOES THAT NAME MEAN ANYTHING TO YOU?

A I HAD INDEPENDENT INFORMATION THAT THERE WAS AN ESCAPE CASE BEING INVESTIGATED AROUND THE STATE, AND THAT THE TWO INDIVIDUALS WERE BEING SOUGHT BY THE DEPARTMENT OF CORRECTIONS.

Q WAS SHAWN WILES ONE OF THEM?

A YES, SIR.

Q ALL RIGHT.

THE COURT: HOLD ON JUST A SECOND. BEAR WITH ME. I'M SORRY.

MR. YOUNG: YES, SIR.

THE COURT: OKAY. LADIES AND GENTLEMEN, THERE HAS BEEN ADMITTED IN THE TRIAL OF THIS CASE EVIDENCE RELATED TO ALLEGATIONS ABOUT AN ALLEGED ESCAPE FROM CUSTODY BY THIS DEFENDANT. I WANT TO EXPLAIN TO YOU THAT THIS

EVIDENCE IS ADMITTED ONLY FOR A LIMITED PURPOSE. EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS IS NOT ADMITTED TO PROVE THE CHARACTER OF AN ACCUSED TO SHOW ACTION AND CONFORMITY WITH THAT CHARACTER. IN OTHER WORDS, EVEN IF YOU BELIEVE THAT HE HAD DONE SOMETHING WRONG RELATED TO AN ESCAPE OR PREVIOUS CONFINEMENT, THAT DOES NOT MEAN THAT HE IS GUILTY OF THE CRIMES CHARGED IN THESE CASES. THE EVIDENCE ABOUT THE ALLEGED ESCAPE, IF YOU DEEM IT TRUE, IS ADMITTED FOR A LIMITED PURPOSE, AND IF YOU CONCLUDE IT TRUE, YOU CAN ONLY USE IT FOR THE LIMITED PURPOSE FOR WHICH IT IS ADMITTED. THIS EVIDENCE IS ADMITTED TO ALLOW THE STATE TO ATTEMPT TO ESTABLISH THE DEFENDANT'S MOTIVE, INTENT AND/OR THE ABSENCE OF ACCIDENT OR MISTAKE. IF YOU DETERMINE THE EVIDENCE IS TRUE, YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE, BUT ONLY ON THESE LIMITED ISSUES. ALL RIGHT, MR. YOUNG.

MR. YOUNG: THANK YOU, YOUR HONOR.

MR. FALGIONE: YOUR HONOR, I'D JUST LIKE TO RENEW MY PREVIOUS OBJECTION SO IT'S ON THE RECORD TO ANY -- ANY AND ALL REFERENCE.

THE COURT: ALL RIGHT. IT'S NOTED. OVERRULED. YOU MAY CONTINUE, MR. YOUNG.

MR. YOUNG: THANK YOU, YOUR HONOR.

Q CAPTAIN SHORTER, BASED UPON THAT TYPE OF INFORMATION AS TO MR. WILES' STATUS AS AN ESCAPED PERSON, WHAT IS YOUR OBLIGATION AND WHAT ACTIONS DID YOU TAKE?

A NOTIFYIN' THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

Q OKAY. WERE ANY OTHER AGENCIES NOTIFIED?

A SLED WAS NOTIFIED ALSO, YES, SIR.

Q AND DID THEY RESPOND TO THE SCENE IN RELATION TO THE INFORMATION THAT YOU'D BEEN GIVEN?

A YES, SIR.

Q OKAY. HOW LONG WAS IT TILL THEY ARRIVED?

A THE RESPONSE TIME FROM WHEREVER THEY CAME FROM, I THINK THE MAJORITY PROBABLY LIVED IN THE COLUMBIA AREA, PROBABLY 45 MINUTES.

Q ALL RIGHT, SIR. AND THEY ARRIVED. IN THE MEANTIME THERE IS A PERIMETER ESTABLISHED AROUND THIS BUILDING?

A THAT'S CORRECT.

Q AND MS. MILLER IS IN YOUR CUSTODY, AND YOU INTERVIEW HER, AND ESSENTIALLY, YOU WAIT FOR THE SLED FOLKS TO GET THERE. IS THAT—

A THAT'S CORRECT, YES, SIR.

Q ALL RIGHT, SIR. DID THEY ASSUME RESPONSIBILITY FROM THIS POINT FORWARD?

A THEY DID.

Q OKAY. IN TERMS OF THE MATTERS INVOLVING WHO WAS STILL IN THE BUILDING.

A THAT'S CORRECT, YES, SIR.

Q AND THERE WERE OTHER AGENCIES INVOLVED IN INVESTIGATING THE ACCIDENT. CORRECT?

A YES, SIR.

Q WHO -- WHO INVESTIGATED THE ACCIDENT?

A NEWBERRY COUNTY SHERIFF'S OFFICE.

Q ALL RIGHT. THANK YOU VERY MUCH. I HAVE NO FURTHER QUESTIONS. WOULD YOU, PLEASE, ANSWER ANY QUESTIONS THAT MR. FALGIONE HAS.

MR. FALGIONE: MAY IT PLEASE THE COURT, YOUR HONOR.

THE COURT: YES, SIR.

CROSS-EXAMINATION

BY MR FALGIONE

Q CAPTAIN SHORTER, YOU DIDN'T SEE THE COLLISION OCCUR, DID YOU?

A NO, SIR.

Q YOU ARRIVED AFTER THE FACT.

A THAT'S CORRECT, YES, SIR.

Q NOW THERE WERE NO WEAPONS INVOLVED ANYWHERE ALONG THIS LINE WITH THIS ESCAPE OR WITH THIS HIGH SPEED CHASE OR THE CAR BEING IN THE BUILDING OR ANYTHING INVOLVED IN THIS, WERE THERE?

A I THINK AS IT TURNED OUT, NO WEAPONS WERE RECOVERED. THAT'S CORRECT.

Q OKAY. AND THERE WAS NO ALLEGATIONS THAT THE PERSON THERE THAT HAD DRIVEN THIS CAR INTO THAT BUILDING OR STRUCK YOUR DEPUTY CAR THAT HE WAS A VIOLENT PERSON, WAS THERE?

MR. YOUNG: YOUR HONOR, I OBJECT TO THIS LINE OF QUESTIONING. I'M NOT SURE WHERE HE'S GOIN' WITH IT. I DON'T KNOW WHAT HIS BASIS FOR ASKIN' SUCH A QUESTION IS.

THE COURT: YOU WANT TO BE HEARD?

MR. FALGIONE: I'LL ACCEPT THE COURT'S RULING RIGHT NOW.

THE COURT: THE OBJECTION IS SUSTAINED.

Q NOW, CAPTAIN SHORTER, DID YOU FILL OUT AN AFFIDAVIT RELATED TO THIS INCIDENT?

A I'M SURE I DID, YES, SIR.

Q ALL RIGHT. NOW AN AFFIDAVIT IS SOMETHING YOU'RE SWORN UNDER OATH TO

TELL THE TRUTH ABOUT, ISN'T IT?

A YES, SIR.

Q OKAY. AND DID YOU SAY IN THAT OFFICE -- AFFIDAVIT SHAWN WILES DID WITH THE INTENT TO KILL STRIKE DEPUTY FRANK DANIEL'S PATROL VEHICLE?

A I'D LIKE TO LOOK AT THE---

Q CERTAINLY.

A ---AFFIDAVIT TO REFRESH MY MEMORY, YES, SIR. YES, SIR, THIS APPEARS TO BE MY HANDWRITING.

Q OKAY. SO YOU SWORE UNDER OATH, DID YOU NOT, CAPTAIN SHORTER, THAT SHAWN WILES INTENDED TO KILL DEPUTY FRANK DANIELS?

A YES, SIR.

Q THANK YOU.

THE COURT: REDIRECT.

REDIRECT EXAMINATION

BY MR YOUNG

Q CAPTAIN SHORTER, YOU DO AFFIDAVITS OF THAT TYPE ALL THE TIME, DO YOU NOT?

A YES, SIR.

Q ALL RIGHT. AND YOU HAVE TO STATE CERTAIN ELEMENTS OF THE LAW, DO YOU NOT?

A THAT'S CORRECT.

Q AND THAT'S FOR THE PURPOSE OF SEEKING AN ARREST WARRANT?

A YES, SIR.

Q ALL RIGHT. THANK YOU VERY MUCH. NO FURTHER QUESTIONS.

THE COURT: RECROSS.

RECROSS EXAMINATION

BY MR FALGIONE

Q CAPTAIN SHORTER, YOU HADN'T EVEN TALKED TO SHAWN WILES—

A NO, SIR.

Q —WHEN YOU FILLED THAT AFFIDAVIT OUT, HAD YOU?

A THAT'S CORRECT.

Q THANK YOU.

THE COURT: ANYTHING ELSE OF THE WITNESS?

REDIRECT EXAMINATION

BY MR YOUNG

Q DID YOU ISSUE THAT WARRANT AFTER YOU HAD RECEIVED THE INFORMATION FROM THE INVESTIGATION INTO THIS MATTER?

A YES, SIR.

Q OKAY. NO FURTHER QUESTIONS.

THE COURT: ANYTHING ELSE OF THE WITNESS?

MR. YOUNG: NO, SIR.

MR. FALGIONE: NO, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH. YOU MAY STEP DOWN.

A THANK YOU, YOUR HONOR.

MR. YOUNG: WE DON'T WANT CAPTAIN SHORTER TO BE EXCUSED, YOUR HONOR.

THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

MR. YOUNG: STATE CALLS -- STATE CALLS ROBERT DENNIS.

THE COURT: COME AROUND, PLEASE.

ROBERT DENNIS, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. YOUNG

Q INTRODUCE YOUR NAME AND SPELL YOUR LAST NAME.

A ROBERT DENNIS D-E-N-N-I-S.

Q WHERE DO YOU WORK AND FOR HOW LONG?

A I WORK AT NEWBERRY COUNTY SHERIFF'S OFFICE. I'VE BEEN EMPLOYED THER FOR ABOUT 5 AND A HALF YEARS.

Q ALL RIGHT, SIR. NOW I'M GONNA ASK YOU A QUESTION ABOUT DECEMBER 26 2003 AND WHAT YOU WERE DOING. WHAT WERE YOU DOING THAT DAY?

A I WAS OFF ON THAT DAY; HOWEVER, I WAS ON CALL FOR BEING INVESTIGATO ON CALL IF WE WERE TO GET CALLED OUT FOR ANY TYPE OF BURGLARIES O SOMETHING THAT NEED TO BE INVESTIGATED.

Q DID YOU CALL THE CITY OF SALUDA TO ASSIST IN A COLLISION THAT HA OCCURRED INSIDE THE CITY ON THAT DAY?

A REPEAT THE QUESTION.

Q WERE YOU CALLED TO ASSIST THE CITY OF SALUDA -- NEWBERRY COUNTY WA CALLED TO ASSIST THE CITY OF SALUDA, SHERIFF'S DEPARTMENT HERE IN SALUD COUNTY IN THEIR INVESTIGATION OF A COLLISION?

A YES, SIR. SHERIFF JAMES WAY (PHONETIC) FOSTER RECEIVED A PHONE CA FROM THE SHERIFF OVER HERE IN SALUDA TO RESPOND OVER HERE AND ASSIST WITH SITUATION.

Q WHAT WAS YOUR INITIAL ROLE WHEN YOU WENT OUT THERE?

A THE INITIAL ROLL OF COMING OVER HERE WAS TO GIVE SUPPORT TO SALUD COUNTY AS THEY HAD SET UP A PERIMETER AROUND THE BUILDING ACROSS FROM TH COURTHOUSE.

Q ALL RIGHT, SIR. AND WHILE YOU WERE HERE DID THAT ROLE CHANGE?

A YES, SIR, IT DID.

Q WHAT WAS YOUR ROLE LATER?

A THE ROLE CHANGED AFTER MR. WILES WAS REMOVED FROM THE BUILDING AND SALUDA COUNTY SHERIFF JASON BOOTH ASKED SHERIFF FOSTER IF WE WOULD HANDLE THE INVESTIGATION OF THE ACCIDENT INVOLVING HIS PATROL CAR.

Q OKAY. AND DID YOU DO SO?

A YES, SIR, WE DID.

Q NOW WOULD YOU, BASICALLY, DESCRIBE YOUR TRAINING AND EXPERIENCE AS -- AS A POLICE OFFICER IN HANDLING ACCIDENT INVESTIGATIONS. JUST DESCRIBE GENERALLY WHAT YOU DO.

A PRIOR TO BECOMING -- AT THE NEWBERRY SHERIFF'S OFFICE, I WAS EMPLOYED AT NEWBERRY CITY POLICE DEPARTMENT IN 1991. DURIN' THAT TIME OF GOIN' THROUGH THE ACADEMY AND WORKIN' THERE AT THE CITY POLICE DEPARMENT, ONE OF MY ROLES AS A PATROLMAN WAS TO INVESTIGATE ACCIDENTS WHETHER IT WAS ON THE ROADWAY OR OFF THE ROADWAY, PRIVATE PROPERTY.

Q AND HOW MANY YEARS TOTAL DO YOU SUPPOSE YOU HAVE INVESTIGATING ACCIDENTS OF THIS TYPE?

A I WOULD SAY I HAVE INVESTIGATED PROBABLY OVER A COUPLE HUNDRED ACCIDENTS DURIN' THAT TIME.

Q ALL RIGHT. SO DID YOU CONDUCT THE INVESTIGATION INTO THE COLLISION IN THIS PARTICULAR CASE?

A YES, I DID WITH THE ASSISTANCE OF LT WESLEY BOLAND.

Q ALL RIGHT. WOULD YOU DESCRIBE HOW YOU WENT ABOUT INVESTIGATING.

A THE FIRST THING FOR THE INVESTIGATION IS WE HAVE A FORM THAT IS SET UP

BY THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION. INFORMATION IS TRANSCRIBED ON THAT AS FAR AS THE INTERSECTION OF THE ACCIDENT, WHERE IT TOOK PLACE AND THE UNITS THAT WERE INVOLVED IN THE ACCIDENT. AND THEN THERE IS A BRIEF DRAWING OF WHAT THE INVESTIGATION ENTAILS.

Q ALL RIGHT. NOW LET ME ASK ABOUT THE VEHICLES INVOLVED IN THIS PARTICULAR COLLISION. WHAT TYPE OF VEHICLES WERE THEY AND DID YOU INQUIRE INTO THEIR OWNERSHIP?

A YES, SIR, I DID. THERE WERE TWO VEHICLES INVOLVED. ONE WAS A MARKED SALUDA COUNTY SHERIFF'S VEHICLE WHICH WAS WHITE IN COLOR. IT HAD BLUE LIGHTS ON THE HOOD PART WHICH WOULD BE ON THE ROOF AREA, AND THE OTHER VEHICLE WAS A BLUE FORD CROWN VIC AS WELL, AND IT WAS IN THE BUILDING.

Q ACROSS THE STREET.

A YES, SIR.

Q OKAY. WHEN YOU SAY IN THE BUILDING, YOU MEAN LITERALLY INSIDE THE BUILDING OR---

A YES, SIR, IT HAD BROKE THROUGH THE FRONT GLASS WINDOWS AND LAID TO REST ON A -- I CALL IT A FOOTIE DOWN AT THE BOTTOM OF THE WINDOW AS WELL AS IMPACTED THE SIDE OF THE BUILDIN' TO DO SOME DAMAGE TO THE FRONT END.

Q DID YOU INQUIRE INTO THE OWNERSHIP OF THE VEHICLE THAT WAS IMBEDDED IN THE BUILDING?

A YES, SIR, WE DID. WE DID A N.C.I.C. CHECK ON THE TAGS THAT WAS DISPLAYED ON THE VEHICLE, AND IT CAME BACK TO A OWNERSHIP OUT OF GEORGIA.

Q OKAY. DO YOU KNOW SPECIFICALLY WHERE IN GEORGIA?

A NOT WITHOUT REVIEWING THE ACCIDENT REPORT.

Q OKAY. YOU REFERRED TO AN ACCIDENT REPORT. IF I SHOWED YOU A COPY OF

THAT, WOULD YOU BE ABLE TO RECOGNIZE IT?

A YES, SIR.

Q LET ME SHOW YOU SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR310 AND ASK YOU IF YOU RECOGNIZE IT.

A YES, SIR, THIS IS PART OF IT.

Q ALL RIGHT. HAVING LOOKED AT THAT, DOES THAT REFRESH YOUR RECOLLECTION AS TO THE OWNERSHIP?

A YES, SIR. THE FULL OWNERSHIP OF THE VEHICLE AT THE TIME WAS PRECISION COLLISION CENTER OUT OF WINDISH LANE, BON AIR, GEORGIA.

Q OKAY. ALL RIGHT. AND IN TERMS OF THIS VEHICLE ITSELF, WHEN DID YOU ACTUALLY -- AND THE OTHER VEHICLES, WHEN DID YOU ACTUALLY BEGIN TO INVESTIGATE THE COLLISION ITSELF? BEFORE OR AFTER SECURITY MATTERS HAD BEEN TAKEN CARE OF?

A THE ACTUAL INVESTIGATION DID NOT TAKE PLACE UNTIL AFTER THE SCENE WAS BEING SECURE AND WE BEGAN MOVING SOME OF THE FOLKS OUT OF THE WAY SO WE CAN ACTUALLY GET IN AND DO SOME MEASUREMENTS.

Q OKAY. AND DID YOU DO SOME MEASUREMENTS OF THE SCENE?

A YES, SIR, WE DID.

Q ALL RIGHT. HOW'D YOU DO THAT?

A THE -- I CARRY AROUND ONE OF THOSE ROLLIN' TAPE MEASURE THAT YOU CAN USE TO MEASURE INSTEAD OF PULLIN' TAPES OUT OF THE VEHICLE. SO I WAS ABLE TO USE A WALKING, ROLLING MEASURING STICK TO DO THE MEASURE OF THE INTERSECTION AND -- AND LANE.

Q OKAY. AND WERE YOU ABLE TO LOOK FOR INDICATORS OF WHERE A POINT OF IMPACT HAD BEEN?

A YES, SIR.

Q WERE THERE SUCH MARKINGS?

A YES, SIR, IT WAS.

Q TELL ME ABOUT THAT.

A THE POINT OF IMPACT WAS PRETTY MUCH MAYBE CLOSE TO THE CENTER OF THE INTERSECTION. TO DETERMINE THAT, WE SAW WHERE THERE WAS A LARGE PUDDLE OF FLUID WHICH WOULD HAVE INDICATED AN IMPACT TO AN INDIVIDUAL LOOKING AT THE ACCIDENT. ONCE WE SAW THAT PUDDLE, IT LED TO WHERE THE SHERIFF'S PATROL VEHICLE WAS REST AS WELL AS WHERE THE OTHER VEHICLE LATER REST IN THE BUILDING.

Q OKAY. SO THERE WERE MARKS LEFT BY THE COLLISION ITSELF ON THE ROAD SURFACE?

A THE FIRST IMPACT MARK WAS A PUDDLE OF FLUID FROM THE VEHICLES.

Q OKAY. AND THERE WERE OTHER MARKS AS WELL?

A THERE WAS A MARK LEADING AWAY FROM THE PUDDLE. IF YOU'RE -- IF YOU'RE COMING DOWN 378, THE BLUE CROWN VIC BEGAN TO -- AS IT WAS COMIN' DOWN THE INTERSECTION AND AT THE POINT OF IMPACT, IT DEFLECTED AND VEERED TO THE LEFT WHICH PUT IT INTO THE BUILDING ACROSS THE STREET.

Q SO THERE WERE MARKINGS YOU COULD SEE ON THE GROUND ASSOCIATED WITH THIS?

A YES, SIR. THERE WERE DRAG MARKS LEADING AWAY FROM THE -- THE FIRST PUDDLE UP TO WHERE THE CAR RESTED IN THE BUILDING.

Q LET ME SHOW YOU WHAT'S BEEN MARKED AS -- ADMITTED AS STATE'S EXHIBIT 10. I WANT YOU TO HOLD THAT UP AND LOOK AT IT AND TELL ME IF THAT PICTURE SHOWS ANY OF THE MARKS YOU'RE REFERRING TO.

A YES, SIR, IT DOES.

Q ALL RIGHT, SIR. WHAT ARE THE MARKS?

A THE FIRST SET OF MARKS WOULD BE HERE IN THE MIDDLE OF THE INTERSECTION WHICH I HAVE DEEMED THE POINT OF IMPACT. THE SECOND SET OF MARKS WHICH ARE – APPEAR TO ME TO BE DRAG MARKS ARE LEADING AWAY FROM THE POINT OF IMPACT COMING TOWARD ME IF YOU'RE LOOKING AT THE PICTURE, AND IF THE PICTURE WAS BLOWN UP A LITTLE BIT MORE, YOU WOULD ACTUALLY SEE THE BUILDING ABOUT WHERE I'M AT HERE TO INDICATE WHERE THE CAR LAY TO REST.

Q ALL RIGHT. WOULD YOU PLACE THAT PICTURE ON THE TABLE THERE IN FRONT OF YOU AND I'M GONNA – YOU SAID YOU – DID YOU ACTUALLY MAKE A DIAGRAM OF ANY PART OF THIS COLLISION ITSELF?

A YES, SIR, AND AS WE DID THE FIRST TRAFFIC COLLISION REPORT, I DID ANOTHER DRAWING JUST TO KINDA HELP INDICATE THE INTERSECTION, THE SIZE OF THE LANES, AND JUST KINDA GIVE AN OVERVIEW OF THE ACTUAL ACCIDENT.

Q ALL RIGHT. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT #18. AND WHAT IS THIS?

A THAT IS A BLOWN UP COPY OF THE DRAWIN' I SUBMITTED.

Q OKAY. AND THIS IS -- THE MARKINGS ON THIS PARTICULAR DIAGRAM, WHO MADE THOSE?

A I DID.

Q OKAY. AND WHO MADE THE MEASUREMENTS?

A I DID.

Q AND WHO MADE ALL THE OTHER MARKINGS ON THE DIAGRAM ITSELF?

A I DID.

Q OKAY. WE OFFER THIS AS STATE'S EXHIBIT #18, YOUR HONOR.

THE COURT: MR. FALGIONE?

MR. FALGIONE: WITHOUT OBJECTION, YOUR HONOR.

THE COURT: THANK YOU. (STATE'S EXHIBIT #18 RECEIVED IN EVIDENCE.)

Q NOW BECAUSE OF THE CIRCUMSTANCES HERE AND ME STANDIN' IN THE WAY OF WHAT'S GOIN' ON, I WOULD LIKE FOR YOU, SIR, IF I STAND AWAY FROM YOU AND I'LL HOLD THIS PICTURE UP WHICH IS STATE'S EXHIBIT #10, CAN YOU ORIENT THIS PICTURE IN RELATION TO THAT DIAGRAM. WHERE IS THIS PICTURE?

A IN PLACING THIS PICTURE TO OVERLAY IT, BEFORE THE IMPACT, WOULD BE LIKE SO. AND THIS WOULD BE —

Q NOW LET ME ASK YOU THIS—

A —THE BUILDING HERE—

Q FROM WHAT DIRECTION IS THAT PICTURE TAKEN?

A WE'RE ACTUALLY LOOKING STANDING HERE IN FRONT OF THE BUILDING SHOOTING BACK THIS WAY TO THE POINT OF IMPACT.

Q OKAY. NOW THERE ARE SOME MARKS. THIS IS THE PICTURE – IF THIS IS WHERE THE PICTURE IS TAKEN – WHICH IS BY THE BUILDING.

A YES, SIR.

Q AND MARKS IN THE FOREGROUND THAT LEAD BACK TOWARD THE CENTER OF THIS INTERSECTION, CAN YOU ROUGHLY DESCRIBE ON THE DIAGRAM WHERE THOSE MARKS WERE.

A THOSE?

Q YES, SIR. SO WE CAN ORIENT IT. I CAN GIVE YOU A BLUE INK PEN IF YOU LIKE. DOES THAT HELP YOU? WHERE WOULD THOSE MARKS BE LEADING FROM?

A THOSE MARKS WOULD BE LEADING FROM THE POINT OF IMPACT TO THE BUILDING.

Q OKAY. SO YOU MADE TWO PARALLEL LINES.

A YES, SIR. BECAUSE THERE ARE 2 ON THE PICTURE.

Q RIGHT. AND THE POINT OF IMPACT YOU INDICATED ALSO, IS THERE A MARK ON THE GROUND THERE?

A YES, SIR, THERE IS A POOL OF FLUID JUST HERE AT MY FINGER.

Q UH-HUH.

A WHICH WOULD INDICATE A POINT OF IMPACT.

Q RIGHT. AND WHERE WOULD THAT POINT OF IMPACT BE? IF YOU WOULD PUT AN X.

A THE POINT OF IMPACT WOULD BE RIGHT HERE.

Q RIGHT THERE.

A YES.

Q OKAY. NOW WHICH OF THE TWO CARS LEFT THOSE MARKS THAT YOU SHOWED RIGHT THERE ON THE PICTURE?

A THE – THE MARKS THAT ARE LEFT, THE FIRST MARK THAT IS ON THE OUTSIDE APPEARS TO BE A TIRE MARK WHICH WOULD BE A DRAG MARK FROM THE RIGHT FRONT TIRE AND THE SECOND MARK WOULD BE FLUID ON THAT SIDE OF THE VEHICLE.

Q ALL RIGHT. AND THESE MARKS LEAD UP TO THE VEHICLE THAT WAS IMBEDDED IN THE BUILDING.

A THAT'S CORRECT.

Q ALL RIGHT.

A WHICH IS THEN IDENTIFIED AS UNIT ONE WHICH IS #1 IN THE CENTER.

Q OKAY. DID YOU LATER DETERMINE WHO WAS THE OPERATOR OF THAT VEHICLE?

A YES, SIR, I WAS LATER ADVISED THAT SHAWN WILES WAS OPERATING THAT

VEHICLE.

Q NOW IN THAT CONNECTION, LET'S JUST REFER TO THAT AS THE WILES VEHICLE.

A YES, SIR.

Q ALL RIGHT? NOW WAS THERE – THERE'S ANOTHER MARK IN THE ROADWAY THAT GOES IN A DIFFERENT DIRECTION AS WELL. NOW THAT ONE, WOULD YOU DESCRIBE THAT ONE IN RELATION TO THIS DIAGRAM.

A YES, SIR. THAT – THE SECOND SPILL OR SO, THE FIRST INDICATOR HERE, THE SECOND SPILL IS RIGHT HERE PLACING MR. DANIEL'S VEHICLE WHICH IS UNIT 2 ON THE DIAGRAM, ONCE THE IMPACT OCCURRED, MR. DANIEL'S VEHICLE DID A 180 COMIN' TO REST WOULD BE THE FRONT OF HIS VEHICLE WAS GOIN' TOWARD ON THIS DIAGRAM TOWARDS NEWBERRY.

Q ALL RIGHT. IF YOU WOULD, WOULD YOU PUT A LITTLE V IN THE FRONT OF VEHICLE #2. ALL RIGHT. THERE'S ANOTHER VEHICLE TOO IN THE PICTURE. WHERE IS THE FRONT OF THE VEHICLE IN THE SECOND—

A THE FRONT OF THE VEHICLE IS HERE.

Q THAT'S VEHICLE #1. I WAS TALKIN' ABOUT VEHICLE #2. WHERE'S THE FRONT OF VEHICLE #2 IN THE DIAGRAM.

A OVER HERE.

Q WHERE IS THE FRONT OF THE VEHICLE—

A RIGHT HERE.

Q ALL RIGHT. NOW WOULD YOU PUT A V IN FRONT OF VEHICLE #1—

A THIS IS THE V HERE INDICATES THE FRONT OF VEHICLE #2. THE V HERE INDICATES THE FRONT OF VEHICLE #2.

Q THAT'S AFTER IT CAME TO REST?

A THAT'S AFTER IT CAME TO REST AND DOING A 180.

Q AND WHERE IS THE FRONT OF VEHICLE #1—

A VEHICLE #1 IS HERE FROM THE POINT OF IMPACT INTO THE LEFT DRIVER'S SIDE TIRE, AND THEN THE FRONT OF THE VEHICLE CAME TO REST INSIDE THE BUILDING.

Q OKAY. THANK YOU. ALL RIGHT. I'M GONNA SHOW SEVERAL OTHER PICTURES HERE, SIR. IF YOU COULD, AND THEY'RE MADE FROM DIFFERENT ANGLES. I'D LIKE FOR YOU, IF YOU COULD, TAKING A LOOK AT PICTURE NUMBER – STATE'S EXHIBIT #14, LOOK AT THAT ONE, AND CAN YOU NOW RELATE THAT – I GUESS YOU COULD CALL IT – WHAT YOU CALL DRAG MARKS OR MARKS ON THE ROAD SURFACE, CAN YOU RELATE THEM TO THE DIAGRAM? HOLD IT UP FOR THE JURY.

A YES, SIR. THE – THIS – JUST TO INDICATE HERE, THE VEHICLE WHICH COMES TO REST INSIDE THE BUILDING, THE DRAG MARK THAT'S HERE ON THE OUTSIDE INDICATE THERE WERE SOME TREAD MARKS IN IT AS THE VEHICLE BEGAN DRAGGING BEFORE IT CAME TO REST IN THE BUILDING. AND THE SECOND SET HERE WHICH I JUST KINDA DRAW LIKE THAT IS THE FLUID, FLUID SPILLS FROM UNDER THE VEHICLE.

Q OKAY. AND THEY'RE ROUGHLY PARALLEL TO EACH OTHER.

A YES, SIR, THEY ARE.

Q OKAY. NOW THIS IS ANOTHER ANGLE. STATE'S EXHIBIT #11. IF YOU WILL LOOK AT THAT ONE, SIR. NOW IN THIS CASE WE HAVE A PICTURE OF A SHERIFF'S DEPUTY – WHAT VEHICLE IS THAT?

A THIS THE MR. DANIEL'S VEHICLE. THAT IS #2.

Q ALL RIGHT. NOW CAN YOU RELATE THESE MARKS THAT ARE ON THE ROAD SURFACE THAT YOU DESCRIBE WHERE MR. DANIEL'S VEHICLE IS.

A YES, SIR. IT'S PRETTY MUCH PLACED IN THE PICTURE HERE TO INDICATE WHAT THE IMPACT WAS MADE WAS THIS WHITE FORD TRUCK IS IN THE LINE OF VIEW 'CAUSE WHERE THE POINT OF IMPACT IS – THE IMPACT HERE THAT WAS MADE JUST OUT OF

SIGHT BECAUSE OF THE TRUCK, YOU HAVE A OIL SPILL OR FLUID SPILL THAT DOES A 180 INDICATING THAT MR. DANIEL'S VEHICLE FROM THE POINT OR DIRECTION HE WAS GOIN' WAS KNOCKED AROUND TO WHERE HE IS NOW FACIN' THE COURTHOUSE AND JUST TO WHERE MY LEFT HAND IS AT IS WHERE THE BUILDING IS AT WHERE VEHICLE 1 THE WILES VEHICLE CAME TO REST.

Q SO WHAT DIRECTION DOWN -- WHAT STREET ARE WE LOOKING DOWN IN THIS PERSPECTIVE.

A THIS IS LOOKING DOWN THIS WAY IS EAST CHURCH STREET.

Q OKAY.

A IN FRONT OF THE COURTHOUSE.

Q OKAY.

A THE COURTHOUSE IS SITTING JUST TO THE FRONT -- JUST TO THE FRONT OF MR. DANIEL'S VEHICLE.

Q THANK YOU, SIR. I HAVE ANOTHER ONE. IT'S SLIGHTLY DIFFERENT. THIS ALSO SHOWS MARKS IN THE ROAD SURFACE AND THE SHERIFF DEPUTY VEHICLE. WOULD YOU LOOK AT THAT AND POINT IN FACT THAT PICTURE TO THE DIAGRAM.

A YES, SIR. THIS IS -- THIS IS ANOTHER SHOT OF THE VEHICLE WHICH THE ACTUAL PHOTOGRAPH IS BEING TAKEN AT THIS ANGLE, AND IT SHOWS THE REAR END OF MR. DANIEL'S VEHICLE. MR. DANIEL'S VEHICLE IS FACIN' THE COURTHOUSE. AS WELL AS THE MARKS ON THE SIDEWALK FROM THE WILES VEHICLE GOIN' INTO THE BUILDIN'.

Q OKAY. ARE THESE THE SAME DRAG MARKS THAT YOU REFERRED TO EARLIER?

A THAT'S CORRECT.

Q THANK YOU, SIR. WOULD YOU RESUME THE STAND. AND THEN WHEN YOU MEASURED THESE DISTANCES, YOU USED THE MARKINGS ON THE ROAD SURFACE AS A BASIS FOR THAT?

A YES, SIR.

Q AND YOU AL -- WELL, THEY'RE ALSO INDICATED ON THERE ARE LINES IN THE ROAD.

A THAT'S CORRECT.

Q THOSE LINES IN THE ROAD, YOU ALSO ORIENTED YOUR DIAGRAM TO THOSE LINES?

A YES, SIR, I DID.

Q OKAY.

A ATTEMPTED TO.

Q ALL RIGHT, SIR. SO I SEE A NOTATION ON HERE. 35 -- A SINGLE MARK FROM THE -- IT LOOKS HERE TO BE THE EAST CHURCH STREET -- I GUESS THAT'S THE WEST SIDE -- THAT WOULD BE THE WEST SIDE OF THIS STREET TO THE CENTER OF MAIN STREET. IS THAT THE DISTANCE BETWEEN I GUESS THE START OF THE INTERSECTION OR WHAT? HOW DO YOU--

A THE 35 FEET IS FROM THE STOP OF THE YELLOW LINES HERE COMING OFF OF 378 TO THE ACTUAL POINT OF IMPACT.

Q ALL RIGHT. AND AS A -- BELOW THAT IS A 41 FEET. WHAT DOES THAT REPRESENT?

A THE 41 FEET COMES FROM THE YELLOW LINE AT SOUTH MAIN STREET TO THE POINT OF IMPACT.

Q THAT'S THE MARK ON THE GROUND.

A THAT'S CORRECT.

Q OKAY. AND THEN THE MEASUREMENTS OF 67 FEET, WHAT DOES THAT REPRESENT?

A 67 FEET REPRESENTS THE FEET THAT WILES' VEHICLE TRAVELED FROM POINT OF

IMPACT UNTIL IT CAME TO REST INTO THE BUILDING ACROSS THE STREET.

Q ALL RIGHT, SIR. NOW THERE'S ONE MORE MEASUREMENT HERE AND THAT IS 21 FEET.

A OKAY. THE 21 FEET IS THE DISTANCE BETWEEN THE ACTUAL CURB AND THE BACK OF UNIT 2 WHICH WAS DANIEL'S VEHICLE.

Q OKAY. I MISSPOKE. THERE'S A 50 FOOT AND 11 FOOT, WHAT ARE THOSE?

A THE 50 FOOT IS THE DISTANCE BETWEEN THE CURB AND THE CURB SIDEWALK TOWARD THE COURTHOUSE AND THIS IS THE BUSINESS SIDE HERE. THAT'S THE OVERALL LENGTH BETWEEN THE 2 CURBS AND THEN THE DISTANCE WHICH 11 FOOT IS BETWEEN THE YELLOW LINE AND THE WHITE LINE GIVING THE INDICATION OF 11 FOOT FOR THE WIDTH OF THE RIGHT TURNING LANE TO COME DOWN 378.

Q OKAY. THAT LANE IS IMMEDIATELY TO THE REAR OF THE YAW MARKS YOU FOUND TO THE POINT OF IMPACT?

A THAT'S CORRECT.

Q OKAY. OKAY. NOW I'M GONNA HAND UP WHAT'S MARKED AS STATE'S EXHIBIT 3. THIS IS A SEPARATE -- WOULD YOU TELL US WHAT THAT IS AND WHERE IT'S TAKEN.

A THIS IS A VIEW OF – THAT IS LOOKING UP 378 FROM THIS AREA DOWN HERE WHICH IS WHERE THE DETENTION CENTER IS LOCATED. SO WE'RE ACTUALLY STANDING HERE IN FRONT OF THE COURTHOUSE JUST UP TO ABOUT WHERE THE NEXT STREET IS AT THE COURTHOUSE.

Q OKAY. SO THE FIRST INTERSECTION EAST OF THE COURTHOUSE ON CHURCH STREET?

A YES, SIR.

Q LOOKING BACK WHICH DIRECTION?

A LOOKING BACK TOWARD 378 TOWARD GREENWOOD.

Q OKAY. IT'S ALSO MCCORMICK?

A MCCORMICK.

Q SIR, IF I COULD, WOULD YOU HOLD THAT -- TURN THAT PICTURE AROUND AND JUST SHOW IT TO THEM AND I WANT YOU TO ORIENT THE JURY, IF YOU WILL, ON ANY TRAFFIC SIGNALS THAT ARE APPARENT IN THAT INTERSECTION.

A THE -- THERE'S A OVERHEAD TRAFFIC SIGNAL HERE IN THE INTERSECTION OF EAST CHURCH STREET AS WELL AS SOUTH MAIN. THERE ARE 2 LIGHTS FACING THIS WAY. 2 LIGHTS FACING THIS WAY. 2 THIS WAY, AND 2 THAT WAY.

Q OKAY, SIR. LET ME IF I COULD NOW STEP DOWN THIS PARTICULAR DIAGRAM AND NOW USING THE LARGER OVERHEAD PICTURE WHICH IS STATE'S 17, ARE THERE ANY OTHER TRAFFIC SIGNALS IN THIS PICTURE THAT ARE ALSO OR CAN BE POSITIONED ON THE LARGER OVERHEAD PROJECTION OF THIS PICTURE?

A LET ME GET ORIENTATED. YES, SIR. THIS IS THE INTERSECTION I JUST DESCRIBED WHICH IS SOUTH MAIN AND EAST CHURCH STREET. THE NEXT INTERSECTION IS RIGHT HERE WHICH IS JEFFERSON STREET, AND THERE IS A CAUTION LIGHT THERE AT THE INTERSECTION.

Q ALL RIGHT, SIR. NOW IF YOU WILL LOOK AT THIS PICTURE. HOLD THE PICTURE UP FOR THE JURY TO SEE. NOW FROM -- FROM THE MIDDLE OF THE INTERSECTION AT CHURCH AND MAIN STREET WHICH IS 378 AND 121.

A YES, SIR.

Q LOOKING WEST TOWARD THE MCCORMICK AREA---

A YES, SIR.

Q JUST TO -- FROM THE POINT OF THE MIDDLE OF THE INTERSECTION TOWARD MCCORMICK, DOES THE TERRAIN RISE OR IS IT LEVEL AT THAT POINT?

A THE -- FROM ABOUT WHERE WE'RE LOCATED HERE THE INTERSECTION COMING

THROUGH IS A LEVEL INTERSECTION UNTIL IT GETS TOWARD JEFFERSON AND IT BEGINS TO INCLINE, AND THEN ONCE YOU GET UP PAST JEFFERSON TO WHERE THE CHURCH IS LOCATED THERE IS A LITTLE KNOLL.

Q ALL RIGHT, SIR. RIGHT THERE WOULD YOU MAKE A MARK, AND I DON'T CARE HOW YOU PUT IT, WHY DON'T YOU PUT A B THERE. ALL RIGHT. THERE'S A KNOLL AT THAT POINT?

A YES, SIR. AND THE REASON WHY IT'S PLACED THERE, I WAS ABLE TO WALK AS WELL AS DRIVE THIS INTERSECTION AND JUST IN LINE WITH THE CHURCH THERE'S A BREAK, SO TO SPEAK, IN THE COLORATION OF THE ASPHALT, AND YOU CAN ACTUALLY TELL ONCE YOU'RE COMING UP, THE KNOLL ITSELF AS WELL AS GOIN' OUTTA TOWN AND COMIN' INTO TOWN.

Q SO A PERSON THAT IS APPROACHING FROM MCCORMICK HEADED TOWARD THE CENTER OF SALUDA WOULD -- LET'S JUST SAY ONE CAR IS FOLLOWING ANOTHER. IF THE LEAD CAR WENT OVER THIS KNOLL, WOULD A CAR TO REAR CONTINUE TO SEE IT IF IT WAS, LET'S SAY, A QUARTER MILE AWAY?

A NO, SIR.

Q OKAY. AND FROM THAT POINT LET'S SAY AT THE TOP OF THE KNOLL, THAT PERSON COMING FROM THE MCCORMICK DIRECTION TOWARD THE CENTER OF SALUDA, WHERE ARE -- APPROXIMATELY WHERE WOULD THEY FIRST BE ABLE TO BEGIN TO SEE THE INTERSECTION AT 121 AND 378?

A APPROACHING THE TOWN AND ONCE YOU GET PRETTY MUCH IN LINE WITH THE CHURCH, THEY WOULD SEE STRAIGHT DOWN INTO THE MAIN STREET AREA.

Q SO AT POINT B ON THAT MAP YOU CAN SEE DOWN TO THE INTERSECTION?

A YES, SIR, YOU CAN SEE THE INTERSECTION COMPLETELY THROUGH JEFFERSON AS WELL AS BEING IN FRONT OF THE COURTHOUSE.

Q NOW IT'S NOT ON ANY OF YOUR DIAGRAMS, IS IT? DID YOU MEASURE THAT DEPTH – DISTANCE FROM B DOWN TO THE CENTER OF THE INTERSECTION?

A THE – THE APPROXIMATE DISTANCE BETWEEN THE CHURCH AND THE MAIN STREET IS RIGHT AROUND 900 FEET.

Q OKAY. CLOSE TO IT.

A CLOSE TO APPROXIMATE.

Q OKAY. NOW DID YOU IN THE COURSE OF YOUR INVESTIGATION ATTEMPT TO DETERMINE BASED UPON WITNESSES AND OTHER THINGS AN APPROXIMATE SPEED AT THE TIME OF THE COLLISION?

A BASED ON WITNESS TESTIMONY FROM THE HIGHWAY PATROL AS WELL AS GIVIN' MR. WILES THE BENEFIT OF THE DOUBT BECAUSE OF THE BRAKING SPEED, I ESTIMATED AROUND 90 MILES AN HOUR.

Q AND THAT'S JUST A GOOD FAITH ESTIMATE.

A YES, SIR.

Q OKAY. AND IS THAT – YOU THINK THAT'S CONSERVATIVE OR YOU REALLY UPPED THE SPEED ON HIM?

A IF I HAD TO, BASED ON ALL THE INFORMATION OF LOOKING AT THE ACCIDENT AND THE WITNESS TESTIMONY, THE ACTUAL SPEED WAS WELL ABOVE WHAT I PUT ON THE ACCIDENT REPORT.

Q OKAY. NOW WOULD YOU TELL US BRIEFLY ABOUT THE LIGHT THAT YOU MENTIONED AT JEFFERSON, I BELIEVE YOU SAID IT WAS. WHAT KINDA LIGHT IS THIS? WELL, AT THE TIME, WHAT KINDA LIGHT WAS IT?

A REPEAT THAT.

Q THE LIGHT AT JEFFERSON – I BELIEVE YOU SAID THERE WAS A LIGHT THERE SOMETIME.

A YES, SIR. AT THE INTERSECTION HERE AT JEFFERSON AND CHURCH STREET, YES SIR, AT CHURCH STREET, THERE IS A CAUTION LIGHT. ON THE CHURCH STREET SIDE, IT'S A FLASHING YELLOW CAUTION LIGHT, AND THEN ON THE JEFFERSON SIDE IS A FLASHING RED CAUTION LIGHT DUE TO THE STOP SIGN ON THE SIDE.

Q OKAY. DOES THIS CAUTION LIGHT DOES IT BLINK A PARTICULAR COLOR?

A FOR THE CHURCH STREET IT BLINKS YELLOW; FROM THE JEFFERSON STREET, IT BLINKS RED.

Q OKAY. SO IF YOU'RE GOIN' ALONG CHURCH STREET ALONG 378 FROM MCCORMICK, IT'S WHAT COLOR?

A IT'S -- IT'S YELLOW.

Q OKAY. HOW FAR BACK IS THAT LIGHT VISIBLE?

A THAT LIGHT IS VISIBLE ABOUT WHERE I PLACED THE V ONCE YOU COME OVER THAT KNOLL. ONCE YOU COME OVER THAT KNOLL THERE AT THE CHURCH, YOU CAN VISIBLY SEE BOTH CAUTION LIGHTS.

Q ALL RIGHT. IF YOU'RE HEADED BACK TOWARD MCCORMICK, WHEN IS THE FIRST TIME YOU CAN SEE THAT? IF YOU'RE COMING FROM MCCORMICK TOWARD SALUDA, WHERE WOULD BE THE FIRST TIME YOU COULD SEE THAT LIGHT?

A IF I'M COMING FROM MCCORMICK BACK IN, ONCE I GET TO THE CHURCH---

Q YOU CAN'T -- CAN'T RIGHT TO THE CHURCH? I MEAN IF I'M COMIN' FROM MCCORMICK HEADED TOWARD THIS CAUTION LIGHT, WHEN'S THE FIRST TIME I'M GONNA SEE THAT CAUTION LIGHT?

A ONCE I GET HERE AT CHURCH---

Q SO YOU CAN'T TILL YOU GET RIGHT UNDER IT.

A NO, SIR.

Q SO THE LIGHT'S TOTALLY INVISIBLE BACK DOWN THE ROAD FROM MCCORMICK.

A YES, SIR.

Q OKAY. SO SOMEONE COMING FROM MCCORMICK TOWARD THE CENTER OF SALUDA, OKAY?

A IF THEY'RE COMING FROM MCCORMICK INTO SALUDA—

Q YES, SIR.

A —IT'S – UNTIL I GET RIGHT HERE, THAT'S WHERE I GET THE FULL VIEW OF THE INTERSECTION FOR BOTH LIGHTS.

Q OH, I UNDERSTAND THAT. I'M JUST TALKIN' ABOUT JUST THE CAUTION. THE ONE THAT'S AT JEFFERSON.

A YES, SIR.

Q THE ONE THAT'S -- LET ME SHOW YOU. MAKE SURE WE'RE UNDERSTANDIN' EACH OTHER. NOW THIS PICTURE IS LOOKING AT THAT – DO YOU SEE THAT CAUTION LIGHT ANYWHERE?

A I CAN SEE THE CAUTION LIGHT. I JUST KINDA HOLD IT UP A LITTLE CLOSER—

Q OKAY. IT'S THERE. BUT YOU'RE LOOKIN' FROM WHAT END OF THE STREET?

A WE'RE LOOKING FROM ALMOST DIRECTLY HERE IN FRONT OF THE COURTHOUSE JUST TOWARD THE DETENTION CENTER A LITTLE BIT AND LOOKING BACK UP 378 TOWARD MCCORMICK.

Q AND THIS CAUTION LIGHT YOU'RE REFERRIN' TO IS RIGHT ABOUT HERE AT THAT POINT. IS THAT CORRECT?

A RIGHT THERE AT THE CIRCLE AND THE X.

Q OKAY.

A OR MY SLASH.

Q OKAY. SO THE KNOLL, YOU GET TO THE TOP OF THE KNOLL, IS THAT WHEN YOU CAN SEE THIS LIGHT?

A THAT'S WHEN YOU CAN SEE THIS LIGHT.

Q OKAY. JUST MAKIN' SURE. ALL RIGHT? AT THE POINT IN TIME YOU WERE DOIN YOUR INVESTIGATION, DID YOU TRY TO DETERMINE HOW THE SPEED LIMITS CHANGED IF THEY DID AT ALL ALONG THE ROUTE TAKEN AS YOU ENTERED SALUDA? DID YOU MAKE AN EFFORT TO DO THAT?

A YES, SIR, I DID.

Q WHAT ARE THE SPEED LIMITS FROM THE TIME, LET'S SAY YOU HIT THE SALUDA LINE? WHAT ARE THE SPEED LIMITS THERE?

A THE SPEED LIMITS ONCE YOU COME INTO THE – JUST PROBABLY 9, 8 TENTHS TO 9 TENTHS OF A MILE OUT IS 35 MILES AN HOUR.

Q WHAT'S 8 TENTHS OR 9 TENTHS OF A MILE OUT? WHAT'S THAT FROM?

A THAT GOES FROM ABOUT THE POINT OF THE INTERSECTION GOIN' TOWARD MCCORMICK, AND YOU GET OUT PAST WHERE THERE'S A SCHOOL, WHERE YOU TURN OFF TO GO TO THE ELEMENTARY SCHOOL AND THE HIGHWAY DEPARTMENT.

Q SO IS THERE A SCHOOL ZONE SHORTLY AFTER THAT?

A RIGHT THERE AT THE WHERE IT BREAKS INTO THE 35 MILE PER HOUR ZONE.

Q DOES IT CHANGE AFTER THAT?

A YES, SIR. YOU COME DOWN THE STREET COMIN' INTO A HEAVY RESIDENTIAL AREA, AND IT BREAKS DOWN TO 25 MILES PER HOUR JUST ABOUT JEFFERSON STREET SOMEWHERE ALONG IN THERE.

Q ALL RIGHT. WHAT'S THE SPEED LIMIT THROUGH THE MIDDLE OF THE INTERSECTION THERE?

A THE POSTED SPEED LIMIT IS 25.

Q OKAY. NOW YOU EXAMINED THE VEHICLES IN THIS CASE, DID YOU NOT?

A YES, SIR, WE LOOKED AT THE VEHICLES.

Q YOU LOOKED AT THE EXTENT OF THE DAMAGE TO BOTH VEHICLES, DID YOU NOT?

A YES, SIR, WE DID.

Q AND WHEN YOU EXAMINED THE EXTENT OF THE DAMAGE TO THE VEHICLES, WERE YOU -- AND WHERE THIS -- WHERE THE COLLISIONS OCCURRED, WHERE THE ACTUAL IMPACT OCCURRED WITH BOTH VEHICLES, DID YOU LOOK AT THAT AS WELL?

A YES, SIR.

Q WHERE DID ONE VEHICLE STRIKE THE OTHER?

A THE WILES VEHICLE STRUCK MR. DANIEL'S VEHICLE AT A -- AT A ANGLE OF PRETTY MUCH THE FRONT OF THE WILES VEHICLE STRIKING THE FRONT END LEFT, FRONT JUST ABOVE THE DRIVER'S SIDE WHEEL DIRECTLY.

Q ALL RIGHT. LET ME SHOW YOU A PICTURE OF THE SIDE -- OF THE SIDE VIEW OF THE WILES VEHICLE. ALL RIGHT? CAN -- AND THEN I'M GONNA SHOW YOU A PICTURE OF THE FRONT OF THE DANIEL'S VEHICLE. NOW THIS IS STATE'S EXHIBIT 9 AND STATE'S EXHIBIT 20. CAN YOU RELATE THOSE TO EACH OTHER IN TERMS OF THE IMPACT THAT YOU DISCOVERED?

A YES, SIR.

Q ALL RIGHT. WHAT DID YOU SEE?

A THE IMPACT ON MR. DANIEL'S VEHICLE WAS AT THE FRONT LEFT OF HIS VEHICLE JUST IN FRONT OF THE DRIVER STEERING WHEEL OVER THE -- THE TIRE AREA WHICH INDICATED THE FRONT SIDE OF MR. WILES' VEHICLE HAD MADE THE IMPACT.

Q ALL RIGHT, SIR. WAS THERE ANY SECONDARY IMPACT APPARENT BASED UPON THE TYPES OF IMPACT OR DAMAGE TO THE VEHICLES?

A YES, SIR. AS THE – AS THE TWO VEHICLES COLLIDED, WILES' VEHICLE STRIKING THE DANIEL'S VEHICLE AND ONCE YOU MAKE AN IMPACT, DANIEL'S VEHICLE BEGINS

TO GO AWAY FROM WILES' VEHICLE AND WILES WAS DEFLECTED TO GO INTO THE BUILDING WHICH PUT MR. DANIEL'S VEHICLE INTO A SPIN. NOT A FULL 360 BUT A 180. AS THEY WERE -- AS THEY WERE MAKING THE DEFLECTION AND MAKING A TURN, THEIR BACK ENDS TOUCHED EACH OTHER AS WELL.

Q OKAY.

A AND THERE WAS—

Q NOW DAMAGE, LET ME SHOW YOU WHAT I REFER TO HERE IS DAMAGE TO THE RIGHT REAR QUARTER PANEL OF MR. WILES' VEHICLE?

A THAT'S CORRECT.

Q AND THERE IS DAMAGE IN ANOTHER PICTURE. STATE'S EXHIBIT #5. DOES THAT RELATE IN ANY WAY TO THE DAMAGE THAT YOU REFER TO AS COMING INTO CONTACT WITH THE REAR QUARTER PANEL?

A YES, SIR, IT DOES. IT -- IT SHOWS INDENTIONS ON THE BACK QUARTER PANEL OF THE 2 VEHICLES.

Q WOULD YOU HOLD IT UP FOR THE JURY AND POINT OUT SPECIFICALLY WHAT YOU'RE REFERRING TO. I'LL HOLD ONE AND THEN YOU HOLD THE OTHER.

A WE'VE GOT THE DAMAGE TO THE VEHICLE, THE WILES' VEHICLE, JUST BEHIND THE TIRE, AND THEN WE HAVE DAMAGE TO MR. DANIEL'S VEHICLE WHICH IS RIGHT THERE ABOUT THE GAS TANK.

Q NOW YOU EXAMINED THESE VEHICLES AND -- WELL, LET ME ASK YOU THIS. THESE PICTURES ARE TAKEN AT THE SCENE, AND WHO TOOK 'EM?

A THE PICTURES WERE TAKEN AT THE SCENE BY LT. WESLEY BOLAND WHO IS—

Q HE WAS WORKIN' WITH YOU ON THIS?

A THAT'S CORRECT. HE'S ALSO EMPLOYED AT NEWBERRY SHERIFF'S OFFICE.

Q WERE THE VEHICLES MOVED BEFORE THESE PICTURES WERE TAKEN?

A NOT TO MY KNOWLEDGE, NO, SIR.

Q ALL RIGHT. ONE FINAL QUESTION. IN YOUR -- IN ACCIDENT INVESTIGATION REPORT DID YOU SPECIFICALLY DETERMINE THE VIN NUMBER ON MR. WILES' VEHICLE?

A YES, SIR. WE WERE ABLE TO ONCE WE RAN THE TAG, THE TAG CAME BACK AS WELL AS THE VIN NUMBER WHICH WERE BOTH MATCHED ON THE DEPARTMENT OF MOTOR VEHICLES LIST IN GEORGIA.

Q ALL RIGHT. DID YOU RECORD THAT ON YOUR ACCIDENT INVESTIGATION REPORT?

A YES, SIR, I DID.

Q LET ME HAND YOU BACK YOUR ACCIDENT INVESTIGATION REPORT. WHAT WAS THE VIN NUMBER THAT YOU RECORDED ON THAT?

A MR. WILES' VEHICLE--

THE COURT: SAY IT SLOWLY. SHE HAS TO TAKE DOWN WHAT YOU SAY.

A YES, SIR, YOUR HONOR. THE VIN NUMBER IS AS FOLLOWS: 2FALP71WOVX194323.

Q OKAY. THIS HAS BEEN OFFERED INTO EVIDENCE AS STATE'S EXHIBIT #19. WOULD YOU READ THE VIN NUMBER OFF OF STATE'S EXHIBIT 19.

A ON STATE'S EXHIBIT 19 WHICH IS GEORGIA CERTIFICATE OF TITLE, THE VEHICLE IDENTIFICATION NUMBER: 2FALP71WOVX194323.

Q IS THAT THE SAME NUMBER AS ON YOUR REPORT?

A YES, THEY ARE.

WOULD YOU, PLEASE, ANSWER ANY QUESTIONS, MR. FALGIONE HAS FOR YOU, SIR?

A YES, SIR.

THE COURT: HOW LONG DO YOU THINK YOUR CROSS WILL BE?

MR. FALGIONE: IT'S GONNA TAKE MORE THAN 5 MINUTES I'M SURE, YOUR HONOR.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GONNA BREAK FOR LUNCH NOW. YOU'RE ON YOUR OWN FOR LUNCH. I NEED YOU BACK IN THE JURY ROOM AT 2:15. PLEASE, BE IN THE JURY ROOM AT 2:15. DON'T DISCUSS THE CASE WITH ANYBODY OR LET ANYBODY DISCUSS IT WITH YOU. I LOOK TO SEE YOU AT 2:15. THANK YOU. (THE FOLLOWING OCCURRED OUTSIDE THE PRESENCE OF THE JURY.) DURING THE BREAK, SIR, DON'T DISCUSS YOUR TESTIMONY WITH ANYONE.

A YES, SIR, YOUR HONOR.

THE COURT: COURT'S AT EASE TILL 2:15. (THERE WAS A LUNCH RECESS.) STATE READY FOR THE JURY?

MR. YOUNG: YES, SIR.

THE COURT: DEFENSE?

MR. FALGIONE: 2 MINUTES, YOUR HONOR, OR LESS. YES, YOUR HONOR. WE'RE READY.

THE COURT: BRING THE JURY, PLEASE, MA'AM. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) ALL RIGHT. CROSS-EXAMINATION

MR. FALGIONE: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. FALGIONE

Q INVESTIGATOR DENNIS, DID YOU USE ANY COMPUTER PROGRAMS TO RECONSTRUCT THIS ACCIDENT?

A NO, SIR, I DID NOT.

Q WHAT ALGORITHMS DID YOU USE TO DETERMINE SPEED, CRUSH FACTOR, THOSE TYPES OF THINGS?

A WE USE -- WE DID NOT USE ANYTHING TO DETERMINE THAT?

Q OKAY. THE HIGHWAY PATROL HAS A COMPUTER PROGRAM THAT

RECONSTRUCTS ACCIDENTS, DON'T THEY?

A IF THEY DO I'M NOT AWARE OF IT.

Q HAVE YOU HEARD OF THE MAIT TEAM BEFORE? M-A-I-T. MAIT TEAM?

A YES, SIR, I HAVE.

Q AND THAT'S A SPECIAL TEAM THE HIGHWAY PATROL HAS THAT COMES OUT IN SERIOUS ACCIDENTS AND TAKES MEASUREMENTS, DETERMINES RECONSTRUCTIONS, THOSE KINDS OF THINGS, DON'T THEY?

A THAT'S CORRECT.

Q BUT THEY HAD NO PART IN THIS. IS THAT RIGHT?

A NO, SIR. THEY WERE NOT SUMMONED.

Q OKAY. NOW WOULD YOU AGREE WITH ME THAT YOUR STARTING PREMISE IS THAT OFFICER DANIEL'S CAR WAS IN THE MIDDLE OF THE INTERSECTION?

A YES, SIR.

Q OKAY. AND IT'S PRETTY MUCH AS YOU'VE DEPICTED IT IN YOUR DIAGRAM FOR THE JURY. I'M GONNA SET IT UP HERE. THAT MR. YOUNG HAD YOU TESTIFY TO BEFORE. IT IS LABELED AS STATE'S EXHIBIT #18.

A THAT'S CORRECT.

Q NOW, OFFICER, DENNIS, FROM YOUR DIAGRAM, CAN YOU SEE THAT?

A YES, SIR, I CAN SEE.

Q I APOLOGIZE FOR TURNING MY BACK. FROM YOUR DIAGRAM IT APPEARS THAT THERE'S MORE DISTANCE AVAILABLE IF SOMEONE WERE TO PASS THIS CAR WHICH IS REPRESENTED AS #2 ON THIS DIAGRAM, ON THE LEFT THAN ON THE RIGHT. WOULD THAT BE FAIR?

A ACCORDIN' TO MY DRAWIN' WHICH IS NOT TO SCALE.

Q WELL, OKAY. WELL, I THOUGHT YOU TESTIFIED THAT THIS IS A TRUE AND

ACCURATE REPRESENTATION OF THAT ACCIDENT.

A IT IS, BUT NOT TO SCALE.

Q OKAY. WELL, AS WE UNDERSTAND THIS, OFFICER DANIELS WAS GONNA MAKE A LEFT HAND TURN, WASN'T IT?

A THAT'S CORRECT.

Q OKAY. AND AS YOU HAVE HIM LOCATED ON YOUR DIAGRAM, HE WOULD BE MAKING -- IN POSITION TO MAKE THAT LEFT HAND TURN, WOULDN'T HE?

A THAT'S CORRECT.

Q AND I BELIEVE YOU'RE IN AGREEMENT THAT SINCE YOU'VE HEARD ALL THE TESTIMONY THAT'S BEEN PRESENTED THAT OFFICER DANIELS TESTIFIED THAT HE WAS AT A DEAD STOP IN THE CENTER OF THE INTERSECTION. ISN'T THAT TRUE?

A THAT'S CORRECT.

Q SO HE HAD NO FORWARD MOMENTUM WHATSOEVER.

A NONE.

Q ALL RIGHT. NOW WOULD IT NOT APPEAR THEN THAT THERE IS MORE AREA IF THE CAR WERE TO SWERVE AND MISS OFFICER DANIELS ON THE LEFT THAN ON THE RIGHT?

A IF HE WOULD HAVE SWERVED, YES, SIR.

Q OKAY. NOW WOULD YOU AGREE WITH ME THAT ACCIDENT RECONSTRUCTION AND DETERMINING RESTING PLACES OF VEHICLES IS PRIMARILY A FUNCTION OF THE DISSIPATION OF FORCE AGAINST MASS. ISN'T IT?

A THAT'S CORRECT.

Q OKAY. NOW FROM THE DIAGRAM AND FROM THE TESTIMONY THAT WE'VE HEARD, WE KNOW THAT THERE WAS FORCE EXERTED ON OFFICER DANIEL'S CAR AND ALSO ON THE SPEEDING VEHICLE. IS THAT CORRECT?

A THAT'S CORRECT.

Q OKAY. NOW FROM THE LOOK OF YOUR DIAGRAM WHICH WE ACCEPT AS BEING TRUE AND ACCURATE, OFFICER DANIEL'S VEHICLE ROTATED TO THE RIGHT, THAT BEING CLOCKWISE. CORRECT?

A THAT'S CORRECT.

Q AND THE SPEEDING VEHICLE LAUNCHED TO THE LEFT OF THAT. ISN'T THAT TRUE?

A THAT'S CORRECT.

Q OKAY. SO THE DISSIPATION AND THAT FORCE OCCURRED IN 2 DIFFERENT WAYS. ONE WAS THE ROTATION OF OFFICER DANIEL'S CAR. CORRECT?

A CORRECT.

Q AND THE OTHER WAS THE FINAL CRUNCH AND RESTING OF THAT SPEEDING VEHICLE AS IT LAUNCHED INTO THE BUILDING TO THE LEFT. IS THAT TRUE?

A THAT'S TRUE.

Q ALL RIGHT. NOW IF THIS WERE A PERFECTLY STRAIGHT HEAD ON COLLISION WHERE VEHICLE ONE WAS COLLIDING DIRECTLY IN A STRAIGHT MANNER WITH VEHICLE TWO, WHAT WOULD BE THE NORMAL EFFECT OF THE DISSIPATION OF THAT ENERGY?

A I'M TRYIN' TO UNDERSTAND WHAT YOUR SAYIN'.

Q WHAT I'M TRYING TO SAY IS ISN'T IT TRUE THAT IF THIS WERE A STRAIGHT ON COLLISION THAT VEHICLE #2 WOULD HAVE ROTATED BUT IT WOULD'VE ROTATED ABOUT IT AXIS INSTEAD OF WITH FORWARD MOMENTUM TO THE LEFT.

MR. YOUNG: YOUR HONOR, I'M NOT SURE I UNDERSTAND THE QUESTION. I'M TRYIN' TO UNDERSTAND IT. I DON'T UNDERSTAND IT. IF HE COULD REPHRASE IT. PERHAPS HE -- I JUST THINK HE DON'T UNDERSTAND THE QUESTION. THEREFORE IF I

CAN'T UNDERSTAND IT—

MR. FALGIONE: YOUR HONOR, I'D ASK THAT THE WITNESS – IT'S NOT IMPORTANT IF MR. YOUNG UNDERSTANDS IT. IF THE WITNESS UNDERSTANDS IT, THAT – THAT'S ANOTHER ISSUE. I'LL BE HAPPY TO TRY AND REPHRASE IT, YOUR HONOR.

THE COURT: OBJECTION IS OVERRULED.

Q INVESTIGATOR, ISN'T IT TRUE THAT IF VEHICLE ONE HAD IMPACTED VEHICLE TWO IN THE CENTER OF ITS MASS STRAIGHT ON, THAT VEHICLE TWO WOULD HAVE ROTATED ON ITS AXIS?

A I BELIEVE IF YOU – WHAT YOUR – I'M UNDERSTANDING, IF VEHICLE ONE HAD GONE STRAIGHT INTO THE VEHICLE FROM THE WAY YOU SHOWED IT, VEHICLE ONE WOULD HAVE IMPACTED MR. DANIEL IN THE DRIVER SIDE DOOR, AND IT WOULD NOT HAVE MADE A ROTATION.

Q OKAY. LET'S CARRY THAT THOUGHT FORWARD. NOW IF VEHICLE ONE IMPACTS VEHICLE TWO AS DEPICTED, WITH A CURVED MOTION, OKAY? SAY THAT VEHICLE ONE IS CURVING TO THE LEFT WHEN IT IMPACTS VEHICLE ONE, AT THE POINT OF IMPACT, ISN'T IT TRUE THAT VEHICLE ONE WOULD TRAVEL ON THIS LINE AS YOU HAVE SHOWN INTO THAT BUILDING AND VEHICLE TWO WOULD'VE BEEN CARRIED WITH THE FORWARD MOMENTUM AROUND BEFORE IT TURNED?

A AT THE IMPACT THAT IS DEPICTED THERE, VEHICLE ONE MAKING THE IMPACT UP CLOSER TO THE FRONT OF THE VEHICLE MADE VEHICLE ONE DEFLECT WHICH BECAUSE OF THE POSITION OF VEHICLE 2 IT GAVE IT THAT ROTATION OF THE 180.

Q I THINK WE'RE SAYING SIMILAR THINGS. OKAY? MY QUESTION TO YOU IS ISN'T IT TRUE THAT IF VEHICLE ONE HAD MADE A LEFT – A SLIGHT LEFT TURN IN AN EFFORT TO AVOID THE IMPACT OF VEHICLE ONE, THEN THIS FORWARD MOTION OF THAT TURN WOULD'VE CARRIED VEHICLE TWO AROUND THE SAME ARCH THAT YOU'VE DEPICTED

ON YOUR DRAWING, AND VEHICLE ONE WOULD'VE COME TO REST IN THAT BUILDING. ISN'T THAT TRUE?

A I THINK WE'RE SAYIN' THE SAME THING.

Q ALL RIGHT. THANK YOU. NOW, INVESTIGATOR, I WANT TO SHOW YOU STATE'S EXHIBIT 7 WHICH IS A PHOTOGRAPH OF OFFICER DANIEL'S CAR. ISN'T IT?

A YES, SIR, IT IS.

Q OKAY. NOW FROM THE LOOKS OF THAT IMPACT ABOVE THE WHEEL WELL, DOESN'T THAT INDICATE TO YOU FROM THE CRUNCH FACTOR GOING UP AT THIS POINT IN THE HOOD, FROM THIS POINT, THIS POINT UP IN THE HOOD, THAT FORWARD MOTION, DOESN'T THAT INDICATE TO YOU THAT THAT CAR WAS STRUCK FROM THIS KIND OF AN ANGLE?

A IT – IT INDICATES TO ME THAT THERE WAS THE WILES VEHICLE STRUCK MR. DANIEL'S VEHICLES THERE ABOVE THE DRIVER'S SIDE TIRE.

Q OKAY. AND DOESN'T THE FACT THAT THE FORCE WAS DISSIPATED TO THE FRONT RESULTING IN THAT SHEET METAL BEING PUSHED UP AT THAT POINT, DOESN'T THAT SHOW YOU THAT THE SPEEDING VEHICLE WAS ACTUALLY TURNING TO THE LEFT AT THE POINT OF IMPACT OR IT WAS A LESS ANGLED DEFLECTION?

A A LESS ANGLED DEFLECTION.

Q OKAY. THANK YOU. NOW I'D LIKE TO SHOW YOU THIS PHOTOGRAPH WHICH IS STATE'S EXHIBIT #15. NOW DOES THAT PHOTOGRAPH INDICATE TO YOU THAT THIS CAR, THE SPEEDING VEHICLE THAT CAME TO REST IN THE BUILDING THAT, IN FACT, IN THAT PHOTOGRAPH THE RIGHT FRONT TIRE IS TURNED TO THE LEFT?

A IT DOES DEPICT THAT IN THE PICTURE.

Q OKAY. NOW, INVESTIGATOR DENNIS, AS PART OF YOUR INSPECTION OF OFFICER DANIEL'S VEHICLE, YOU ACTUALLY, PHYSICALLY INSPECTED IT. DIDN'T YOU?

A YES, SIR, I DID.

Q AND YOU DID IT AT THE TIME OR SHORTLY AFTER THIS COLLISION. CORRECT?

A YES, SIR, I DID.

Q AND WHAT WAS YOUR OBSERVATIONS ABOUT THE AIR BAGS?

A BOTH THE AIR BAGS WERE DEPLOYED IN THE VEHICLE ON THE DRIVER'S SIDE AS WELL AS ON THE PASSENGER'S SIDE.

Q AND WHAT WERE YOUR OBSERVATIONS ABOUT THE BLUE LIGHT SWITCH?

A THE BLUE – THE BLUE LIGHTS – OR THE SWITCH THAT ACTIVATES THE BLUE LIGHTS WAS IN THE OFF POSITION.

Q SO FROM THAT DO YOU HAVE ANY CONCLUSIONS THAT YOU'RE ABLE TO GIVE US ABOUT WHETHER OR NOT THE BLUE LIGHTS WERE TURNED ON?

A NOT HAVING ANY WITNESS TESTIMONY AS FAR AS THE BLUE LIGHTS AT THAT POINT IN TIME OTHER THAN WHAT MR. DANIEL TESTIFIED TO, I HAVE NO IDEA OF KNOWING WHETHER THEY WERE ON AT THAT TIME OR WHETHER THEY WERE OFF AT THAT TIME.

Q WELL, THE PHYSICAL INDICATIONS FROM YOUR OWN OBSERVATION INDICATE TO YOU THE LIGHTS WERE TURNED OFF. DON'T THEY?

A AT THE TIME THE VEHICLE REST AT ITS POSITION IN THE MIDDLE OF THE STREET.

Q OKAY. ARE YOU AWARE OF ANYBODY ELSE DOING ANYTHING WITH THAT VEHICLE BEFORE YOU MADE YOUR INSPECTION?

A NO, SIR, I AM NOT.

Q THANK YOU. I HAVE NO FURTHER QUESTIONS, INVESTIGATOR DENNIS.

THE COURT: REDIRECT?

MR. YOUNG: BRIEFLY, YOUR HONOR.

<u>REDIRECT EXAMINATION</u>

BY MR. YOUNG

Q YOU WERE ASKED SEVERAL QUESTIONS REGARDING THE RELATIONSHIP OF VEHICLE ONE AND TWO, AND I BELIEVE AN EFFORT TO TURN EITHER AT THE POINT OF IMPACT OR JUST PRIOR TO THE POINT OF IMPACT. DID YOU INSPECT THE AREA BEHIND VEHICLE ONE GIVEN THE DIRECTION OF TRAVEL FROM MCCORMICK TOWARD THE INTERSECTION, DID YOU EXAMINE THE AREA BEHIND VEHICLE ONE FOR EVIDENCE TO ANY SWERVING MARKS ON THE ROAD THAT MIGHT'VE BEEN LEFT OR ANY BRAKING MARKS THAT MIGHT'VE BEEN LEFT?

A YES, SIR, WE DID.

Q DID YOU SEE ANY SUCH MARKS ON THE ROAD?

A THERE WERE NO MARKS FROM BEHIND THE DIRECTION OF WHERE THE VEHICLE ONE WAS COMING FROM.

Q AND THAT'S UP TO THE POINT OF IMPACT?

A THAT'S CORRECT.

Q DID YOU ALSO -- YOU WERE ACTUALLY SHOWN A COUPLE OF PICTURES. LET ME REFER TO THOSE AND CLEAR MY QUESTION. I BELIEVE TWO PICTURES MAY ASSIST. STATE'S EXHIBIT 9 WHICH IS THE PATROL VEHICLE AND STATE'S EXHIBIT 7 THE PATROL VEHICLE, BOTH OF THESE DEPICT THE FRONT END DAMAGE TO THE VEHICLE. IS THAT CORRECT?

A YES, SIR, THEY DO.

Q ALL RIGHT. WITH REGARD TO THE DAMAGE THAT'S VISIBLE ON THE FRONT END OF THE VEHICLE, YOU DESCRIBED IT AS BEING ABOVE THE DRIVER'S SIDE WHEEL AND IN THE WHEEL AREA?

A THAT'S CORRECT.

Q ALL RIGHT. DID YOU EXAMINE THE NATURE OF THE WHEEL ITSLEF? WAS IT

BENT INWARD OR OUTWARD? WHAT DIRECTION DID IT GO?

A THE VEHICLE, THE DRIVER'S SIDE TIRE WAS BENT INWARDS.

Q OKAY. NOW WITH REGARD TO THAT OBSERVATION AND THE OTHER DAMAGE THAT YOU SAW AT THE SCENE THAT'S EVIDENT IN THOSE PICTURES, CAN YOU -- AND LET ME ASK A PREPATORY QUESTION. WHAT NORMALLY HAPPENS WHEN A VEHICLE IS AT A HIGH RATE OF SPEED OR AT A SIGNIFICANT RATE OF SPEED AND THE BRAKES ARE APPLIED? WHAT HAPPENS TO THE FRONT END OF THE VEHICLE AT THE POINT THE BRAKES ARE APPLIED?

MR. FALGIONE: OBJECTION, YOUR HONOR. THIS ISN'T APPROPRIATE RECROSS. THEY WENT OVER THIS ON DIRECT. THE BRAKING FACTOR IS NOT AN ISSUE.

THE COURT: YOU WANT TO BE HEARD?

MR. YOUNG: YES, YOUR HONOR. I BELIEVE THE QUESTIONS WERE ASKED REGARDING ANY SWERVING MOTIONS AND THE POINT OF IMPACT AND THAT QUESTION THAT I AM GOING AT IS FROM AS TO WHERE IT WAS STRUCK AND HOW IT WAS STRUCK AS TO HOW IT MIGHT EXPLAIN THE VEERING INTO THE BUILDING. I BELIEVE THAT WAS ALSO TESTIFIED TO ON CROSS-EXAMINATION.

THE COURT: AND THE OBJECTION IS THAT IT'S NOT IN RESPONSE TO ANYTHING THAT WAS BROUGHT IN ON CROSS.

MR. FALGIONE: THAT'S CORRECT, YOUR HONOR.

THE COURT: IF THAT'S THE OBJECTION, IT'S OVERRULED.

Q WITH REGARD -- LET ME GO BACK TO THE POINT. FIRST OFF, WHAT HAPPENS TO A VEHICLE TRAVELING AT A SIGNIFICANT RATE OF SPEED, BRAKES ARE APPLIED? WHAT HAPPENS TO THE FRONT END OF THE VEHICLE THAT APPLIES THE BRAKES?

A WHEN YOU APPLY BRAKES ON A VEHICLE LIKE THE VEHICLE WE'VE GOT HERE THEY CONTINUE TO KEEP MOVIN'. IF IT IS A REAR WHEEL DRIVE FOR THE BRAKES.

Q IS THERE ANY CHANGE IN THE FRONT OF THE BRANK -- THE ANGLE OR THE RELATIONSHIP OF THE BUMPER TO THE GROUND UPON APPLYING BRAKES?

A OH, YES, SIR. ONCE A VEHICLE STARTS TO PUT ON ITS BRAKES, THE VEHICLE WILL BEGIN TO DO A NOSE DIVE.

Q OKAY.

A SO TO SPEAK.

Q OKAY. YOUR OBSERVATION AT THIS POINT OF IMPACT AT THE VEHICLE, DID YOU BELIEVE OR DO YOU BELIEVE BASED UPON YOUR OBSERVATION THAT THE FRONT END OF WHICH WOULD BE THE RIGHT SIDE OF MR. WILES' VEHICLE, RIGHT FRONT FENDER AREA, THAT AREA, IMPACTED THE FRONT OF—

A ANYWHERE FROM THE MID TO THE RIGHT FRONT.

Q OKAY. DID YOU SEE ANY EVIDENCE THAT WOULD INDICATE THERE AS TO THE POINT OF IMPACT ON -- ON THE VEHICLE DRIVEN BY DEPUTY DANIELS THAT THERE WAS ANY SIGNIFICANT BRAKING AT ALL BASED UPON THE IMPACT POINT?

A IN LOOKING AT THE PICTURES AS WELL AS THE VEHICLE AT THE SCENE, THE IMPACT WAS JUST HIGH OF THE WHEEL INDICATING NO BRAKING.

Q WOULD YOU HAVE ANSWER ANY QUESTIONS HE MAY HAVE ON RECROSS.

THE COURT: ANYTHING FURTHER?

RECROSS EXAMINATION

BY MR. FALGIONE

Q INVESTIGATOR DENNIS, BRAKING OR NO BRAKING, THE PHYSICS OF WHAT YOU AND I TALKED ABOUT IN YOUR EXAMINATION ARE -- ARE PART OF THIS CASE, AREN'T THEY?

A YES, SIR, THEY ARE.

Q OKAY. SPEED MASS, VELOCITY, CRASH FAC -- OR CRUNCH VALUE. RIGHT?

A CORRECT.

Q THANK YOU.

THE COURT: ANYTHING FURTHER OF THE WITNESS?

MR. YOUNG: NO THANK YOU, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

A THANK YOU, YOUR HONOR.

THE COURT: CALL YOUR NEXT WITNESS.

MR. YOUNG: STATE CALLS WILLIAM SCHAEKEL.

WILLIAM SCHAEKEL, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. YOUNG

Q THANK YOU, SIR. WOULD YOU GIVE US YOUR FULL NAME AND SPELL THE LAST.

A YES. IT'S WILLIAM EDWARD SCHAEKEL. S-CH-A-E-K-E-L.

Q THANK YOU, SIR. WHERE DO YOU WORK AND HOW LONG HAVE YOU WORKED THERE?

A I'M EMPLOYED AS AN AGENT WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION FOR 30 YEARS.

Q AND WHAT IS YOUR JOB?

A VIOLENT FELONY FUGITIVE APPREHENSION AND SWAT.

Q ALL RIGHT, SIR. I WANT TO DIRECT YOUR ATTENTION TO THE DECEMBER 26TH 2003 TIME FRAME. WERE YOU NOTIFIED TO COME TO SALUDA IN RESPONSE IN AN ATTEMPT TO LOCATE A FUGITIVE?

A YES, SIR, I WAS.

Q WHEN WERE YOU CALLED?

A I DON'T REMEMBER EXACTLY. IT WAS IN THE AFTERNOON. I WAS ASKED TO COME. I BELIEVE IT WAS GIVEN INITIALLY AS A BARRICADED SUSPECT CALL.

Q I UNDERSTAND. AND WHEN YOU ARRIVED HERE, WHERE DID YOU GO?

A CAME INTO SALUDA AND WAS DIRECTED TO ACTUALLY COME AROUND THE COURTHOUSE AND PARKED OUT ON THE STREET ON THIS SIDE.

Q ALL RIGHT. DID YOU MAKE AN EFFORT TO RETRIEVE A PERSON FROM INSIDE A BUILDING DURING THAT TIME FRAME?

A YES, SIR. AFTER WE'D BEEN HERE FOR A WHILE WE WERE TOLD THAT THERE WAS A SUSPECT WHO WAS AN ESCAPEE FROM JAIL. HAD CRASHED THE CAR INTO THE BUILDING ACROSS THE STREET, AND WE FORMED, I BELIEVE, IT WAS ABOUT A 12 -MAN ENTRY TEAM TO DO ENTRY AND TO TRY TO LOCATE AND APPREHEND THE SUSPECT.

Q DID YOU TRY TO TALK HIM OUT?

A YES, SIR. WE TALKED TO HIM. WE DID THE ENTRY AND DID NOT FIND ANYBODY INITIALLY. CLEARED THE UPSTAIRS OF THE BUILDING, AND FOUND A TABLE THAT HAD SOME SMALL WHITE FLAKES THAT LOOKED LIKE SOMEBODY HAD PUSHED A CEILING TILE UP, AND WE BROUGHT A VIPER DEVICE WHICH IS A TELESCOPING ARM INFRARED CAMERA THAT WE COULD ACTUALLY USE TO PUT UP THROUGH THE CEILING TO LOOK FOR THE SUSPECT.

Q WHERE DID YOU FIND HIM, IF EVER?

A WE FOUND HIM IN THE CEILING UP ABOVE THE CEILING TILES BELOW THE ROOF ON THE -- I CAN'T REMEMBER THE NAME OF THE STREET BUT IT WOULD BE THIS SIDE OF THE BUILDING DOWN IN A KIND OF A CORNER UP WHERE THE ROOF WAS.

Q OKAY. AND HOW LONG AFTER YOU FOUND HIM IN THAT LOCATION DID HE COME OUT?

A ONCE WE FOUND HIM AND WE STARTED TALKING TO HIM DIRECTLY AND HE

KNEW WE WERE LOOKING AT HIM, HE WENT AHEAD AND WE ASKED HIM TO SHOW US HIS HANDS, AND HE SHOWED US HIS HANDS, AND AT THAT TIME HE CAME ON OUT. WE TRIED TALKING TO HIM THE WHOLE TIME WE WERE SEARCHING THE CEILING. IT WAS ACTUALLY ABOUT THE LAST AREA OF THE CEILING THAT WE LOOKED, AND HE WAS NON-RESPONSIVE AT THAT TIME UNTIL WE ACTUALLY KNEW WE HAD HIM IN SIGHT.

Q OKAY. AND WAS HE ARMED?

A NO, SIR, HE WAS NOT.

Q OKAY. IS THE PERSON THAT YOU APPREHENDED PRESENT IN THE COURTROOM?

A YES, SIR, IT IS.

Q OKAY. WHO IS IT?

A DEFENDANT SHAWN WILES.

Q THANK YOU. HE WAS TRANSPORTED AFTER HE WAS BROUGHT INTO CUSTODY WHERE?

A I BELIEVE HE WAS TAKEN TO BROAD RIVER CORRECTIONAL IN COLUMBIA.

Q THANK YOU VERY MUCH. WOULD YOU ANSWER ANY QUESTIONS MR. FALGIONE HE HAS.

THE COURT: CROSS.

<u>CROSS-EXAMINATION</u>

<u>BY MR FALGIONE</u>

Q AGENT SCHAEKEL, YOU FOUND HIM COWERED IN THE CEILING?

A EXCUSE ME?

Q YOU FOUND MR. WILES COWERED IN THE CEILING?

A WELL, COWERING I DIDN'T – HE WAS HIDING.

Q HIDING?

A (NODDED YES.)

Q OKAY. AND HE WASN'T ARMED, WAS HE?

A NO, SIR.

Q THANK YOU.

THE COURT: REDIRECT?

MR. YOUNG: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN. CALL YOUR NEXT WITNESS.

MR. YOUNG: INVESTIGATOR GREG ANTLEY, PLEASE.

GREG ANTLEY, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. YOUNG

Q WOULD YOU GIVE US YOUR FULL AND COMPLETE NAME AND SPELL THE LAST.

A MY NAME IS GREG ANTLEY. LAST NAME IS SPELLED A-N-T-L-E-Y.

Q THANK YOU, SIR. WHERE DO YOU WORK AND HOW LONG?

A I'M AN INVESTIGATOR WITH THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. I HAVE BEEN EMPLOYED WITH THEM FOR 3 YEARS.

Q ALL RIGHT, SIR. DID YOU HAVE AN OCCASION ON DECEMBER 30TH OF 2003 TO CONDUCT AN INTERVIEW OF AN INMATE BY THE NAME OF SHAWN WILES?

A YES, SIR, I DID.

Q AND DID YOU TALK TO HIM AT KIRKLAND?

A YES.

Q ALL RIGHT. WHO WAS PRESENT OTHER THAN YOURSELF?

A MYSELF AND INMATE SHAWN WILES.

Q OKAY. WAS HE THEN IN CUSTODY?

A YES, SIR, HE WAS.

Q HOW -- WHEN YOU SAY IN CUSTODY, WAS IT IN THE FORM OF RESTRAINTS?

A YES, SIR, HE WAS. HE WAS BROUGHT FROM HIS CELL TO THE CONFERENCE ROOM WHERE I INTERVIEWED HIM. HE WAS IN FULL RESTRAINTS. ANKLE RESTRAINTS, HANDCUFFS AND A BELLY CHAIN.

Q ALL RIGHT. WHAT WAS THE PURPOSE OF YOUR INTERVIEW?

A THE PURPOSE OF MY INTERVIEW WAS I WAS TASKED BY THE AGENCY—

Q LET ME STOP YOU.

MR. YOUNG: I WITHDRAW THAT QUESTION, YOUR HONOR, IN DEFERENCE.

Q LET ME DIRECT YOUR ATTENTION TO SOMETHING SPECIFICALLY. DID YOU INTERVIEW HIM REGARDING THE EVENTS LEADING UP TO THE COLLISION HERE IN SALUDA COUNTY?

A YES, SIR, I DID.

Q ALL RIGHT. AND IN THAT REGARD IF YOU WOULD DIRECT YOUR ATTENTION TO THE PERIOD OF TIME DEALING WITH HIS LEAVING THE STATE AND OBTAINING A CAR, DID YOU TALK TO HIM ABOUT THAT?

A IT WAS BROUGHT UP IN THE INTERVIEW.

Q ALL RIGHT, SIR. IF WE COULD DIRECT YOUR ATTENTION AND LIMIT IT TO THAT TIME FRAME, I'D LIKE TO DO IT FROM THERE. AND THE CONTEXT OF THIS INTERVIEW IS HIS ESCAPE. CORRECT?

A THAT'S CORRECT.

Q ALL RIGHT. AND SOMETIME DURING THE ESCAPE HE OBTAINED A CAR. IS THAT CORRECT?

A CORRECT.

Q ALL RIGHT. A CAR FROM GEORGIA. WOULD YOU PICK IT UP FROM THAT

STANDPOINT AND JUST TELL THE COURT WHAT HE SAID.

A OKAY. MAY I LOOK AT MY NOTES?

Q CERTAINLY. IF YOU NEED TO REFER TO THAT, GO AHEAD.

THE COURT: HOLD ON A SECOND. YOU ASKIN' HIM WHAT THE DEFENDANT SAID?

MR. YOUNG: YES, SIR.

THE COURT: YOU HAVEN'T LAID A FOUNDATION YET.

MR. YOUNG: ALL RIGHT, SIR. LET ME LAY THE FOUNDATION.

Q DURING THE COURSE OF YOUR INTERVIEW OF HIM, WHAT WAS HIS CONDITION LIKE?

A PHYSICAL CONDITION?

Q YES.

A HE APPEARED TO BE PHYSICALLY AND EMOTIONALLY COHERENT. HE APPEARED TO BE, I GUESS YOU'D CALL IT SCRAPED UP, SCARRED UP FROM THE EVENTS THAT OCCURRED DURING HIS ESCAPE AND AFTER HE ESCAPED UNTIL HE WAS RECAPTURED. HE APPEARED OF SOUND MIND AND SOUND BODY AS FAR AS I COULD OBSERVE. ONCE HE CAME IN, I OBSERVED HOW HE WALKED IN. HE WAS RESTRAINED, BUT I ASKED HIM ONCE I ADVISED HIM OF WHO I WAS I WOULD LIKE TO SPEAK WITH HIM CONCERNING THE EVENTS THAT OCCURRED ON THE DAY PREVIOUS. HE DIDN'T OBJECT. I READ HIM HIS MIRANDA RIGHTS. HE WAS FREE TO GET UP AND LEAVE ANY TIME HE WANTED TO.

Q ALL RIGHT. LET'S GO TO MIRANDA RIGHTS NOW. YOU SAY YOU GAVE HIM MIRANDA RIGHTS. HOW DO YOU DO THAT?

A I DID IT VERBALLY AND ON PAPER.

Q DO YOU USE SOMETHING TO DO THAT WITH? SOME SPECIFIC FORM.

A I HAVE A FORM.

Q DID YOU READ FROM THE FORM?

A YES, SIR, I DID. I READ EACH LINE INDIVIDUALLY.

Q ALL RIGHT. NOW LET ME ASK YOU IF YOU COULD, I'LL HAND YOU UP WHAT'S BEEN MARKED AS STATE'S EXHIBIT 1 FOR IDENTIFICATION AND ASK YOU IF YOU CAN IDENTIFY THAT FOR ME. WHAT IS THAT FORM?

A THIS IS MIRANDA RIGHTS FORM FROM THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS OFFICE OF INSPECTOR GENERAL. IT WAS SIGNED BY SHAWN WILES ON DECEMBER 30TH 2003 AND ALSO SIGNED BY MYSELF GREG H. ANTLEY AS A WITNESS ON DECEMBER 30TH 2003.

Q OKAY. WHEN HE WAS BROUGHT INTO YOU, DID YOU ASK HIM ANY QUESTIONS BEFORE YOU READ THAT?

A NO, SIR, I DID NOT.

Q OKAY. NOW HOW DID YOU DO -- DID YOU ACTUALLY READ THE FORM TO HIM?

A I READ THE FORM STARTING AT THE TOP.

Q WOULD YOU READ THE FORM AS YOU READ IT TO HIM.

A YES, SIR. THE VERY FIRST LINE STATES THAT BEFORE I ASK YOU ANY QUESTIONS YOU MUST UNDERSTAND YOUR RIGHTS. THE FIRST LINE IS YOU HAVE THE RIGHT TO REMAIN SILENT. IF MR. WILES WHAT YOU DID PUTS HIS INITIALS ON THAT LINE, THEN I PROCEED TO THE SECOND LINE.

Q DID YOU SAY -- DID YOU ASK HIM IF YOU UNDERSTAND THAT, PUT YOUR INTIALS THERE?

A YES, SIR, I DID.

Q OKAY. GO AHEAD.

A SECOND LINE, ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW. HIS SIGNATURE IS BESIDE THAT LINE. AND I PROCEEDED TO THE THIRD LINE.

MR. FALGIONE: YOUR HONOR?

THE COURT: YES, SIR.

MR. FALGIONE: I HAVE AN ISSUE I NEED TO TAKE UP WITH THE COURT.

THE COURT: LADIES AND GENTLEMEN, PLEASE, STEP IN THE JURY ROOM. DON'T DISCUSS THE CASE. (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.)

MR. FALGIONE: YOUR HONOR, I WISH TO RENEW MY OBJECTION. APPARENTLY WHERE WE'RE HEADED WITH THIS WE'RE GONNA TRY AND ADMIT. THE INVESTIGATOR'S SUMMARY HAS AN ADMISSION BY MY CLIENT AND A STATEMENT BY MY CLIENT. I OBJECT TO THE ADMISSION OF THAT AS WE DISCOVERED IN OUR PRELIMINARY HEARING, IT'S INCOMPLETE. IT DOES NOT HAVE ANY – ANY BACKGROUND WITH IT OTHER THAN – WE DON'T HAVE WRITTEN NOTES; WE DON'T HAVE A TAPE RECORDING, AND BY INVESTIGATOR ANTLEY'S OWN ADMISSION THERE MAY HAVE BEEN AND PROBABLY WERE OTHER THINGS SAID IN THIS INTERVIEW THAT MAY HAVE BEEN EXCULPATORY FOR MY CLIENT THAT ARE NOT CONTAINED THEREIN AND I HAVE NO WAY TO DO THAT, NO WAY TO GET TO THAT. ON THAT BASIS I RENEW MY OBJECTION AS TO INVESTIGATOR ANTLEY'S TRYING TO ENTER THIS SUMMARY AS MY CLIENT'S STATEMENT REGARDLESS OF MIRANDA RIGHTS OR NOT.

THE COURT: ALL RIGHT. WITH REGARD TO THE OBJECTION THAT WAS PREVIOUSLY RAISED, THE OBJECTION IS OVERRULED. WITH REGARD TO THE ISSUE THAT YOU'RE RAISING NOW ABOUT A BRADY CLAIM, THERE'S REALLY NOTHIN' IN THE RECORD FOR ME TO MAKE A DETERMINATION ON THAT OTHER THAN THE FACT THAT HE DID SAY THERE MAY HAVE BEEN OTHER STATEMENTS THAT WERE GIVEN THAT WOULD BE HELPFUL TO MR. WILES. I CAN'T RULE IN THE ABSTRACT. I DON'T KNOW HOW TO RULE ON THOSE. SO THE OBJECTION ON BRADY GROUNDS UNLESS IT'S MADE MORE SPECIFIC OR I HAVE MORE SPECIFIC INFORMATION IS ALSO OVERRULED.

MR. FALGIONE: WELL, YOUR HONOR, THERE -- NOT TO BELABOR THE ARGUMENT, BUT THEREIN LIES THE CRUX. WE HAD NOT WAY OF POSSESSING ANY OF THAT. WE'VE DONE ALL WE CAN DO. WE ISSUED A SUBPOENA FOR ANY AUDIO TAPES. OBVIOUSLY THIS IS A DICTATED STATEMENT. IT SAYS IT WAS TRANSCRIBED JANUARY 9TH 2004. WE'VE ISSUED A SUBPOENA FOR THE TRAN -- FOR THOSE AUDIO TAPES AND BEEN TOLD THEY'RE NOT IN EXISTENCE. SO, YOU KNOW, AS MUCH AS THAT PRESENTS A PROBLEM FOR THE COURT, IT ALSO BELEAGURES MY CLIENT.

THE COURT: I UNDERSTAND. OBJECTION IS OVERRULED. BRING THE JURY. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.)

Q INVESTIGATOR ANTLEY, I BELIEVE YOU WERE TESTIFYING ABOUT THE FIRST LINE. YOU COMPLETED THAT. AND HE PLACED HIS INITIALS ON THE SECOND LINE. IS THAT CORRECT?

A THAT'S CORRECT.

Q ON THE FIRST LINE. I'M SORRY. AND NOW YOU WERE TALKING ABOUT A SECOND LINE. AND WOULD YOU PICK IT UP FROM THAT POINT AS TO WHAT RIGHT YOU WERE ADVISING HIM OF.

A OKAY. THE SECOND LINE ON THE RIGHTS FORM STATES THAT ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW. MR. WILES PLACED HIS INITIALS S.W. NEXT TO THAT LINE, AND THEN I PROCEEDED TO THE THIRD LINE. THE THIRD LINE READS YOU HAVE THE RIGHT TO TALK WITH AN ATTORNEY FOR ADVICE BEFORE I ASK YOU ANY QUESTIONS AND TO HAVE AN ATTORNEY PRESENT DURING QUESTIONING. HE THEN PLACED HIS INITIALS ON THE LEFT OF THAT LINE. PROCEEDED TO THE NEXT LINE. IF YOU HAVE NO MONEY FOR AN ATTORNEY'S FEES, THE COURT WILL APPOINT ONE TO REPRESENT YOU WITHOUT COST IF YOU WISH. HIS INITIALS ARE NEXT TO THAT LINE. S.W. I PROCEEDED TO THE NEXT LINE. IF YOU DECIDE TO ANSWER

QUESTIONS NOW WITHOUT A LAWYER PRESENT YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP AN – TO STOP ANSWERING QUESTIONS AT ANY TIME UNTIL YOU TALK TO AN ATTORNEY. THE INITIALS S.W. ARE OUT TO THE LEFT OF THAT LINE. AND I PROCEEDED TO THE LAST LINE ON THE RIGHT PORTION OF THE STATEMENT. YOU HAVE READ THIS STATEMENT – I – EXCUSE ME – I HAVE READ THIS STATEMENT OF MY RIGHTS OR HAVE HAD IT READ TO ME AND I UNDERSTAND WHAT MY RIGHTS ARE. AND THE INITIALS S.W. ARE TO THE LEFT OF THAT LINE.

Q OKAY. AND AFTER HE COMPLETED THAT PORTION OF THE ADVISEMENT, DID HE INDICATE WHETHER HE WANTED TO TALK WITH YOU OR NOT?

A WELL, THE FIRST THING I DID BEFORE THAT WAS REQUEST THAT HE SIGN THE SIGNATURE LINE UNDER THAT PORTION OF THE STATEMENT. BY SIGNING HIS SIGNATURE AND DATING IT, THAT MEANT THAT HE DID UNDERSTOOD WHAT HIS RIGHTS WERE AT THAT TIME.

Q ALL RIGHT. AND AFTER HE SIGNED IT, DID YOU TALK TO HIM ABOUT HIS DESIRES AS TO WAIVING HIS RIGHTS AND TALKING WITH YOU?

A I DID. I EXPLAINED THE SECOND PORTION OF THE STATEMENT OF THE RIGHTS FORM WHICH IS A WAIVER OF RIGHTS SECTION.

Q ALL RIGHT. WHAT DOES THAT SAY?

A IT STATES I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT AN ATTORNEY AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME. THOSE THREE SENTENCES ARE READ TO HIM. HIS INITIALS S.W. TO THE LEFT OF THAT STATEMENT.

Q OKAY. AND YOU OBSERVED HIM SIGN IT AND INITIAL THAT?

A YES, SIR. I DID.

Q AND AT WHAT TIME DID HE -- YOU COMPLETE THE RIGHTS ADVISEMENT?

A HE COMPLETED AND SIGNED THE STATEMENT, THE SECOND LINE ON THE STATEMENT AT APPROXIMATELY 2:08 P.M. ONCE I WITNESSED HIS SIGNATURE, I THEN SIGN -- SIGNED IT ABOUT BEIN' A WITNESS AND I LOOKED AT MY WATCH AND IT WAS APPROXIMATELY 2:08 P.M. ON DECEMBER 30TH.

Q ALL RIGHT. AND THAT'S -- THAT'S AT THE COMPLETION OF ALL THE RIGHTS AND HIS WAIVER.

A YES, SIR.

Q CORRECT? 2:08. ALL RIGHT.

MR. YOUNG: THE STATE WOULD MOVE INTO EVIDENCE PROSECUTION I THINK IT'S EXHIBIT 1.

THE COURT: SUBJECT TO PREVIOUS OBJECTION?

MR. FALGIONE: YES, YOUR HONOR.

THE COURT: MARK IT INTO EVIDENCE, PLEASE. (STATE'S EXHIBIT #1 RECEIVED IN EVIDENCE.)

Q WITH REGARD TO THIS INTERVIEW PERIOD OF TIME, HOW LONG DID IT TAKE ROUGHLY? YOU KNOW?

A IF I RECALL IT WAS A RATHER LENGTHY INTERVIEW. I WOULD SAY IN THE NEIGHBORHOOD OF AN HOUR AND A HALF. SOMEWHERE IN THAT RANGE. I CAN RECALL IT -- WE SAT AND TALKED FOR A GOOD WHILE.

Q NOW IS THIS A -- IS THIS A TALK OR THIS YOU POINTIN' YOUR FINGER AT HIM AND YELLIN' HIM -- YELLIN' AT HIM? IS THIS A IF YOU DON'T DO WHAT I SAY OR TALK TO ME NOW YOU'RE GONNA GET IN TROUBLE? IS THAT -- WHAT'S THIS LIKE? GIVE US THE ATMOSPHERE.

A THIS INTERVIEW AND IN MY TASK IN THIS PARTICULAR CASE WAS TO INTERVIEW THE ESCAPED INMATES ONCE THEY'RE RECAPTURED AND ANY EMPLOYEES THAT WERE WORKING AT THAT TIME.

Q WHAT'S THE ATMOSPHERE OF YOUR CONVERSATION WITH HIM? HOW IS -- HOW IS THIS? IS THIS ANTAGONISTIC OR IS THIS CASUAL? WHAT'S IT LIKE?

A NO, SIR, IT WAS NOT ANY TYPE OF INTERROGATION OR ANYTHING OF THAT MATTER. ONCE MR. WILES WAS READ AND UNDERSTOOD HIS RIGHTS, I ASKED HIM IF HE WOULD TELL ME THE STORY BASICALLY WHAT -- WHAT HAPPENED WHILE YOU WERE ESCAPED.

Q ALL RIGHT.

A I'M INTERESTED IN KNOWING.

Q THAT'S FINE. AND SO WHEN YOU ASKED HIM WHAT HAPPENED DURING THE ESCAPE, DID HE JUST START TALKIN'?

A HE -- HE AGREED TO TALK TO ME.

Q ALL RIGHT. NOW IS THIS A SITUATION WHERE HE'S IN THERE AND HE'S BEING DENIED THE OPPORTUNITY TO GO TO THE RESTROOM?

A THERE'S NO RESTROOM IN THAT ROOM, BUT IF HE ASKED, THERE WAS AN OFFICER OUTSIDE THE ROOM THAT COULD'VE ASSISTED HIM WITH THAT.

Q DID HE ASK FOR THAT?

A NO, SIR.

Q DID HE ASK TO SMOKE A CIGARETTE OR DRINK -- GET SOMETHIN' TO DRINK OR ANYTHING LIKE THAT?

A NO, SIR.

Q DID YOU DENY HIM ANY COMFORTS LIKE THAT?

A NO, SIR.

Q DID YOU – DID YOU TELL HIM THAT IF HE DIDN'T COOPERATE—

MR. FALGIONE: OBJECTION, YOUR HONOR. LEADING.

THE COURT: I HADN'T HEARD THE QUESTION BUT IT SEEMS LIKE IT WAS GONNA BE LEADING.

MR. YOUNG: I'LL REPHRASE IT, YOUR HONOR. THANK YOU.

Q WHAT, IF ANY, THREATS OR COERCION DID YOU USE IN ORDER TO GET HIM TO TALK TO YOU?

A NONE.

Q WHAT TYPE OF PROMISE DID YOU MAKE TO HIM, IF ANY, THAT THINGS WOULD GO BETTER FOR HIM IF HE COOPERATED?

A I MADE NO PROMISES. NONE.

Q WHAT REWARD IN TERMS OF HIS TREATMENT IN THE FACILITY, IF ANY, DID YOU MAKE HIM IF HE WOULD JUST TALK TO YOU?

A NONE.

Q DURIN' THIS PERIOD OF TIME AND AT ANY TIME DURIN' THE INTERVIEW, DID HE ASK TO SPEAK WITH AN ATTORNEY?

A NO, SIR.

Q DID HE ASK TO TALK WITH ANY ATTORNEY BEFORE ANSWERIN' ANY QUESTIONS?

A NO, SIR.

Q DID HE INDICATE TO YOU HE DID NOT WANT TO ANSWER ANY QUESTIONS?

A HE DID NOT INDICATE TO ME THAT HE DID NOT WANT TO ANSWER QUESTIONS.

Q AT ANY TIME DID HE TELL YOU OR GIVE YOU THE INDICATION THAT HE WAS TIRED OF TALKIN' TO YOU PERIOD?

A NO, SIR.

Q AT ANY TIME DID YOU HAVE AN IMPRESSION THAT HE DID NOT UNDERSTAND ANY OF THE RIGHTS YOU PREVIOUSLY TALKED TO HIM ABOUT?

A I DIDN'T. AT NO TIME DID I GET THE IMPRESSION THAT HE DID NOT UNDERSTAND HIS RIGHTS.

Q AND I GOT A LITTLE AHEAD OF MYSELF WHEN I STARTED ASKIN' YOU THE QUESTION BEFORE. BUT AT THIS POINT I'M NOW GOING TO ASK YOU THE QUESTION THAT I STARTED OFF WITH. I'M GONNA GO BACK TO THAT POINT WHERE YOU STARTED TALKING TO HIM ABOUT THE ESCAPE AROUND THE DECEMBER 26 TIME. AND JUST – JUST THAT PERIOD OF TIME ONLY, OKAY? MAYBE A DAY OR SO BEFORE THAT WHEN THE CAR WAS TAKEN, DID HE TALK TO YOU ABOUT THE CAR AND HOW THE CAR THAT HE HAD WAS TAKEN?

A HE EXPLAINED TO ME THAT WHILE HE WAS IN GEORGIA THAT HE AND SOME FRIENDS TOOK THESE VEHICLES WHILE THEY WERE IN GEORGIA AND THEN RETURNED BACK TO SOUTH CAROLINA.

Q OKAY.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I NEED TO REMIND YOU OF THAT LIMITING INSTRUCTION I TOLD YOU EARLIER ABOUT THE ESCAPE EVIDENCE. I'M NOW EXTENDING THAT TO THIS EVIDENCE ABOUT THE VEHICLE. MR. WILES IS CHARGED WITH POSSESSION OF A STOLEN VEHICLE, AND, OBVIOUSLY, THE STATE HAS THE BURDEN OF PROVING THAT. BEAR WITH ME JUST A MOMENT. NO. I'M GONNA LEAVE THAT ALONE. I'M SORRY. THERE'S NO WAY FOR ME TO CRAFT THAT. GO AHEAD.

MR. YOUNG: THANK YOU VERY MUCH.

Q AT THE POINT IN TIME -- NOW I'LL JUST GO BACK – DID HE INDICATE WHERE IN GEORGIA THIS CAR CAME FROM?

A FROM THE MACON, GEORGIA AREA.

Q AREA. MACON, GEORGIA AREA. AND THEN HE CAME BACK TO SOUTH CAROLINA, I BELIEVE YOU SAID.

A THAT'S CORRECT.

Q OKAY. AND DID HE INDICATE AT SOME POINT THAT HE MADE CONTACT WITH A MELISSA MILLER?

A YES, SIR, HE DID.

Q WHERE DID THAT HAPPEN? DID HE INDICATE THAT OR DID HE SAY HOW THAT HAPPENED?

A HE STATED TO ME THAT HE HAD PICKED – ONCE HE GOT BACK TO SOUTH CAROLINA HE PICKED – PICKED HER UP NEAR WHERE SHE LIVED OR WHERE HER FAMILY LIVED. HE DIDN'T SPECIFICALLY SAY EXACTLY, YOU KNOW, WHERE. IT WAS IN THE COLUMBIA, SOUTH CAROLINA AREA.

Q WAS HE IN THE COMPANY OF ANYONE ELSE?

A I DO NOT RECALL HIM SAYIN' ANYBODY ELSE. HE SAID HE WENT AND PICKED HER UP.

Q OKAY. ON THE CHRISTMAS – THE DAY BEFORE DECEMBER 25TH – DECEMBER 26TH – CHRISTMAS DAY, DID HE INDICATE WHERE HE WAS AT THAT TIME AND WITH WHOM?

A THE DAY BEFORE CHRISTMAS?

Q YEAH, THE DAY OF CHRISTMAS.

A THE DAY OF CHRISTMAS. I HAVE HE STATED THAT THE GROUP THAT HE WAS WITH, THE GROUP OF FRIENDS WHICH HE NEVER MENTIONED THEIR NAMES, MOVED TO A MOTEL IN THE AUGUSTA, NORTH AUGUSTA AREA.

Q OKAY. WAS MELISSA MILLER WITH HIMTHERE?

A WELL, WHAT HE TOLD ME HE HAD ALREADY PICKED HER UP ON THE EVENIN'

BEFORE THAT.

Q ALL RIGHT. AND THEN GOING NOW TO DECEMBER 26TH, WHAT DID HE TELL YOU HAPPENED ON DECEMBER 26TH?

A IF I MAY, I'LL READ FROM MY INTERVIEW. ON FRIDAY DECEMBER 26TH 2003, HE MEANING SHAWN WILES IN THIS INTERVIEW AND MELISSA WERE RIDING IN THE COUNTRY AS GRIFFIN WHICH WAS INMATE JOHN GRIFFIN, WAS FOLLOWING THEM IN THE PICKUP. HE SPOTTED A STEEP -- STATE TROOPER, PANICKED AND TOOK OFF DRIVING AS FAST AS HE COULD. HE STATED THAT HE LOST TRACK OF GRIFFIN. HE RACED TOWARD SALUDA AT SPEEDS UP TO 140 MILES AN HOUR. HE REALIZED THAT HE WAS ABOUT OUT OF GAS WHEN HE REACHED SALUDA. HIS THOUGHTS WERE THAT HE WAS ABOUT TO BE KILLED OR WOULD END UP KILLING SOMEONE IN THE PROCESS OF TRYING TO GET AWAY FROM THE POLICE. HE CLAIMS THAT THE SALUDA COUNTY DEPUTY PULLED INTO THE INTERSECTION AND RAMMED HIS VEHICLE. HE CLAIMS THAT HE WAS NOT AIMING FOR THIS DEPUTY. YOU WANT ME TO CONTINUE?

Q PLEASE.

A OKAY. HE STATED THAT THE IMPACT OF HITTING THE BUILDING BASICALLY KNOCKED HIM UNCONSCIOUS FOR A BRIEF MOMENT. HE CHECKED ON MELISSA'S CONDITION AND THEN WENT FURTHER INTO THE BUILDING TO HIDE. HE INITIALLY THOUGHT THAT HE -- THAT -- EXCUSE ME -- HE INITIALLY THOUGHT THAT SHE WALKED OUT OF THE BUILDING JUST AFTER HE CHECKED ON HER. HE WAS LATER TOLD THAT SHE WAS IN THE BUILDING FOR ABOUT AN HOUR AFTER THEY WRECKED AND BEFORE SHE CAME OUT.

Q ALL RIGHT. YOU CAN STOP THERE. THAT'LL BE FINE. DURING THIS PERIOD OF TIME DID HE INDICATE TO YOU ANY SPECIFIC DETAILS ABOUT HOW THE ACCIDENT WITH THE OFFICER OCCURRED OTHER THAN HE DID NOT INTEND TO STRIKE THE OFFICER

THAT WAS IN THE INTERSECTION AND THAT THE OFFICER RAMMED HIS VEHICLE?

A NOT THAT I RECALL. THE REASON WHY I PUT THE STATEMENT IN THERE OF HIS THOUGHTS WERE THAT BECAUSE I ASKED MR. WILES WHAT WERE YOU THINKING WHEN THIS WAS GOING ON. YOU KNOW, GIVE ME AN IDEA OF WHAT YOU WERE THINKING WHEN THIS CHASE WAS GOING ON. AND HE SAID I JUST PANICKED, TOOK OFF AND I DO REMEMBER WHEN I GOT IN THE EDGE OUTTA TOWN I WAS ALMOST OUTTA GAS AND -- AND I BELIEVE SOMETHIN' BAD IS ABOUT TO HAPPEN. DID -- NOTHING WAS MENTIONED TO ME THAT I RECALL OF ANY ATTEMPTS TO STOP, ANY COMMENTS CONCERNING SLOWING DOWN OR ANY OF THAT.

Q YOU INDICATED THAT -- IN YOUR SUMMARY STATEMENT HERE THAT HIS THOUGHTS WERE THAT HE WAS ABOUT TO BE KILLED OR THAT HE WOULD KILL -- END UP KILLING SOMEONE. I THINK IS THAT HOW YOU SAID IT?

A YES, SIR.

Q ARE THOSE HIS WORDS OR ARE THOSE -- IS THAT YOUR SUMMARY OF WHAT HE SAID?

A THAT'S AS CLOSE TO HIS WORDS AS I CAN PUT IT. IS THAT A DIRECT QUOTE? NO, SIR. NOT IN THIS SUMMARY, NO, IT ISN'T.

Q HE DID NOT REDUCE ANYTHING TO WRITING IN YOUR DISCUSSION WITH HIM?

A SIR?

Q HE DID NOT REDUCE ANYTHING TO WRITING OTHER THAN HIS RIGHTS ADVISEMENT TO YOU?

A NO, SIR, THERE'S NO WRITTEN STATEMENT GIVEN.

Q OKAY.

MR. YOUNG: YOUR HONOR, WE WOULD MOVE THE ADMISSION OF THOSE PORTIONS OF THE STATEMENT THAT HAVE BEEN SUMMARIZED AND, OF COURSE, MAKE

APPROPRIATE DELETIONS OR EXTRACTIONS.

MR. FALGIONE: YOUR HONOR, I OBVIOUSLY OBJECT TO THE ADMISSION OF THAT BASED ON THE PREVIOUS GROUNDS.

THE COURT: YOU CAN'T ADMIT HIS SUMMARY. IT'S SUSTAINED.

MR. YOUNG: ALL RIGHT, SIR. THANK YOU.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GONNA TAKE A MID AFTERNOON BREAK. DON'T DISCUSS THE CASE. I'LL SEND FOR YOU IN ABOUT 10 MINUTES. STEP IN THE JURY ROOM, PLEASE. (THE FOLLOWING OCCURRED OUTSIDE THE PRESENCE OF THE JURY.) DURING THE BREAK YOU MAY STEP DOWN BUT YOU CANNOT DISCUSS YOUR TESTIMONY WITH ANYONE. ALL RIGHT.

A YES, SIR.

THE COURT: THANK YOU. WE'RE AT EASE FOR ABOUT 10 MINUTES. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) CROSS?

MR. FALGIONE: YES, SIR.

CROSS-EXAMINATION

BY MR. FALGIONE

Q INVESTIGATOR ANTLEY, WHEN YOU WENT TO SEE SHAWN WILES, YOU DIDN'T TELL HIM YOU WERE THERE TO GET INFORMATION ABOUT THE COLLISION OR ABOUT ANY OF THE EVENTS THAT ACTUALLY HAPPENED IN SALUDA THAT DAY, DID YOU?

A NOT SPECIFICALLY, NO, SIR.

Q OKAY. AND WHEN YOU HAD HIM SIGN THAT FORM YOU THOUGHT OR YOU TOLD HIM YOU WERE THERE TO SEE HIM ABOUT ANOTHER MATTER, DIDN'T YOU?

A I'M NOT FOLLOWING YOU, SIR.

Q YOU TOLD HIM YOU WERE THERE FOR ANOTHER PURPOSE THAN TO INVESTIGATE WHAT HAPPENED HERE IN SALUDA THAT DAY, DIDN'T YOU?

A NO, SIR.

Q YOU DIDN'T TELL HIM YOU WERE THERE -- DID YOU TELL HIM YOU WERE THERE TO INVESTIGATE THIS MATTER IN SALUDA THAT DAY?

A I TOLD HIM THAT I WAS THERE TO INVESTIGATE THE MATTER THAT BEGAN ON DECEMBER 18TH OF 2003 AND THE EVENTS THAT LED UP TO THE PRESENT DATE ON DECEMBER 26TH 2003.

Q YOU TOLD HIM YOU WERE THERE TO INVESTIGATE HIS ESCAPE, DIDN'T YOU?

A YES, SIR.

Q THAT'S WHAT YOU TOLD HIM, WASN'T IT?

A YES, SIR.

Q AND WHEN YOU HAD HIM SIGN THAT FORM, THAT'S WHAT YOU TOLD HIM YOU WERE THERE TO LOOK FOR. RIGHT?

A YES, SIR.

Q OKAY. NOW THIS HOUR AND HALF CONVERSATION SUDDENLY EVOLVED INTO OTHER STATEMENTS ABOUT WHAT HAPPENED HERE IN SALUDA, DIDN'T IT?

A YES, SIR.

Q OKAY. NOW INVESTIGATOR ANTLEY, ISN'T IT TRUE THAT YOU DIDN'T TRANSCRIBE OR MAKE ANY NOTATION, TYPE WRITTEN NOTATION OF THESE -- OF YOUR INTERVIEW WITH MR. WILES UNTIL ABOUT A WEEK AFTER IT WAS CONDUCTED?

A THAT'S CORRECT.

Q OKAY. AND ISN'T IT TRUE THAT MY OFFICE ISSUED A SUBPOENA FOR ANY TAPE RECORDINGS OR ANY OTHER MEANS OF RECORDING OF ANYTHING IN THAT INTERVIEW, ISN'T THAT TRUE?

A CORRECT.

Q AND NONE HAVE BEEN PRODUCED. RIGHT?

A THERE WAS NO AUDIO OR VIDEO TAPE OF THE INTERVIEW.

Q OKAY. WAS THERE ANYTHING THAT PREVENTED YOU FROM TAPE RECORDING THAT INTERVIEW WITH MR. WILES?

A NOTHING PREVENTED IT, NO, SIR.

Q SO WE WOULD'VE HAD A TRUE AND ACCURATE, PRECISE OF EXACTLY WHAT WAS SAID IN THAT INTERVIEW, WOULDN'T WE, IF YOU HAD DONE THAT?

A IF THAT WAS DONE, YES.

Q OKAY. NOW WHEN YOU WENT TO INVESTIGATE OR TO TALK WITH MR. WILES, DID YOU INQUIRE AS TO WHETHER OR NOT HE WAS ON ANY MEDICATION?

A NOT TO HIM SPECIFICALLY, NO, SIR.

Q OKAY. WHO DID YOU MAKE THE INQUIRY WITH?

A THE INQUIRY I MADE WAS TO THE SUPERVISOR THAT WAS RUNNIN' THE UNIT THAT HE WAS IN THAT DAY. I ADVISED THE SUPERVISOR WHEN I WENT TO THE FRONT DOOR OF THE UNIT THAT I WAS THERE TO SEE INMATE SHAWN WILES AND WAS ANY PROBLEMS OR ANYTHING GOING ON OR WAS – DID HE BELIEVE HE WAS UP TO BEIN' INTERVIEWED. I WAS GIVEN NO INDICATION THERE WAS ANY PROBLEMS THAT WOULD PREVENT AN INTERVIEW FROM BEING CONDUCTED ON THAT PARTICULAR DAY.

Q DID YOU SPECIFICALLY ASK IF MR. WILES WAS TAKING ANY MEDICATIONS AT THAT TIME?

A NO, SIR, I DID NOT.

Q TRUTH OF IT IS HE WAS, WASN'T HE?

A FROM WHAT I UNDERSTAND.

Q ALL RIGHT. NOW YOUR SUMMARY THAT YOU'VE ENLIGHTENED US WITH HERE TODAY DOESN'T CONTAIN EVERYTHING THAT WAS SAID IN THAT INTERVIEW, DOES IT?

A NO, SIR.

Q AND, IN FACT, IF I UNDERSTAND CORRECTLY AND MY HEARING IS NOT AS GOOD AS IT USED TO BE, BUT IF I UNDERSTAND CORRECTLY, YOU TESTIFIED A LITTLE BIT AGO THAT MR. WILES TOLD YOU THAT HE BELIEVED SOMETHING BAD WAS ABOUT TO HAPPEN. IS THAT TRUE?

A CORRECT.

Q DURING THAT CHASE? AND THAT FOUND ITS WAY INTO YOUR TESTIMONY A LITTLE WHILE AGO THAT HIS THOUGHTS WERE THAT HE WAS ABOUT TO BE KILLED OR WOULD END UP KILLING SOMEONE IN THE PROCESS OF TRYING TO GET AWAY. IS THAT A FAIR STATEMENT?

A YES, SIR. THOSE WERE HIS THOUGHTS TO ME.

Q OKAY. SO YOU PUT YOURSELF IN THE PLACE OF HIS THINKING AND THAT STATEMENT THAT WE JUST TALKED ABOUT THERE EVOLVED FROM HIS STATEMENT THAT HE BELIEVED SOMETHING BAD WAS ABOUT TO HAPPEN. IS THAT RIGHT?

A I ASKED HIM WHAT HE WAS THINKING AT THAT TIME AND THAT'S HOW HE RESPONDED TO ME.

Q ALL RIGHT. NOW ISN'T IT TRUE THAT SHAWN WILES TOLD YOU IN THAT INTERVIEW THAT HE PANICKED WHEN HE SAW THE STATE TROOPER?

A CORRECT.

Q AND THERE WASN'T ANYTHING IN YOUR CONVERSATION OR THAT INTERVIEW WITH SHAWN WILES THAT LEADS YOU TO BELIEVE THAT HE INTENTIONALLY RAMMED THAT POLICE VEHICLE, IS THERE?

A NOT BESIDES OF WHAT HE TOLD ME.

Q WELL, WE TALKED ABOUT WHAT HE TOLD YOU, HAVEN'T WE?

A YES, SIR.

Q OKAY. AND HIS STATEMENT TO YOU WAS THAT HE PANICKED, WASN'T IT?

A CORRECT.

Q OKAY. AND DIDN'T HE ALSO TELL YOU DIRECTLY IN THAT STATEMENT THAT HE WAS TRYING NOT TO HIT THAT DEPUTY?

A I DON'T RECALL THAT.

Q WELL, HOW ABOUT IF -- HOW ABOUT IF YOU PHRASED IT THIS WAY. HE CLAIMS THAT HE WAS NOT AIMING FOR THIS DEPUTY? DOES THAT SOUND FAMILIAR?

A I SEE THAT STATEMENT. THAT -- THAT -- MY INTERPRETATION OF THAT IS HE WAS NOT INTENTIONALLY TRYING TO RAM THE DEPUTY. THAT TO ME IS A LITTLE DIFFERENT THAN ABSOLUTELY TRYING TO AVOID THE DEPUTY.

Q OKAY. WELL, EITHER WAY HE WAS TRYING NOT TO HIT THE DEPUTY. RIGHT?

A ACCORDIN' TO WHAT HE TOLD ME, YES.

Q OKAY. THANK YOU, SIR.

THE COURT: REDIRECT?

MR. YOUNG: ONE QUESTION.

REDIRECT EXAMINATION

BY MR. YOUNG

Q HIS EXPLANATION WAS THE POLICE OFFICER RAMMED HIM. ISN'T THAT CORRECT?

A THAT'S CORRECT. I RECALL HIM SAYIN' THAT HE BELIEVED THE DEPUTY'S CAR EASED UP INTO THE INTERSECTION AS HE WAS COMING THROUGH IT AND THAT'S WHY THEY COLLIDED.

Q NOTHIN' FURTHER.

THE COURT: RECROSS?

MR. FALGIONE: NO, YOUR HONOR. THANK YOU.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

MR. YOUNG: THE STATE RESTS, YOUR HONOR.

THE COURT: FOLKS, I TOLD YOU WHEN THE STATE RESTS, I HAD TO DISCUSS LEGAL ISSUES WITH THE ATTORNEYS. WE'VE REACHED THAT POINT NOW. THIS TYPICALLY TAKES ABOUT 15 OR 20 MINUTES. I DON'T KNOW HOW LONG IT'LL TAKE. BUT IF IT'S GONNA BE SUBSTANTIALLY LONGER THAN THAT, I'LL SEND WORD TO YOU. DON'T DISCUSS THE CASE. FOLLOW THE BAILIFF, PLEASE. (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.) MOTIONS?

MR. FALGIONE: YES, YOUR HONOR. DEFENSE WOULD MOVE FOR A DIRECTED VERDICT OF ACQUITTAL ON TWO OF THE CHARGES. THE VERY FIRST CHARGE, YOUR HONOR, IS THE CHARGE OF POSSESSION OF STOLEN PROPERTY. I WOULD HAND TO THE COURT THE CASE OF STATE V. MCNEAL. I APOLOGIZE FOR THE PRINT, YOUR HONOR. I WAS AT A REMOTE LOCATION LAST NIGHT AND HAD A LITTLE PROBLEM WITH MY LAP TOP AND MY PRINTER. SO IT'S LARGE PRINT. YOUR HONOR, I WOULD ALSO HAND UP THE SUPPORTING CASE OF STATE V. HAMILTON THAT IS CITED FOR AUTHORITY IN THE CASE OF STATE V. MCNEAL.

YOUR HONOR, THE TESTIMONY THAT'S BEEN HEARD BY THE JURY AND BY ALL PRESENT IN THE COURTROOM HAS COME FROM THE LAST WITNESS INVESTIGATOR ANTLEY ON BOTH OCCASIONS AND THAT IS THE ONLY TESTIMONY THAT IS IN THE RECORD AND THAT TESTIMONY IS THAT SHAWN WILES ADMITTED THAT HE STOLE THAT VEHICLE IN GEORGIA. AND UNDER THE CASE OF STATE V. MCNEAL IT CLEARLY SAYS, YOUR HONOR, THAT IN ORDER TO BE GUILTY OF A CHARGE WITH POSSESSION OF A STOLEN VEHICLE, YOU HAVE TO GAIN POSSESSION FROM SOMEONE OTHER THAN THE THIEF THAT TOOK IT. SO, IN OTHER WORDS, THE ORIGINAL THIEF CANNOT BE FOUND GUILTY OF THE CRIME OF POSSESSION OF A STOLEN VEHICLE OR POSSESSION OF STOLEN PROPERTY.

YOUR HONOR, I THINK THESE TWO CASES ARE PRETTY MUCH ON POINT WITH US HERE AND I THINK THEY'RE AUTHORITATIVE. I COULD FIND NO INSTANCE WHERE THEY'VE BEEN REVERSED. IN FACT, THEY'RE STILL CITED FOR THAT PROPOSITION.

YOUR HONOR, THE DEFENSE RESPECTFULLY MOVES FOR A DIRECTED VERDICT OF ACQUITTAL ON THAT CHARGE.

THE COURT: MR. YOUNG?

MR. YOUNG: YOUR HONOR, THE TESTIMONY IN THE RECORD IS THAT HE WAS IN GEORGIA.

IT'S HIS STATEMENT, I BELIEVE IT WAS TESTIFIED TO EARLIER, THAT HE WAS IN THE COMPANY OF SEVERAL PEOPLE WHO TOOK THE VEHICLE. SOMETHING TO THAT EFFECT. AND THAT WHETHER HE WAS THE ONE ACTUALLY TAKING THE VEHICLE IS NOT CLEAR.

THE PERSON ACTUALLY TAKING THE CAR I'M NOT SURE OF, YOUR HONOR. HE BECAME -- OBTAINED THE POSSESSION OF IT CLEARLY AFTER HE CAME IN SOUTH CAROLINA. WE DON'T HAVE ANY CONTRARY EVIDENCE THAT AT SOME POINT HE -- HE WAS IN POSSESSION OF IT. WE CANNOT PROVE THAT HE'S THE ONE THAT TOOK IT. WE DON'T HAVE, PER SE, PROOF OF THAT. WE HAVE GENERIC INFORMATION THAT HE WAS IN GEORGIA, HE CAME FROM GEORGIA; HE WAS IN THE COMPANY OF FRIENDS, AND I BELIEVE THE TESTIMONY WE -- WE TOOK IT OR SOMETHING TO THAT EFFECT. BUT HE WAS PHYSICALLY PRESENT WHEN IT HAPPENED OR NOT, WE DON'T HAVE INFORMATION OF THAT. ALL WE CAN DEMONSTRATE IS THAT HE BECAME CLEARLY IN POSSESSION OF IT AND THAT HE KNEW IT WAS STOLEN IN THE STATE OF SOUTH CAROLINA. GEORGIA HAS A SPECIFIC LAW, IT'S A TAKING STATUTE. IN OTHER WORDS, A PERSON MUST BE RESPONSIBLE FOR TAKING THE PROPERTY TO BE CONVICTED OF LARCENY IN THAT STATE. AND THIS STATE DOES NOT HAVE SUCH A LAW. AND I THINK THAT'S THE

REASON FOR THE DICHOTOMY AND THE DIFFERENCE BETWEEN OUR STATE AND OTHE STATES, WE DON'T REQUIRE A TAKING I DON'T BELIEVE. HE CERTAINLY WAS I POSSESSION OF IT. OUR CASE IS BASED SOLELY UPON HIS POSSESSION OF SOMETHIN HE KNEW OR SHOULD'VE KNOWN IT WAS STOLEN. I CAN'T PROVE HE PHYSICALL TOOK IT.

MR. FALGIONE: YOUR HONOR, IF YOU WISH TO ENTERTAIN FURTHER ARGUMEN I'D RESPOND TO THAT.

THE COURT: SURE. GO AHEAD.

MR. FALGIONE: WELL, YOUR HONOR, INVESTIGATOR ANTLEY TESTIFIED UNDE OATH THAT THAT WAS THE ADMISSION OF SHAWN WILES. I DON'T KNOW HOW YOU CA GET ANY MORE CLEAR THAN THAT. THIS JURY HAS HEARD INVESTIGATOR ANTLE TESTIFY THAT SHAWN WILES SAID THAT HE STOLE THE CAR IN GEORGI ACCORDINGLY, THIS WAS A GEORGIA OFFENSE. IT'S NOT APPLICABLE HERE IN SOU CAROLINA UNDER THIS CASE OF STATE V. MCNEAL 445 SOUTHEAST 2d 461, A 1994 COUR OF APPEALS CASE WHERE THEY OVERTURNED A GUILTY PLEA BASED UPON THAT VER PREMISE.

MR. YOUNG: YOUR HONOR, IF I MAY. THE SUMMARY THAT I'M HOLDING, AND BELIEVE THIS WAS THE TESTIMONY, READS THEY REACHED MACON, GEORGIA AN STOLE I BELIEVE A CROWN -- FORD CROWN VICTORIA. I BELIEVE HE INDICATED AND WAS SPEAKING WITH INVESTIGATOR ANTLEY THAT HE -- MR. WILES NEVER INDICATE WHO THESE FRIENDS WERE HE WAS WITH. THE IMPRESSION I HAD WAS THEY TOOK HI TO GEORGIA; HE WAS WITH THEM IN THEIR COMPANY AND THIS GROUP STAYE TOGETHER FOR SOMETIME. SO, YOUR HONOR, I DON'T HAVE THE INFORMATION AS T WHO ACTUALLY WAS RESPONSIBLE FOR BREAKING IN THE CAR AND TAKING IT. THAT HOW IT WAS ACCOMPLISHED. I CAN'T EVEN PROVE HOW THAT HAPPENED.

THE COURT: IT WOULDN'T MATTER 'CAUSE IT HAPPENED IN GEORGIA.

MR. YOUNG: I'M SORRY, YOUR HONOR?

THE COURT: IT HAPPENED IN GEORGIA. YOU DON'T HAVE ANY ABILITY TO PROVE THAT.

MR. YOUNG: THAT'S RIGHT. I DON'T HAVE ANY ABILITY TO PROVE WHAT HAPPENED IN GEORGIA.

THE COURT: MR. YOUNG, WHAT DO YOU SAY ABOUT THESE CASES?

MR. YOUNG: MY ARGUMENT ABOUT THE CASES – WHICH ONE, YOUR HONOR? STATE V. HAMILTON OR BOTH?

THE COURT: BOTH.

MR. YOUNG: WELL, AS I READ THIS, YOUR HONOR, I – I THINK THE STATE OF SOUTH CAROLINA IS PUT TO SOME ODD TURN OF EVENTS IF IT PROCEEDS ON A – LET'S SAY IF GEORGIA OR SOME OTHER STATE HAS CHARGED A DEFENDANT WITH THEFT OF SOME PROPERTY, I THINK THE STATE OF SOUTH CAROLINA IS IN A PICKLE TO TRY TO TURN AROUND AND SAY NOW YOU'RE ALSO CHARGED WITH POSSESSION OF IT IF YOU CROSSED THE STATE LINE. I THINK THAT MIGHT BE A PROBLEM FOR THE STATE.

BUT THE STATE, IF IT CAN'T PROVE WHO STOLE THE VEHICLE AND THAT'S WHAT WE'RE IN HERE. I CAN'T PROVE WHO STOLE IT. I DON'T EVIDENCE OF WHO STOLE IT SPECIFICALLY. I CAN'T SAY HE WAS PHYSICALLY PRESENT. I THINK HIS STATEMENT IS THEY STOLE IT IN GEORGIA. THAT MEANS AT THAT POINT IN TIME HE HAS SOME GUILTY KNOWLEDGE AS TO THE EVENT AND THEREFORE ONCE HE CROSSES THE STATE LINE AND HE'S IN POSSESSION OF THAT CAR, AND I DON'T KNOW WHEN HE GOT IT, BUT HE DID, AT SOME POINT HE'S IN POSSESSION OF A STOLEN VEHICLE.

NOW AS I READ THE LAW, YOUR HONOR, I MAY BE WRONG. I HAVE BEEN MANY TIMES. YOU CAN'T BE BOTH THE PERSON WHO STEALS IT AND THE PERSON WHO MOVES

IT. YOU'RE EITHER ONE OR THE OTHER. I CAN ONLY PROVE HE WAS MOVIN' IT. HE WAS IN A CAR THAT HE KNEW WAS STOLEN, AND HE HAD REASON TO BELIEVE IT WAS STOLEN OR REASONABLY SHOULD'VE KNOWN. THAT'S OUR CASE, AND I THINK WE'VE GOT - THAT'S ALL I'VE OFFERED TO PROVE. I HAVEN'T GOT PROOF THAT HE'S THE THIEF AND I DON'T HAVE A JURISDICTION OVER WHAT GEORGIA MIGHT DO IF THEY DO AND I DON'T HAVE -- I CERTAINLY HAVE NO INDICATION GEORGIA'S CHARGED HIM.

THE COURT: MADAM COURT REPORTER, GO BACK IN TIME TO THE TESTIMONY OF MR. ANTLEY AND WHAT HE SAID ABOUT WHAT MR. WILES SAID ABOUT STEALING THE CAR. (THE COURT REPORTER PROVIDED THE COURT WITH THE REQUESTED INFORMATION.) IF THERE'S NOTHING FURTHER, I DON'T KNOW THAT I WOULD HAVE MADE THE SAME DETERMINATION THE COURT MADE IN MCNEAL IF I WERE SITTING ON THAT COURT, BUT THAT'S NOT THE QUESTION. AND THERE IS A FAIRLY LONG LINE OF PRECEDENT FROM WHAT I'VE BEEN ABLE TO SEE. IT GOES AT LEAST BACK TO 1934. BASED ON WHAT I'M READING, THE DEFENSE IS CITING THE CORRECT LAW, AND THE MOTION IS TO BE GRANTED. WHAT ELSE DO YOU HAVE?

MR. FALGIONE: YOUR HONOR, THE DEFENSE WOULD MOVE FOR A DIRECTED VERDICT OF ACQUITTAL ON THE ASSAULT AND BATTERY WITH INTENT TO KILL CHARGE UNDER THE BASIS OR ON THE PREMISE THAT THE REQUISITE INTENT HAS NOT BEEN SHOWN OR DEMONSTRATED BY TESTIMONY IN THIS TRIAL.

THE COURT: THE OBJECTION -- I MEAN THAT MOTION IS DENIED.

MR. FALGIONE: I UNDERSTAND, YOUR HONOR.

THE COURT: WHAT ELSE?

MR. FALGIONE: THAT'S ALL FOR THE DEFENSE, YOUR HONOR.

THE COURT: ANYTHING ELSE, GENTLEMEN?

MR. YOUNG: NO, SIR.

THE COURT: MR. WILES, I NEED TO TALK TO YOU A MINUTE. YOU CAN STAY RIGHT THERE. IT'S FINE. ALL RIGHT. I NEED TO ASK YOU SOME QUESTIONS. I DO THIS FOR EVERYBODY ON TRIAL WHETHER THEY'RE ON TRIAL FOR A TRAFFIC OFFENSE OR MURDER. AND I NEED YOUR RESPONSES UNDER OATH. WOULD YOU RAISE YOUR RIGHT HAND FOR ME, PLEASE. (THE DEFENDANT WAS SWORN TO TELL THE TRUTH.) MR. WILES, WE'VE REACHED THE STAGE OF THE TRIAL WHERE THE STATE HAS RESTED, AND THE NEXT THING THAT WOULD HAPPEN IS THAT THE DEFENSE IS GIVEN THE OPPORTUNITY TO PRESENT EVIDENCE FOR THE JURY TO CONSIDER. YOU UNDERSTAND WHERE WE ARE IN THE TRIAL?

THE DEFENDANT: YES, SIR.

THE COURT: NOW IN THAT REGARD YOU MAY TESTIFY IF YOU WISH, BUT YOU'RE NOT REQUIRED TO TESTIFY. YOU UNDERSTAND THAT?

THE DEFENDANT: YES, SIR.

THE COURT: NO ONE CAN MAKE YOU TESTIFY. YOU HAVE AN ABSOLUTE RIGHT TO REMAIN SILENT, AND IF YOU DO NOT TESTIFY, I WILL TELL THAT JURY THEY CANNOT HOLD YOUR SILENCE AGAINST YOU IN ANY WAY. THEY CAN'T DISCUSS IT IN THEIR DELIBERATIONS. IT'S NOT TO ENTER THEIR MINDS IN DECIDING THE QUESTION OF WHETHER YOU'RE GUILTY OR NOT GUILTY. DO YOU UNDERSTAND?

THE DEFENDANT: YES, SIR.

THE COURT: DOES HE HAVE A PRIOR CRIMINAL RECORD THAT WOULD SUBJECT HIM TO IMPEACHMENT?

MR. YOUNG: HE DOES, YOUR HONOR. HE HAS STOLEN SEVERAL VEHICLES IN THE PAST. I BELIEVE – LET ME PROVIDE THE COURT SPECIFIC INFORMATION ON THAT. I HAVE GIVEN MR. FALGIONE A COPY OF THIS, YOUR HONOR. HE HAS A BURGLARY SECOND DEGREE, YOUR HONOR, ON MAY 3RD 19 -- WELL, LET ME SEE. THAT'S THE DATE

OF -- YEAH, THAT'S THE CUSTODY DATE. MAY 3RD OF 1996. BURGLARY SECOND AND A GRAND LARCENY IN THE SAME TIME FRAME.

THE COURT: THAT'S THE DAY OF THE CONVICTION OR THE DAY OF RELEASE?

MR. YOUNG: HE WAS PLACED INTO CUSTODY THAT DAY, YOUR HONOR.

THE COURT: OKAY.

MR. YOUNG: FALSE INFORMATION TO POLICE ON MARCH 11TH 1999. POSSESSION OF A STOLEN VEHICLE IN DECEMBER '99. AND I THINK THESE ARE MOSTLY REPEATS HERE. NO, THEY'RE NOT. POSSESSION OF A STOLEN VEHICLE IN MAY 30TH, ON MAY 30TH OF 2002. I BELIEVE THERE ARE TWO COUNTS OF THAT, YOUR HONOR. BOTH OF THOSE VEHICLES ARE GREATER THAN $5000 IN VALUE. THAT'S ALL. THIS MUST BE THE SAME DATE AS -- IT IS. I BELIEVE THOSE WERE -- WOULD BE ALL OF HIS OFFENSES, YOUR HONOR, THAT WOULD BE IMPEACHABLE.

THE COURT: ALL RIGHT. YOU WANT TO BE HEARD ON THAT, MR. FALGIONE?

MR. FALGIONE: NO, YOUR HONOR. I DISCUSSED THIS ISSUE WITH MY CLIENT. HE'S REVIEWED HIS RAP SHEET. HE'S IN AGREEMENT THAT HE HAS MOST PROBABLY 9 SETS OF CHARGES THAT WOULD SUBJECT HIM TO IMPEACHMENT.

THE COURT: ALL RIGHT. THEN, MR. WILES, UNDER RULE 609 OF THE RULES OF EVIDENCE, THE STATE WOULD BE PERMITTED TO ASK YOU ABOUT WHETHER -- IF YOU TAKE THE WITNESS STAND, THE STATE WOULD BE PERMITTED TO ASK YOU ABOUT YOUR CONVICTIONS OF BURGLARY SECOND DEGREE, GRAND LARCENY, PROVIDING FALSE INFORMATION TO POLICE OFFICER, POSSESSION OF STOLEN VEHICLE. THE COURT HAS BALANCED THE REQUIREMENTS OF RULE 609 RELATED TO THE PROBATIVE VALUE OF ADMITTING THE EVIDENCE VERSUS THE PREJUDICIAL EFFECT OF THE ACCUSED AND HAS DETERMINED IT WOULD BE ADMISSIBLE. HOWEVER, THEY CAN ONLY ASK YOU WHETHER YOU HAVE BEEN CONVICTED OF THOSE CRIMES. THEY COULD NOT GO INTO

SPECIFICS OF THEM, AND I WOULD TELL THE JURY THAT THEY COULD ONLY CONSIDER THAT EVIDENCE, IF AT ALL, ON THE ISSUE OF EVALUATING WHETHER YOUR TESTIMONY IS BELIEVABLE OR NOT AND NO OTHER PURPOSE. YOU UNDERSTAND ALL THAT?

THE DEFENDANT: YES, SIR.

THE COURT: NOW IF YOU OFFER NO EVIDENCE, THAT IS, NEITHER YOU NOR ANYONE ELSE ON YOUR BEHALF TESTIFIES OR PRESENTS EVIDENCE, YOUR LAWYER GETS TO MAKE THE LAST ARGUMENT TO THE JURY. OTHERWISE, THE STATE MAKES THE LAST ARGUMENT. YOU UNDERSTAND THAT?

THE DEFENDANT: YES, SIR.

THE COURT: THIS DECISION ABOUT WHETHER YOU TESTIFY OR NOT IS YOUR DECISION TO MAKE AND YOURS ALONE. I EXPECT YOU MIGHT CONFER WITH YOUR ATTORNEY OR WITH ANYONE WHOSE OPINION YOU VALUE ON IMPORTANT DECISIONS. BUT THIS IS YOUR CALL TO MAKE. YOU DECIDE WHETHER YOU WANT TO TESTIFY OR NOT. YOU UNDERSTAND?

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT. MR. WILES, WHAT I'M GOING TO DO IS I'M GOING TO DETERMINE THAT WHATEVER DECISION YOU MAKE, YOU'VE MADE IT FREELY, KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY. YOU UNDERSTAND YOU HAVE A RIGHT TO TESTIFY AND YOU UNDERSTAND YOU HAVE A RIGHT NOT TO TESTIFY. YOU UNDERSTAND THAT IF YOU DO NOT TESTIFY I'LL TELL THE JURY THEY CANNOT HOLD THAT AGAINST YOU. YOU UNDERSTAND THAT IF NO EVIDENCE IS PRESENTED BY THE DEFENSE, YOUR LAWYER GETS TO MAKE THE LAST ARGUMENT TO THE JURY. YOU UNDERSTAND THAT IF YOU DO TESTIFY THAT YOU COULD BE ASKED ABOUT CERTAIN ASPECTS OF YOUR PRIOR CRIMINAL RECORD, BUT ONLY ON THE ISSUE OF IMPEACHMENT, AND THAT I WILL INSTRUCT THE JURY THAT THEY CAN ONLY CONSIDER

IT FOR THAT PURPOSE, AND YOU KNOW THAT YOU ARE THE ONE WHO MAKES THE DECISION AND YOU ALONE AS TO WHETHER YOU TESTIFY OR NOT.

THE DEFENDANT: YES, SIR.

THE COURT: YOU NEED TO TALK TO HIM MR. FALGIONE?

MR. FALGIONE: NO, YOUR HONOR, WE'VE DISCUSSED THIS AT SOME LENGTH PRIOR TO THIS.

THE COURT: YOU HAVE EVIDENCE TO OFFER?

MR. FALGIONE: YOUR HONOR, THAT I DO WANT TO DISCUSS WITH MY CLIENT.

MR. YOUNG: YOUR HONOR, IF THE CLIENT TO CHOOSES TO TESTIFY, WE'RE GONNA NEED TO MAKE ARRANGEMENTS SO THAT HE'S ALREADY IN POSITION—

THE COURT: ALL RIGHT. WE'LL HAVE HIM UP HERE ON THE WITNESS STAND BEFORE THE JURY COMES IN. WE'RE AT EASE. (THERE WAS A BRIEF RECESS.) READY FOR THE JURY?

MR. YOUNG: YES, SIR.

THE COURT: DEFENSE?

MR. FALGIONE: YES, YOUR HONOR.

THE COURT: BRING THE JURY IN, PLEASE. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) ALL RIGHT. LADIES AND GENTLEMEN, AS A RESULT OF THE CONFERENCE I HAD WITH THE ATTORNEYS AND THE LEGAL RULINGS THAT I HAVE MADE, I NEED TO ADVISE YOU THAT I HAVE REMOVED FROM YOUR CONSIDERATION OF THIS INDICTMENT OF POSSESSION OF A STOLEN VEHICLE RULING THAT ANYTHING RELATED TO THIS CHARGE WOULD HAVE TO TAKE PLACE IN THE STATE OF GEORGIA, IF AT ALL. SO I DO NEED TO GIVE YOU A LIMITING INSTRUCTION. I SORTA STARTED ON EARLIER, BUT SINCE THAT CHARGE WAS THERE AT THAT TIME I STOPPED IN THE MIDDLE OF IT. SO I'M GOING TO TELL YOU NOW THAT THE EVIDENCE IN THIS TRIAL RELATED TO

ALLEGATIONS ABOUT POSSESSING A STOLEN VEHICLE ARE FOR A LIMITED PURPOSE AND I NEED TO EXPLAIN TO YOU AS TO THIS THAT EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS IS NOT ADMITTED TO PROVE CHARACTER OF AN ACCUSED IN ORDER TO SHOW ACTION AND CONFORMITY WITH THAT CHARACTER.

IN OTHER WORDS, EVEN IF YOU BELIEVE THAT HE HAD DONE SOMETHING WRONG RELATED TO POSSESSION OF A MOTOR VEHICLE, THAT DOES NOT MEAN THAT HE IS GUILTY OF THE CRIMES FOR WHICH HE'S CHARGED IN THESE CASES. THE EVIDENCE ABOUT POSSESSION OF A STOLEN VEHICLE, IF YOU DEEM IT TRUE, WAS ADMITTED FOR A LIMITED PURPOSE, AND IF YOU CONCLUDE IT TRUE, YOU MAY ONLY USE IT FOR THE LIMITED PURPOSES FOR WHICH IT WAS ADMITTED. THAT EVIDENCE WAS ADMITTED TO ALLOW THE STATE TO ATTEMPT TO ESTABLISH THE DEFENDANT'S MOTIVE, INTENT AND/OR THE ABSENCE OF ACCIDENT OR MISTAKE RELATED TO THE REMAINING CHARGES WHICH ARE FAILURE TO STOP FOR A BLUE LIGHT AND ASSAULT AND BATTERY WITH INTENT TO KILL. IF YOU DETERMINE TO USE THAT EVIDENCE, YOU CAN GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE, BUT ONLY ON THE LIMITED ISSUE OF MOTIVE, INTENT AND THE ABSENCE OF MISTAKE OR ACCIDENT.

I NEED TO MAKE SURE YOU UNDERSTAND THAT THE FACT THAT THAT CHARGE OF POSSESSION OF STOLEN VEHICLE IS NO LONGER BEFORE YOU DOES NOT IN ANY WAY STRENGTHEN THE OTHER CHARGES, NOR DOES IT IN ANY WAY WEAKEN THE OTHER CHARGES. THAT'S STRICTLY A LEGAL RULING THAT I'VE MADE AND I'VE EXPLAINED TO YOU ALL I NEED TO EXPLAIN TO YOU ABOUT THAT.

I ALSO NEED TO TELL YOU THAT I'VE BEEN ADVISED THAT YOU NOW HAVE ALL THE EVIDENCE THAT YOU'RE GOING TO HAVE TO DECIDE THIS CASE. SO I NEED TO GIVE YOU ANOTHER INSTRUCTION. I THOUGHT I'D ALREADY WRITTEN IT DOWN. I'M SORRY. I THOUGHT IT WAS IN HERE, BUT IT'S NOT. I HAVE TO PULL IT UP. BEAR WITH ME. I CAN

TRY TO WING IT, BUT I'M SURE I'D LEAVE SOMETHING OUT. FOLKS, I'M SORRY. THEY'VE CHANGED MY COMPUTER, AND WHEN THEY DID, THEY TOOK ALL MY STUFF AND PUT IT SOMEWHERE ELSE. OKAY.

ALL RIGHT, LADIES AND GENTLEMEN, I INSTRUCT YOU NOW AND EMPHASIZE TO YOU THAT THE FACT THAT THE DEFENDANT IN THIS CASE ELECTED NOT TO TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN YOUR CONSIDERATION ON THE QUESTION OF WHETHER THE STATE HAS PROVEN MR. WILES GUILTY OR HAS FAILED TO MEET HIS BURDEN. HIS DECISION NOT TO TESTIFY MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER AGAINST MR. WILES. AN ACCUSED HAS A CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THAT RIGHT CANNOT AND MUST NOT BE CONSIDERED BY YOU IN ANY WAY AGAINST THE DEFENDANT. UNDER YOUR OATH YOU ARE TO REACH NO INFERENCE AND DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE ELECTED NOT TO TESTIFY. HIS DECISION NOT TO TESTIFY SHOULD NOT BE DISCUSSED IN THE JURY ROOM. IT SHOULD NOT ENTER YOUR MIND IN MAKING THE DECISION IN THIS CASE.

THE STATE HAS THE ENTIRE BURDEN OF PROOF AND MUST PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

ALL RIGHT. FOLKS, THERE ARE TWO STAGES THAT REMAIN IN THIS TRIAL: THE CLOSING ARGUMENTS AND THEN THE PORTION WHERE I TELL YOU THE LAW. THAT'S CALLED THE CHARGE. THE CHIEF JUSTICE HAS INSTRUCTED US THAT WE DON'T GO INTO THOSE LAST TWO STAGES OF THE TRIAL AFTER 4 O'CLOCK. SO I'LL NEED TO HAVE YOU COME BACK TOMORROW AND YOU'LL HEAR THE CLOSING ARGUMENTS OF THE ATTORNEYS AND THEN I'LL TELL YOU THE LAW. NOW IF YOU'LL BEAR WITH ME ANOTHER MINUTE AND LET ME FIND OUT ABOUT THE NEXT CASE WE'RE GONNA TRY

ALL RIGHT, FOLKS, I NEED YOU HERE TOMORROW. I WAS TRYING TO GAUGE WHAT I NEEDED TO DO WITH THE OTHER JURORS, AND THERE ARE SOME MATTERS THAT I'LL HAVE TO TALK TO ABOUT WITH THE ATTORNEYS ON THE LAW. SO I'M GONNA HAVE YOU COME IN AT TEN AND WE'LL GET STARTED WITH YOU AS QUICKLY AS WE CAN AFTER 10 O'CLOCK. OKAY? I HOPE YOU HAVE A PLEASANT EVENING. REMEMBER ALL THOSE ADMONITIONS I GAVE YOU, AND I'LL LOOK TO SEE YOU TOMORROW AT 10 O'CLOCK.

NOW ONE OF YOU HAD A FLAT TIRE, DIDN'T YOU? YOU NEED A RIDE BACK HOME?

THE JUROR: NO, I'M OKAY.

THE COURT: OKAY. THANK YOU.

(THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.)

I HAVE NOT FINISHED THE DRAFT OF THE CHARGE YET BECAUSE I, OBVIOUSLY, DIDN'T KNOW EXACTLY WHAT TO PUT IN IT, AND I THINK I GOT ABOUT 18 PAGES HERE. I'LL HAVE TO TAKE OUT THE PART ABOUT THE STOLEN VEHICLE AND ADD A LITTLE SOMETHING ABOUT THE LIMITING INSTRUCTION. I'LL HAVE TO ADD IN THE PART ABOUT THE DEFENDANT NOT TESTIFY BECAUSE I JUST CUT FROM THAT OTHER CHARGE THAT I READ FROM. I DON'T REALLY NEED THE WITNESSES TO STAY HERE, BUT I THINK THE ATTORNEYS NEED TO STAY AND TALK TO ME. I DON'T KNOW THAT IT NEEDS TO BE ON THE RECORD.

I AM WRESTLING AND I PUT IT ON THE LIST SERVE FOR THE JUDGES TO COMMENT ABOUT BUT I JUST GOT IT ON THERE ABOUT 15 MINUTES AGO, AND NO ONE HAS RESPONDED. THERE'S A CASE WITH WHICH YOU'RE FAMILIAR. IT'S STATE -VS- WILDS, AND I BELIEVE IT WAS WRITTEN BY JUDGE RALPH KING ANDERSON FOR THE COURT OF APPEALS, AND HE'S GOT A SENTENCE IN THERE THAT I NEED TO MAKE SURE I UNDERSTAND. ASSAULT AND BATTERY WITH INTENT TO KILL IS AN UNLAWFUL ACT OF

VIOLENT INJURY TO THE PERSON OF ANOTHER ACCOMPANIED BY MALICE.

MR. YOUNG: CORRECT.

THE COURT: EXPRESSED OR IMPLIED. HE'S GOT A SENTENCE IN THERE THAT ASSAULT AND BATTERY REQUIRES AN INTENT TO KILL WHICH, QUITE FRANKLY, I THINK HE'S TALKING ABOUT SPECIFIC INTENT AND GENERAL INTENT AND MAYBE -- I JUST AM NOT GRASPING WHERE HE WAS GOING WITH THAT OR WHERE THE COURT OF APPEALS WAS GOING WITH THAT. I HAVE GREAT RESPECT FOR JUDGE ANDERSON AND ALL THOSE OTHER JUDGES, BUT I WANNA MAKE SURE I UNDERSTAND WHAT THEY MEANT. I KNOW THAT MR. FALGIONE HAS MADE REFERENCE TO THAT SENTENCE IN FRONT OF THE JURY SEVERAL TIMES ABOUT AN INTENT TO KILL, AND IF THE STATE AGREES THAT'S THE LAW, THEN I DON'T HAVE ANY ISSUES. BUT I DO NEED SOME HELP AND SOME GUIDANCE AT LEAST TO KNOW THE POSITIONS OF THE RESPECTIVE PARTIES ON THAT BECAUSE—

MR. YOUNG: DO YOU HAVE A CITE ON THAT CASE, YOUR HONOR?

THE COURT: IT'S A 2003 CASE.

MR. YOUNG: STATE V. WILDS?

MR. FALGIONE:. YOUR HONOR, THE CITE IS 584 SOUTHEAST 2d 138.

MR. YOUNG: HOW DO YOU SPELL THE LAST NAME?

THE COURT: W-I-L-D-S.

MR. YOUNG: D-S. I'M SORRY.

THE COURT: I THINK IT -- WASN'T THAT A MOTOR VEHICLE CASE TOO? WAS THAT A MOTOR VEHICLE CASE TOO?

MR. FALGIONE: I BELIEVE IT WAS, YOUR HONOR.

THE COURT: IT'S 355 SOUTH CAROLINA 269 DECIDED JULY 19TH 2003. I'VE TRIED TO LOOK AND SEE IF IT'S BEEN CITED IN ANY OTHER CASES.

MR. YOUNG: IT HAS, YOUR HONOR.

THE COURT: AND I'VE LOOKED AT ALL THE OTHERS, BUT I DON'T THINK ANY OF 'EM CHANGED -- CHANGED IT AND THEN I THINK JUDGE ANDERSON WROTE ANOTHER OPINION LATER WHERE HE GOES OVER THE SAME ISSUE BUT HE DOESN'T USE THAT SENTENCE. I DON'T WANT TO CONFUSE THE JURY. I WANNA MAKE IT CLEAR, BUT WHEN YOU TELL THE JURY THAT IT REQUIRES AN INTENT TO KILL, I'M REAL CONCERNED ABOUT HOW MY COMMUNICATION SKILLS IN COMMUNICATIN' TO THE JURY WHAT I UNDERSTAND THE LAW TO BE. I NEVER UNDERSTOOD IT TO REQUIRE AN INTENT TO KILL. I UNDERSTOOD IT TO REQUIRE MALICE.

MR. YOUNG: YOUR HONOR, EVERY TIME I HAVE -- AND I WANNA STATE WHAT I UNDERSTAND TO BE THE CONDITION OF THE LAW. IF I'M WRONG THEN I HAVE OFTEN STOOD CORRECTED FOR THAT. AS I UNDERSTAND, YOUR HONOR, MALICE IS THE UNDERLYING ELEMENT OF PROOF. INTENT TO KILL IS A TERM OF ART. IT IS USED TO DESCRIBE THE MALICE NECESSARY TO SUPPORT THE CHARGE. IT IS TERMED INTENT TO KILL, BUT THE INTENT IS MERELY GENERAL IN NATURE. THERE IS NO SPECIFIC INTENT TO INTEND TO KILL A PERSON OR ANOTHER PERSON. I THINK THE UNDERLYING PURPOSE IS TO SAY THE CONDUCT OF THIS PERSON, THE VIOLENT NATURE OF THE CONDUCT ITSELF DIRECTED TOWARD AN INDIVIDUAL OR A PERSON COULD HAVE RESULTED IN THE DEATH OF THAT INDIVIDUAL BASED UPON THE CONDUCT AND THE MEANS AND BEHAVIOR.

I THINK MORE DIRECTLY ON POINT FROM THE STATE'S STANDPOINT, AND I CAN CITE CERTAIN CASES THAT WOULD SUPPORT THIS BOTH IN THE GENERAL SENSE OF THE WORD MALICE IN THE CONTEXT OF DRIVING TYPE BEHAVIOR, I DID MENTION TO THE COURT EARLIER STATE V. REID, AND FOR THE COURT'S EDIFICATION IT'S 324 SC 74. IT'S A 96 SUPREME COURT CASE. , AND I BELIEVE I SPOKE TO THAT AS BEING A FAMILY

STOCK CASE DRIVING AT SPEEDS UP TO 119 MILES PER HOUR IN WEST COLUMBIA INTO A CRASH ON ALPINE ROAD AND I-20.

THE STATED DESIRE OF THE DEFENDANT AT THAT TIME WAS THAT HE DID NOT WANT TO GO BACK TO JAIL. HE MADE THAT TO THE OCCUPANTS. THAT WAS CONSIDERED TO BE EVIDENCE OF BOTH MALICE AND RECKLESSNESS AND THERE WAS ALSO AND ACTUALLY SOME INDIFFERENCE TO PLEAS TO STOP. WE DON'T HAVE EVIDENCE OF THAT IN THIS CASE. IN THAT CASE THEY BASED THE MALICE ON THE RECKLESSNESS AND THE BEHAVIOR. I WOULD ALSO POINT OUT THAT WATSON WHICH IS 349 SC 372, 2002 SUPREME COURT CASE, PART OF THE HOLDING WAS THAT RECKLESS HOMICIDE IS NOT A LESSER INCLUDED OFFENSE OF MURDER. IN DICTA THE COURT SAID THAT MALICE AND RECKLESSNESS ARE NOT EQUIVALENT BUT THAT EXTREME RECKLESSNESS CAN LEAD TO AN INFERENCE OF MALICE AND CITED STATE V -- VERSUS MUZON (PHONETIC). AND THE TEXT OF THAT IS TO EXPRESSING THE INFERENCE OF MALICE COULD ARISE FROM THE RECKLESSNESS.

AND THEN, OF COURSE, THERE ARE PLENTY OF GENERAL MALICE CASES. I THINK IN THAT REGARD MALICE HAS GENERALLY BEEN EQUATED TO A WILFUL ACT THAT HAS A NATURAL TENDENCY TO BE FATAL TO ANOTHER. AND THAT'S -- COLEMAN CITED THAT CASE. IT'S 342 SC 172. IT'S A COURT OF APPEALS CASE FROM '97. AND ALSO FAUST WHICH IS 325 SC 12. AGAIN EXPRESSING THE GENERAL POINT THAT ASSAULT AND BATTERY WITH INTENT TO KILL IS THE UNLAWFUL ACT OF A VIOLENT NATURE TO THE PERSON OF ANOTHER WITH MALICE AFORETHOUGHT EITHER EXPRESS OR IMPLIED. JUST AS THE COURT STATED ITS INITIAL OFFERING I HAVE NEVER READ AN ELEMENT OF INTENT TO KILL WITHIN THE CONTEXT OF THIS OFFENSE. I HAVE NEVER SEEN IT DONE AND IF THE LANGUAGE IS THERE, THAT WOULD, IN MY MIND, AMOUNT TO AT LEAST STATUTORY INTERPRETATION OF WHAT THE STATUTE ITSELF REQUIRES AS PROOF OF

ELEMENT. I DON'T – I DON'T – I'VE NEVER SEEN IT AS SOMETHING THAT'S BEEN REQUIRED TO PROVE. I'M JUST NOT FAMILIAR WITH IT AT ALL.

MR. FALGIONE: YOUR HONOR?

THE COURT: YES, SIR.

MR. FALGIONE: YOU'RE ABSOLUTELY RIGHT. I'VE USED THAT TERM ASSAULT AND BATTERY WITH INTENT TO KILL, THAT IS THE CHARGE, AND I'VE USED IT QUITE HONESTLY, OUT OF REFERENCE THROUGH THE VERY OPINION THAT YOU'RE SPEAKING OF: STATE V. WILDS. AND, OF COURSE, THEY CITE A WHOLE HOST OF CASES: STATE V. FAUST; STATE V. COLEMAN; STATE V. GLENN FOR THAT PROPOSITION.

IT'S MY UNDERSTANDING THAT A GENERAL INTENT TO KILL SOMEONE SUFFICES AND I THOUGHT THAT THAT PARTICULAR ISSUE PROBABLY RELATED TO THE ISSUE OF TRANSFERRED INTENT. MOST OF THESE ABIK CASES I THINK REALLY COME FROM SHOOTINGS AND KILLINGS ON THAT REGARD, AND I THINK IT'S A RECENT TREND OF SOLICITORS TO TRY AND APPLY THOSE TO CASES INVOLVING AUTOMOBILE COLLISIONS INVOLVING POLICE OFFICERS. SO THAT – THAT WAS MY REASONING AND CERTAINLY I TRUST THE COURT'S REASONING, A HIGHER DEGREE THAN MINE, BUT THAT WAS MY THOUGHT PROCESS AS I WENT THROUGH THIS.

MR. YOUNG: YOUR HONOR, THE VICTIM IN THIS CASE IS A POLICE OFFICER. IT HAS NO BEARING ON THE CHARGE IN THIS CASE AS WE SEE IT. THERE WAS ANOTHER PERSON IN THAT INTERSECTION WHO TESTIFIED IF THEY'D BEEN STRUCK BY THE CAR THEY WOULD'VE BEEN KILLED. IT'D BE THE SAME CHARGE AS FAR AS THE STATE'S CONCERNED.

THE COURT: WELL, THE USE OF A VEHICLE AT SPEEDS THAT HAVE BEEN TESTIFIED IN THIS TRIAL IS – IS A DANGEROUS INSTRUMENTALITY AND THE JURY CAN CERTAINLY DETERMINE IT'S THE USE OF A DEADLY WEAPON.

MR. YOUNG: ANALOGOUS TO A WEAPON, YES, SIR, IT'S CERTAINLY ANALOGOUS TO A WEAPON USED IN THIS CONTEXT ESPECIALLY.

THE COURT: WELL, I THINK IT IS A DEADLY WEAPON.

MR. YOUNG: IT IS, YOUR HONOR.

THE COURT: OR AT LEAST THE JURY COULD DETERMINE THAT IT IS.

MR. YOUNG: I FIND THAT COMPLETELY CONGRUENT WITH THE STATE'S POSITION IN THAT REGARD.

THE COURT: WELL, SEE, THERE'S NO QUESTION BUT THAT THE STATE CAN CHARGE SOMEONE AND CONVICT SOMEONE OF ASSAULT AND BATTERY WITH INTENT TO KILL USING A MOTOR VEHICLE TO ACCOMPLISH THE ASSAULT AND BATTERY.

MR. YOUNG: YES, SIR.

THE COURT: AND THE DRIVER WOULD HAVE TO HAVE BEEN ACTING WITH MALICE WHICH DOES NOT MEAN THAT THE DRIVER NECESSARILY HAD AN ILL WILL TOWARD ANY PARTICULAR INDIVIDUAL. THE DRIVER COULD BE ACTING WITH SUCH DISREGARD FOR THE SAFETY OF OTHERS AS TO DEMONSTRATE THAT HE HAD MALICE TOWARD HUMAN LIFE.

MR. YOUNG: YOUR HONOR, IF I COULD EXPRESS THE PRECISE THINKING THAT I HAD WHEN THE CHARGE WAS BROUGHT TO ME AND MY ATTENTION. I ANALOGIZED THIS TO A PERSON WHO HAD PICKED UP A LOADED GUN KNOWING THAT THERE'S A CROWD OF PEOPLE OUT THERE TO HIS FRONT AND PICKS UP A WEAPON AND POINTS IT AT THE CROWD AND FIRES IN THEIR DIRECTION AND SOMEONE GOT STRUCK. NOW IT DIDN'T KILL 'EM; IT COULD HAVE. I MEAN THAT'S THE SAME ANALOGY AS I SEE IT. IT'S A -- I DON'T CARE WHO IT HITS; I'M NOT CONCERNED ABOUT THAT. I'M JUST GONNA POINT IT IN THE DIRECTION OF PEOPLE AND THEY COULD GET KILLED AND I KNOW IT, AND THOSE -- THAT IS HOW I SEE MALICE IN THE CONTEXT OF GROSS DISREGARD FOR

THE LIVES AND SAFETY OF OTHERS OR RECKLESSNESS TO THAT SAME LEVEL. IT'S NOT EXACTLY MENS REA BUT I BELIEVE IT IS CERTAINLY A RECKLESS DISREGARD FOR SAFETY THAT APPROACHES CRIMINAL INTENT AND I BELIEVE THAT THE LAW APPROXIMATES THAT AS THE NECESSARY MALICE AS I UNDERSTAND IT. THEREIN LIES THE INTENT.

THE COURT: I'M GOING TO PRINT OUT A DRAFT. I NEED Y'ALL HERE AT 9:30 TO TALK TO ME ABOUT IT.

I'M REAL CONCERNED ABOUT THAT SENTENCE ABOUT ASSAULT AND BATTERY WITH INTENT TO KILL REQUIRES AN INTENT TO KILL. I UNDERSTAND AS LAWYERS WE MAY BE ABLE TO SEPARATE THOSE THINGS AND UNDERSTAND THAT DEFINITIONS HAVE DEFINED TERMS, AND IT'S SOMETHING ANALOGOUS TO WHAT MR. YOUNG WAS SAYING, BUT I DON'T -- AND I APOLOGIZE TO YOU IF I'M WRONG; I'LL GIVE YOU A CHANCE TO CORRECT ME TOMORROW, MR. FALGIONE. I DON'T UNDERSTAND THE LAW TO BE THAT I HAVE A -- I HAVE TO INTEND TO KILL SOMEONE TO BE GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL IN ITS COMMON EVERYDAY USAGE OF THOSE TERMS OF THE INTENT TO KILL SOMEONE. I COULD BE ACTING WITH SUCH DISREGARD FOR SAFETY OF PEOPLE THAT I KNOW THAT I'M PUTTING OTHER PEOPLE'S LIVES IN JAIL AND BE CONVICTED OF ASSAULT AND BATTERY WITH INTENT TO KILL.

AND I'M NOT DISPUTING WHAT JUDGE ANDERSON WROTE. JUDGE ANDERSON KNOWS -- HE'S ALREADY FORGOTTEN MORE LAW THAT I'LL EVER KNOW. AND I LOVE TO READ HIS OPINIONS BECAUSE THEY LAY EVERYTHING OUT FOR YOU WITH CITATION AFTER CITATION, AND HE DOES GIVE A LOTTA CITATIONS IN THAT CASE. MY PROBLEM WITH UNDERSTANDING IT IS I DON'T READ THAT SENTENCE IN ANY OF THOSE CASES.

MR. YOUNG: YOUR HONOR, IN DEFERENCE TO -- AND I -- YOUR HONOR, YOU'RE -- YOU'RE TAKIN' THE POSITION OF THE STATE, AND I DON'T -- I HAVE AN OBLIGATION

TO BE AS CLEAR ON EVERYTHING AS I CAN. THE OBLIGATION I HAVE TO THE LAW IS TO ASK YOU TO LOOK AT THE FAUST OPINION WHICH IS CITED BY JUDGE ANDERSON.

THE COURT: YES, SIR.

MR. YOUNG: TAKE A LOOK AT THAT OPINION AND SEE IF YOU DON'T SEE WHERE HE MAY BE GETTING (UNINTELLIGIBLE) BECAUSE OF CONFUSION AND THINGS. IT MAY BE THAT THE JUDGE IS TRYING TO FOR ONCE OPEN THE DOOR TO BREAK OUT WHAT INTENT MEANS AND MALICE MEANS IN THE CONTEXT OF THIS OFFENSE. I DON'T KNOW THAT HE'S TRYING TO CHANGE THE ELEMENTS. I THINK HE'S TRYING TO EXPLAIN WHAT THE LAW REQUIRES IN THE CONTEXT -- IN THE CONTEXT OF MALICE. THAT'S HOW I READ IT. THAT'S WHAT FAUST DOES AS I READ FAUST. SO IT'S -- IT'S A MALICE OPINION TO TRY TO EXPLAIN THE KIND OF GENERAL INTENT HOW THAT PLAYS INTO THE POSSIBILITY OF DEATH OCCURRING IN THIS KIND OF ASSAULT. THERE HAS TO BE A POSSIBILITY OF DEATH RESULTING BECAUSE OF THE MEANS USED; THE MANNER USED, BEHAVIOR. AND I THINK THAT THAT'S AT THE HEART OF THE FAUST. AND I THINK THAT MAY, IN FACT, BE WHAT JUDGE ANDERSON TALKS ABOUT IN PART BUT -- I JUST READ FAUST AGAIN.

THE COURT: WELL, I'LL REREAD IT TOO.

MR. FALGIONE: YOUR HONOR?

THE COURT: ALL RIGHT. WE'LL BE AT EASE UNTIL 9:30 IN THE MORNING.

MR. FALGIONE: YOUR HONOR, I HAVE SOME PROPOSED JURY CHARGES I'D LIKE TO HAND UP. ALSO, I REQUEST THE LESSER INCLUDED OFFENSE OF ABHAN BE CHARGED TO THE JURY.

THE COURT: I'VE GOT THAT IN HERE.

MR. YOUNG: I THINK HE'S ENTITLED TO THAT.

THE COURT: I'LL GIVE YOU – Y'ALL DON'T LEAVE UNTIL YOU GET A DRAFT OF THIS. OKAY?

MR. FALGIONE: OKAY. (THE FOLLOWING OCCURRED THE NEXT DAY.)

THE COURT: ALL RIGHT, MR. YOUNG.

MR. YOUNG: YOUR HONOR, IF YOU WOULD REFER TO PAGE 13 OF YOUR INSTRUCTIONS.

YOUR PROPOSED INSTRUCTIONS, I BELIEVE, CORRECTLY STATES THE LAW IN ALL REGARDS.

I WOULD SIMPLY LIKE IT TO POINT OF – AND I GO TO THE SECOND FULL PARAGRAPH. I WOULD LIKE TO ADD AN ADDITIONAL PHRASE AT THE END OF THAT SENTENCE. IT'S ACTUALLY I GUESS IT'S THE PARAGRAPH IN THAT SENTENCE. IT BEGINS WITH THE WORDS AN OBJECT THAT IS -- THAT ORDINARILY IS NOT CONSIDERED TO BE A DEADLY WEAPON MAY BECOME A DEADLY WEAPON AND, IN FACT, SHOW THAT THE OBJECT IS USED TO INFLICT SERIOUS BODILY HARM OR DEATH. THE STATE WOULD REQUEST THAT YOU ADD THE PHRASE OR IS USED IN A MANNER LIKELY TO CAUSE DEATH. I BELIEVE THAT'S CONSISTENT WITH THE PHRASEOLOGY IN ACTUALLY THE PREVIOUS SENTENCE, 2 SENTENCES ABOVE AND TO THAT I SPECIFICALLY REFER TO THE SENTENCE THAT SAYS IN I BELIEVE THE FIRST PARAGRAPH SECOND SENTENCE, A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT OR THING THAT IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM.

THE COURT: TELL ME THE LANGUAGE YOU WANNA ADD AGAIN.

MR. YOUNG: THE LANGUAGE I WANNA ADD, YOUR HONOR, IS AT THE END OF THE SENTENCE AN OBJECT THAT IS ORDINARILY IS NOT CONSIDERED TO BE A DEADLY WEAPON, THAT SENTENCE, AT THE END OF IT JUST ADD AN ADDITIONAL PHRASE OR IS USED IN A MANNER LIKELY TO CAUSE DEATH. I BELIEVE THAT'S SUPPORTED BY THE

FACTS BECAUSE OF THE NATURE OF THE DRIVING IN THIS CASE.

THE COURT: ALL RIGHT. MR. FALGIONE, WHAT DO YOU HAVE?

MR. FALGIONE: YOUR HONOR, WE WOULD OBJECT TO THAT AND WE ALSO HAVE SOME ADDITIONAL COMMENTS AND OBJECTIONS TO THAT WHOLE PARAGRAPH. OF COURSE WE OBJECT TO THAT. IT SEEMS TO BE MORE OF A CHARGE ON THE FACTS. WHEN WE GET TO THAT STATE, I THINK THE LANGUAGE THAT YOU HAVE IS A CHARGE THAT'S BEEN CONSISTENTLY GIVEN. HAVING SAID THAT, I HAVE SOME FURTHER OBJECTIONS TO THAT ON CONSTITUTIONAL GROUNDS, YOUR HONOR.

THE COURT: GO AHEAD.

MR. FALGIONE: YOUR HONOR, THE DEFENSE WILL OBJECT TO THE INCLUSION OF ANY OF THAT, ANY OF THOSE INFERENCES FROM AN INTENT, AND FOR THAT WE WOULD CITE AS A BASIS OF GILBERT V. MOORE IN THAT WE BELIEVE IT'S ANALOGOUS TO WHAT THE -- WHAT THE FEDERAL AND THE STATE OF SOUTH CAROLINA, COURT OF STATE OF SOUTH CAROLINA HAVE DETERMINED IS AN UNCONSTITUTIONAL SHIFT OF THE BURDEN. THAT CHARGE INTENT MIRRORS WHAT THE COURT FOUND WAS AN UNCONSTITUTIONAL SHIFT OF THE BURDEN OF PROOF TO THE DEFENDANT IN THE CHARGE OF MALICE. WE THINK THE CHARGE ON INTENT IS ANALOGOUS TO THE COURT'S REASONING ON MALICE AND THEREFORE SHIFTS HOWEVER SUBTLE THE BURDEN OF PROOF TO THE DEFENSE AND OF COURSE THAT WOULD BE IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS AND HIS RIGHT NOT TO TESTIFY.

THE COURT: HOW -- EXPLAIN TO ME HOW IT SHIFTS THE BURDEN.

MR. FALGIONE: BECAUSE IT ALLOWS THAT JURY TO PRESUME, TO MAKE PRESUMPTIONS OF ACTUAL INTENT, AND, OF COURSE, THE PROSECUTION IS SAYING INTENT ALONE IS ENOUGH TO SHOW THAT HE IS GUILTY OF ABWIK IN TERMS OF MALICE OR IN TERMS OF HIS CARRYING OUT THIS ACT.

MR. YOUNG: DO YOU HAVE THE CITE FOR THAT? IS IT 134 F 2d -- F 3d 642, 4TH CIRCUIT 98 FOR THE--

MR. FALGIONE: YOUR HONOR, WE WOULD BE REFERENCING GILBERT V. MOORE 134 F 3d 642. WE WOULD ALSO REFERENCE PLYLER -VS- STATE 424 SOUTHEAST 2d 477, 309 SOUTH CAROLINA 408. A 1992 CASE IN WHICH THEY DISCUSS THIS VERY THING ABOUT MALICE. AND THEY -- THE COURT IN ITS OPINION SAID THAT MALICE CHARGE WHICH STATED THAT IF THE EVIDENCE WERE SUFFICIENT TO RAISE PRESUMPTION OF MALICE, SUCH PRESUMPTION WAS REBUTTABLE IMPERMISSIBLY SHIFTED THE BURDEN OF PROOF FROM THE STATE IN VIOLATION OF SANSFORD (PHONETIC) AND WE THINK THAT -- AND WE WOULD SUGGEST TO THE COURT AND ARGUE TO THE COURT THAT THIS CHARGE ON INTENT DOES EXACTLY THAT SAME THING.

THE COURT: YOU'RE CITING THIS AS THE SAME AS CHARGING ON REBUTTAL OF PRESUMPTION?

MR. FALGIONE: YES, YOUR HONOR.

THE COURT: I DON'T AGREE WITH THAT. LET ME SEE IF I CAN FIND THE CASES. YOU SAID STATE -VS- PLYLER OR PLYLER -VS- EVAN (PHONETIC)? I GOT STATE -VS- PLYLER 270 SOUTHEASTERN 2d 146?

MR. FALGIONE: YOUR HONOR, THE CASE I'M LOOKING AT -- AND, OF COURSE, IT'S A SYNOPSIS IS PLYLER P-L-Y-L-E-R VERSUS STATE 424 SOUTHEAST 2d 477.

THE COURT: I FOUND IT.

MR. FALGIONE: 309.

THE COURT: I FOUND IT. ALL RIGHT. PLYLER IS DEALING WITH A REBUTTABLE PRESUMPTION. I'M NOT CHARGING REBUTTABLE PRESUMPTION. I'M CHARGING EVIDENTIARY INFERENCE. ALL RIGHT. WHAT ELSE DO YOU HAVE?

MR. FALGIONE: YOUR HONOR, THE REST OF THESE DEAL WITH THE DEFENDANT'S REQUEST TO CHARGE THAT WE HANDED UP TO THE COURT.

THE COURT: ALL RIGHT.

MR. FALGIONE: DEFENSE CHARGE #5, YOUR HONOR. DEFENSE WOULD REQUEST THAT THAT CHARGE BE INCLUDED, AND, OF COURSE, THAT REFERS DIRECTLY TO THE TESTIMONY OF INVESTIGATOR ANTLEY. THE FACT THAT A RECORDING WAS NOT MADE OF THAT ALLEGED STATEMENT. NOW THAT, IN ALL FAIRNESS TO THE COURT, THAT'S A MASSACHUSETTS CASE, YOUR HONOR.

THE COURT: ALL RIGHT. REQUEST #5 IS DENIED. IN MY VIEW IT'S A CHARGE ON THE FACTS.

MR. YOUNG: STATE'S POSITION THAT'D BE A COMMENT ON THE EVIDENCE, YOUR HONOR.

THE COURT: WHAT ELSE, MR. FALGIONE?

MR. FALGIONE: HAVING RECEIVED THAT RULING, LET ME PROCEED BEYOND MY NEXT ONE AND GET TO CHARGE #10, YOUR HONOR. DEFENSE REQUESTS A CHARGE THAT SUSPICION HOWEVER STRONG IS NOT ENOUGH TO SUSTAIN A CONVICTION. THAT CERTAINLY SEEMS TO BE APPROPRIATE IN THIS CASE. THAT COMES FROM STATE V. WOOD.

THE COURT: ALL RIGHT. I'VE ADDED IT. I'VE ADDED IT AT THE END OF THE EXPLANATION ABOUT REASONABLE DOUBT. WHAT ELSE DO YOU WANT?

MR. FALGIONE: THANK YOU, YOUR HONOR. WELL, YOUR HONOR, WE WOULD ALSO REQUEST THAT OUT OF THE STATE V. WILDS CASE THAT IT BE MADE CLEAR TO THE JURY THAT IT'S FREE TO ACCEPT OR REJECT AS PER THE WORDING IN WILDS. UNDER FED NOTE #21, YOUR HONOR, THE COURT SAID IN THE CHARGE TO THE JURY REGARDING ASSAULT AND BATTERY WITH INTENT TO KILL THE JUDGE SHOULD MAKE IT CLEAR TO

THE JURY IT'S FREE TO ACCEPT OR REJECT PERMISSIVE INFERENCES OF MALICE. I WOULD LIKE SOME WORDING IN A CHARGE TO THAT IN THAT SECTION, YOUR HONOR, DEPENDING UPON THE JURY'S VIEW OF THE EVIDENCE.

MR. YOUNG: YOUR HONOR, IF THE STATE COULD BE HEARD ON THIS JUST BRIEFLY. YOUR PARAGRAPH WHICH STATES IF FACTS ARE -- ON PAGE 14 -- IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE TOWARD MALICE, THIS INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE PRESENTED. I BELIEVE THAT IS PERMISSIVE BY ITS VERY NATURE THE WAY IT'S WORDED, AND I CAN'T SEE IT IN ANY OTHER FASHION. I DON'T SEE HOW IT IS NOT PERMISSIVE IN ITS INSTRUCTION ITSELF ACTUALLY. IT STATES FOR THE JURY THAT THEY MUST FIRST REACH THAT CONCLUSION BEYOND A REASONABLE DOUBT AND THEN CONSIDER THE INFERENCE. SO IT IS -- IT IS PERMISSIVE BY ITS VERY STATEMENT. I THINK HE'S ACTUALLY ACHIEVED WHAT HE WANTS IN THE -- IN THE WORDING IN THE MIDDLE OF THE PARAGRAPH ON PAGE 14.

MR. FALGIONE: YOUR HONOR, I DISAGREE WITH THAT. I DON'T BELIEVE THAT MAKES IT CLEAR AS MANDATED BY STATE V. WILDS TO THE JURY THAT THEY'RE FREE TO ACCEPT OR REJECT THAT PERMISSIVE INFERENCE. PERHAPS AN APPROPRIATE PLACE TO INSERT THAT WOULD BE ON PAGE 14 DIRECTLY ABOVE THE BEGINNING OF THE PARAGRAPH THAT -- THAT COUNSEL HAS SUGGESTED TO THE COURT.

THE COURT: I'VE ADDED THE FOLLOWING LANGUAGE ON PAGE 13 WHERE I'M DISCUSSING AN INTENT MAY BE SHOWN BY VARIOUS THINGS. IT'S IN LOWER CASE. SOMETIMES WHEN THESE THINGS PRINT OUT, THEY DON'T PRINT OUT THE SAME WAY AS THEY'RE SHOWN ON MY COMPUTER BASE. SO I MAY BE TELLIN' YOU WRONG ABOUT THE PAGE NUMBER. BUT THE PARAGRAPH INTENT MAY BE SHOWN BY ACTS AND THE CONDUCT OF THE ACCUSED.

MR. FALGIONE: YES, SIR.

THE COURT: IT GOES DOWN AND INDICATES THAT INTENT TO KILL MAY BE INFERRED FROM THE CHARACTER OF THE ASSAULT, THE USE OF A DEADLY WEAPON AS AN OPPORTUNITY TO DELIBERATE OR THE USE OF A DANGEROUS OR DEADLY WEAPON IN A MANNER REASONABLY CALCULATED TO CAUSE DEATH OR GREAT BODILY HARM. INTENT MAY BE INFERRED WHEN IT IS DEMONSTRATED THAT THE ACCUSED VOLUNTARILY AND WILFULLY COMMITS AN ACT THE NATURAL TENDENCY OF WHICH IS TO END THE LIFE OF ANOTHER HUMAN BEING. WHAT I'VE ADDED IS HOWEVER ANY INFERENCE OF MALICE THAT ARISES IS PERMISSIVE AND EVIDENTIARY ONLY. YOU MAY ACCEPT OR REJECT IT. SO IF FACTS ARE PROVEN BY THE STATE SUFFICIENT TO PROVE THE JUSTIFICATION OF THE INFERENCE BEYOND A REASONABLE DOUBT, THAT IS ONLY EVIDENCE THAT YOU COULD CONSIDER ALONG WITH ALL THE OTHER EVIDENCE OF THE CASE TO DECIDE WHETHER THE STATE HAS PROVEN THE ELEMENT OF MALICE BEYOND A REASONABLE DOUBT.

MR. FALGIONE: YOUR HONOR, IF THE COURT WOULD -- AT THE RISK OF RAISING THE WRATH OF THE COURT, INSTEAD OF SAYING THAT IS ONLY EVIDENCE, WOULD IT NOT BE MORE CLEAR IF THAT WERE TO SAY THAT IS MERELY EVIDENCE?

THE COURT: FINE WITH ME.

MR. FALGIONE: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. WHAT ELSE DO YOU HAVE, MR. FALGIONE?

MR. FALGIONE: YOUR HONOR, WHEN WE ENDED THE DAY YESTERDAY WE WERE WRESTLING WITH THE INTENT ELEMENT, INTENT TO KILL ISSUE. UNLESS I'M INSTRUCTED OTHERWISE, I WILL BE ARGUING TO THE COURT THAT ASSAULT AND BATTERY WITH INTENT TO KILL DOESN'T MEAN THAT THERE HAS TO BE A SHOWING OF SOME INTENT TO KILL. IS THAT CONSISTENT WITH---

THE COURT: THAT'S WHAT THE OPINION SAID. I HAVE -- I GOT A COUPLE RESPONSES BACK FROM JUDGES, AND I THINK THEY PRETTY MUCH GO IN LINE WITH WHAT I UNDERSTOOD MR. YOUNG'S ARGUMENT TO BE, AND THAT IS THEY THINK THAT WHAT JUDGE ANDERSON AND THE COURT OF APPEALS IS TRYIN' TO DO IS TRYIN' TO EXPLAIN WHAT INTENT TO KILL MEANS. THAT AN INTENT TO KILL IS A DEFINED TERM BASICALLY. THOSE ARE MY WORDS. AND WHAT IT MEANS IS SOMETHING LESS THAN A SPECIFIC INTENT TO KILL SOMEONE. BUT THERE IS A SENTENCE IN THERE THAT STATES ASSAULT AND BATTERY WITH INTENT TO KILL REQUIRES AN INTENT TO KILL.

MR. FALGIONE: I JUST WANTED TO MAKE SURE I DIDN'T RUN COUNTER TO ANY INSTRUCTIONS THE JUDGE IS GONNA BE PRESENTING TO THE JURY, YOUR HONOR. THANK YOU.

THE COURT: I THINK THAT'S A MATTER THE TWO OF YOU ARE GOING TO HAVE TO ADDRESS IN CLOSING ARGUMENT. NOW I NORMALLY DO TELL THE JURY IF THERE'S A DIFFERENCE BETWEEN WHAT I TELL THEM THE LAW IS AND WHAT YOU TELL 'EM THE LAW IS, YOU BEING THE ATTORNEYS—

MR. FALGIONE: I UNDERSTAND.

THE COURT: —THAT THEY HAVE TO TAKE THE LAW AS I GIVE IT TO THEM WHICH IS WHAT I USED TO ALWAYS TELL THE JURY WHEN I WAS A LAWYER ANYWAY. HAVE WE GOT ALL THE JURORS? YOU NEED SOMETHING ON THE RECORD?

MR. FALGIONE: YOUR HONOR, I JUST SPOKE WITH THE SOLICITOR. I'M REQUESTING THAT THE DIRECT LANGUAGE OUTTA STATE V. WILDS UNDER PARAGRAPH 10 OF THE HEAD NOTES BE INCLUDED IN THAT IS THIS EXACT WORDING: ASSAULT AND BATTERY WITH INTENT TO KILL REQUIRES INTENT TO KILL; IT IS ADEQUATE IF GENERAL INTENT IS ESTABLISHED AND SPECIFIC INTENT IS NOT NECESSARY.

THE COURT: I THINK THAT SENTENCE IS CONFUSING. WITH ALL DUE RESPECT, I THINK YOU GOTTA BE A LAWYER TO UNDERSTAND IT. I'M NOT GONNA CHARGE IT.

MR. FALGIONE: I WOULD OBJECT, YOUR HONOR.

THE COURT: I NOTE YOUR OBJECTION.

MR. FALGIONE: THANK YOU.

MR. YOUNG: YOUR HONOR, DO YOU HAVE MADE A WHOLE BUNCHA CHANGES IN YOUR INSTRUCTION OTHER THAN WHAT YOU JUST TOLD US?

THE COURT: I HAVEN'T MADE ANY--

MR. YOUNG: OH, OKAY.

THE COURT: --OTHER THAN WHAT I TOLD YOU IN HERE.

MR. YOUNG: YES, SIR. I -- THAT'S -- I WAS UNDER THE IMPRESSION WE HAD BRAND NEW INSTRUCTIONS.

THE COURT: YOU READY TO ARGUE, MR. YOUNG?

MR. YOUNG: I AM, SIR.

THE COURT: ALL RIGHT. BRING THE JURY IN, PLEASE. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY) ALL RIGHT. LADIES AND GENTLEMEN, AS I TOLD YOU YESTERDAY, THERE ARE TWO STAGES THAT REMAIN: THE CLOSING ARGUMENTS AND THE CHARGE. THE WAY THIS WILL WORK IS THAT THE STATE WILL MAKE THE FIRST CLOSING ARGUMENT, AND THEN THE DEFENSE GETS TO MAKE THE LAST CLOSING ARGUMENT. I USUALLY TAKE BREAKS BETWEEN THE ARGUMENTS. I ALWAYS TAKE A BREAK BETWEEN WHEN THE ATTORNEYS FINISH THEIR ARGUMENT, AND WHEN I DO MY PART AND TELL YOU THE LAW. IT'S GONNA TAKE ME A GOOD WHILE TO EXPLAIN THE LAW TO YOU IN THIS CASE. IT'S GONNA TAKE AROUND 34, 35 MINUTES. SO I WANT YOU TO BE FRESH AND ALERT. IF YOU NEED A BREAK, JUST RAISE YOUR HAND AND LET ME KNOW AT ANY POINT IN TIME WHEN THE ATTORNEYS ARE

DOIN' THEIR THING OR WHEN I'M DOIN' MY THING. BUT I INVITE YOUR CLOSE ATTENTION, LADIES AND GENTLEMEN, AND YOU SHOULD GET THE CASE THIS MORNING, LATER THIS MORNING. ALL RIGHT, MR. YOUNG.

MR. YOUNG: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT? MR. FALGIONE. GOOD MORNING. (RESPONSE) FOLKS, I DON'T WANT TO BLOCK YOUR VIEW OF ANYTHING HERE. THIS IS – YOU LOOK ANY DIRECTION YOU CAN. WE STARTED OFF THIS CASE ON MONDAY TELLING YOU FOLKS THAT WE WOULD PROBABLY GET TO SOMETHING CALLED MALICE. YOU REMEMBER ME SAYING THAT. WELL, WE'RE AT THAT POINT. WE'RE GONNA TALK ABOUT THAT THING. AND I'M GONNA TRY TO NOT GLOSS OVER THE REST OF THE CASE MUCH BUT IT'S GOTTA BE THE FOCUS OF MY DISCUSSION WITH YOU AND IT'S NOT GONNA BE HIGHLY TECHNICAL. OKAY? I'M NOT GONNA TRY TO DO THAT. I'M GONNA TRY TO EXPLAIN WHAT I UNDERSTAND THE LAW TO BE TO YOU FROM MY PERSPECTIVE, THE STATE'S PERSPECTIVE. MR. FALGIONE'S GONNA DO THE SAME THING. ANYTHING I TELL YOU YOU DO NOT HAVE TO LISTEN TO IF YOU DON'T WANT TO.

NOW WHY DO I TELL YOU THAT? BECAUSE I'M NOT THE JUDGE OF THE LAW. THAT MAN SITTIN' RIGHT THERE, JUDGE WILLIAM KEESLEY, IS THE JUDGE OF THE LAW. YOU'RE THE JUDGE OF THE FACTS. OKAY? THIS IS ARGUMENT ON THE STATE'S PART. I'M TRYIN' TO MAKE SENSE OUTTA THIS FROM OUR PERSPECTIVE FOR YOU. THAT'S OUR POINT. THAT'S WHY WE'RE HERE. YOU'VE HEARD THE EVIDENCE; YOU KNOW WHAT IT SAYS.

NOW I'M GONNA REMIND YOU OF SOME PARTS OF IT AND TRY AND MAKE THE LAW WORK IN THE CONTEXT OF THE FACTS. THAT'S WHAT I'M GONNA TRY TO DO HERE. OKAY? I'M GONNA TRY TO GO THROUGH IT. BUT I WANT TO BEGIN WITH A SIMPLE STATEMENT TO YOU. THAT MAN SITTIN' OVER THERE WAS RUNNIN' FROM THE LAW. HE

RAN FROM THE LAW, AND HE WOUND UP PLOWIN' INTO PEOPLE IN THIS CITY. OKAY? HE RAN INTO A MAN AND IT JUST HAPPENED TO BE A DEPUTY. JUST HAPPENED TO BE. HE OUTRAN TWO POLICE CARS, CAME INTO TOWN AND HIT A THIRD. ACTUALLY HE OUTRAN THREE. THEY GAVE UP THE CHASE. AND THEY GAVE UP THE CHASE BECAUSE THEY WERE CONCERNED ABOUT THE SAFETY OF THE PUBLIC. AND I WANT YOU TO PLACE EVERYTHING I TELL YOU IN THE CONTEXT OF THOSE SIMPLE FACTS RIGHT THERE. THERE'S ALSO SOMETHING HE TOLD LAW ENFORCEMENT AFTER HE WAS BROUGHT BACK INTO CUSTODY THAT ESSENTIALLY, FOLKS, BOILS DOWN TO A KILL-OR-BE-KILLED ATTITUDE. THAT'S THE STATE'S PERSPECTIVE ON IT. THE WORDS THAT HE SAID AND THE THINGS YOU LEARNED FROM WHAT YOU HEARD FROM THE STAND. BUT OUR POSITION IS HE HAD A KILL-OR-BE-KILLED ATTITUDE. AND ALL OF THIS IS GOING TO TIE BACK INTO WHAT I'M GONNA TALK TO YOU ABOUT IN A MINUTE. OKAY?

I'M NOT GONNA SPEND A GREAT DEAL OF TIME ON THE FAILURE TO STOP FOR A BLUE LIGHT AND SIREN. YOU ALREADY KNOW ABOUT WHAT HAPPENED.

BASICALLY, HE WAS CLOCKED BY ANOTHER VEHICLE AT ABOUT 100 MILES AN HOUR. THEY WERE AT THAT POINT IN TIME IN EDGEFIELD COUNTY. THEY WERE HEADED – THE POLICEMAN WAS ACTUALLY HEADED TOWARD EDGEFIELD ON HIGHWAY 25, TURNED AROUND, FOLLOWED HIM A SHORT DISTANCE. THE PICKUP TRUCK STOPPED. THE CAR MR. WILES WAS DRIVING KEPT GOIN' AND THEN STOPPED BRIEFLY INSIDE GREENWOOD COUNTY. THE POLICEMAN GOT OUT OF THE CAR. DID A 180. AFTER HE GOT OUT OF THE CAR THEY DID A 180. SCRATCHED OFF AND TORE OUT DOWN THE ROAD. AND THAT'S WHERE THE CHASE BEGAN. ABOUT 17 MILES LONG AT SPEEDS ACCORDING TO HIM UP TO 140 MILES AN HOUR. AT SPEEDS ACCORDING TO THE HIGHWAY PATROLMAN IN ORDER TO CATCH UP TO HIM 160 WHICH IS FAST AS – THAT'S NASCAR SPEEDS. AT THAT POINT THEY BROKE OFF THE CHASE. WE'RE GETTIN'

TOWARD SALUDA. WE'RE 3 MILES OUT. THIS GUY -- GIVE THIS GUY A CHANCE TO DO THE RIGHT THING. LET HIM BACK OFF. HE MIGHT KILL SOMEBODY. THEY'RE CONCERNED. SAFETY OF THE GENERAL PUBLIC. THAT'S WHAT THEY'RE CONCERNED ABOUT. THEY BACK OFF. THERE'S A PATROLMAN BEHIND -- THERE ARE TWO PATROLMEN. THEY SLOW DOWN. THERE'S ANOTHER DEPUTY SLIGHTLY AHEAD OF THEM. SEES THEM COME BY. SPEEDS UP TO 70 AND 80. JUST ABOUT THE TIME HE GETS 80 THEY SAY BACK OFF. BACK OFF. LET HIM GO.

NOW IN THE CONTEXT OF THAT HE HAS BEEN RUNNIN' OFF -- PEOPLE OFF THE ROAD. OKAY? PASSIN' PEOPLE INAPPROPRIATELY. CUTTIN' 'EM OFF AS HE CAME AROUND PASSING THEM, FORCING THEM OFF THE ROAD, FORCING PEOPLE APPROACHING HIM OFF THE ROAD. THE DEPUTY SAID AS SOON AS HE GOT PAST HE RAN A MAN ALMOST INTO THE -- HE DID RUN A MAN INTO THE DITCH OR THE DAM BETWEEN I BELIEVE HE SAID IT WAS FIRE -- FIRETOWER ROAD AND ANGLE ROAD. SOMETHIN' LIKE THAT. RAN HIM OFF INTO THE DITCH. MAN AND WOMAN IN THE CAR APPROACHING FROM THE OPPOSITE DIRECTION. KEPT GOIN' INTO TOWN. HE LOSES SIGHT OF HIM IN A CURVE THAT'S RIGHT THERE. PICKS HIM UP AGAIN BRIEFLY AS HE GOES INTO TOWN. HE'S ABOVE 100. GOES INTO TOWN.

AND THEN OTHER WITNESSES PICK IT UP, BASICALLY, FROM THE TOP OF THIS LITTLE HILL UP HERE WHERE THE CAUTION LIGHT IS. THEY PICK IT UP FROM THAT POINT. AND YOU HEAR FROM THE LADY WHO WAS IN HER CAR, IN HER FAMILY'S CAR, IN THE BACK SEAT, THE BABY AND ANOTHER RIDER AND DAUGHTER-IN-LAW AND SON IN THE FRONT SEAT. AND THEY SEE THIS CAR COMING FROM THE LEFT FROM MCCORMICK AND SON SAYS THAT CAR'S NOT STOPPIN', TURN RIGHT, TURN RIGHT, AND THEY DO KIND OF A TURN TO GET OUT OF THE -- AND THEY GET OUT OF THE WAY MAYBE BECAUSE DEPUTY FRANK DANIELS HAD PULLED INTO THE INTERSECTION ABOUT THIS

TIME. AND THOSE ARE THE CIRCUMSTANCES THAT LED UP JUST PRIOR TO THE COLLISION. JUST PRIOR TO THE COLLISION. AND SHE SAYS HE'S DOIN' ABOUT 80. POLICEMAN SAYS GOOD FAITH ESTIMATE 90. AND HE SAYS I'M BEING CONSERVATIVE. I'M GIVING HIM THE BENEFIT OF THE DOUBT. IN OTHER WORDS, EVERYBODY'S TRYING TO GIVE THIS MAN THE BENEFIT OF THE DOUBT IN HIS DRIVING BEHAVIOR. THE POLICE ARE BACKIN' OFF TO TRY TO PROTECT THE PUBLIC. GIVE HIM THE BENEFIT OF THE DOUBT AND MAYBE HE'LL DO THE RIGHT THING AND SLOW DOWN. THEY DO IT OVER AND OVER AGAIN, TWICE AT LEAST, BEFORE HE GETS INTO CITY OF SALUDA LIMITS. BUT HE'S STILL BARRELING ALONG FOR SPEED LIMITS THAT ARE GOIN' FROM 55 TO 45 TO 35 TO 25 RIGHT UP HERE AT THE TOP OF THE HILL AT THE CAUTION LIGHT. AND HE'S DOIN' ABOUT 80 OR 90 WHEN HE COMES THROUGH THAT INTERSECTION. HE HAS A PASSENGER IN THE CAR WITH HIM.

ALL RIGHT. THAT IS THE CONTEXT THAT THE LAW WILL NOW -- WHAT YOU'RE SUPPOSED TO DO IS TAKE THIS LAW THE JUDGE GIVES YOU AND APPLY IT TO THE KINDA FACTS WHICH YOU HAVE. AND I'VE BEEN GENERAL; I'VE GIVEN YOU AN OVERVIEW OF THE FACTS, BUT YOU KNOW SPECIFICALLY WHAT YOU HEARD THE WITNESSES SAY. THAT'S WHAT YOU RELY ON, WHAT THEY SAID.

THE JUDGE IS GONNA TALK ABOUT ASSAULT AND BATTERY WITH INTENT TO KILL. HE'S GONNA TALK ABOUT ANOTHER CHARGE WHICH IS WHAT WE CALL A LESSER INCLUDED CHARGE CALLED ABHAN. OKAY? ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. THEY'RE DIFFERENT. OKAY? THEY'RE BOTH RAISED BY THE FACTS BECAUSE THE LAW APPLIES TO THESE KIND OF THINGS. AND ASSAULT AND BATTERY WITH INTENT TO KILL IS WHAT THE STATE HAS ALLEGED HERE HE DID WHEN HE STRUCK MR. DANIELS. OKAY? MR. DANIELS IS THE VICTIM IN THAT SETTING, BUT THE WAY THE LAW WORKS, THE LAW LOOKS AT THE BIG PICTURE TO SEE WHAT THE

PERSON'S DOING BECAUSE INTENT IS WHAT MUST LIE AT THE HEART OF EVERYTHING. MALICIOUS INTENT. THEY TIE TOGETHER.

IT IS MALICIOUS INTENT AND MALICE THAT WE'RE TALKING ABOUT WITHIN THE CONTEXT OF THIS BIG CHARGE. ALL RIGHT?

SO AS WE GO THROUGH THIS, KEEP IN MIND THE PURPOSE OF THE STATE'S INTENTION HERE IS FOR YOU TO FOCUS ON THOSE POINTS.

AN UNLAWFUL ACT. HE RAN FROM THE POLICE. AN ESCAPED CONVICT. AND HE DIDN'T HAVE AUTHORITY TO STRIKE ANYBODY. HE STRUCK SOMEBODY IN THE CAR. VIOLENT INJURY. MR. DANIELS WAS BASICALLY KNOCKED OUT SILLY BY THE IMPACT. ONE CAR HIT ANOTHER AND THAT PUT IN MOTION THE VIOLENT EFFECTS OF THE CAR CRASH THAT CAUSED HIM TO BE INJURED. WAS THE INJURY GREAT? NO. THANK GOD IT WAS NOT. BUT IT DOESN'T HAVE TO BE. IT JUST HAS TO BE VIOLENT INJURY. WE HAVE ONE IN THIS CASE. TO A PERSON. MR. FRANK DANIELS IS A PERSON. A HUMAN BEING. YOU SAW HIM HERE. HERE'S THE KEY. WITH MALICE AFORETHOUGHT. AND YOU'VE HEARD THIS IN THE CONTEXT PROBABLY BEFORE WHEN YOU LISTENED TO COURT SHOWS AND THINGS LIKE THAT. YOU'VE PROBABLY HEARD MALICE AFORETHOUGHT. THAT'S ESSENTIALLY WHAT WE'RE TALKIN' ABOUT. WE'RE TALKIN' ABOUT MALICIOUS INTENT. OKAY? THINKS ABOUT IT OR HAS TIME TO THINK ABOUT IT. LET'S ASK THE QUESTION DID HE HAVE TIME TO THINK ABOUT IT.

WELL, LET'S GO BACKWARDS FROM THE POINT IN TIME THE CHASE BEGAN. HE SEES A POLICEMAN. HE SEES A POLICEMAN AND HE, BASICALLY, IS IN THE COMPANY OF SOMEBODY ELSE GOIN' DOWN THE ROAD AT 100 MILES AN HOUR, AND THE POLICEMAN TURNS AROUND ON HIM AND TRIES TO STOP HIM AND HE STOPS INITIALLY. AND THEN TAKES OFF. HE HAS FROM GREENWOOD COUNTY THROUGH EDGEFIELD COUNTY INTO SALUDA COUNTY IN THE CITY LIMITS OF SALUDA TO THINK ABOUT WHAT HE'S DOING.

OKAY? IS THAT TIME ENOUGH TO FORM THE INTENT? ALL RIGHT. THAT'S ONE QUESTION TO ASK.

AND THERE'S NO REQUIREMENT IN THE LAW -- THE JUDGE IS GONNA INSTRUCT YOU ON THIS -- THAT HE ACTUALLY INTEND TO KILL A SPECIFIC PERSON. MALICE IN THIS CONTEXT, OKAY? THIS KINDA SITUATION, WE'RE TALKIN' ABOUT THE KINDA BEHAVIOR THAT A PERSON WOULD EXHIBIT WHEN THEY'RE NOT BEING NOT JUST CAREFUL, BUT THEY BEGIN TO DISREGARD HUMAN LIFE. THAT'S THE KINDA THING WE'RE TALKIN' ABOUT. THE GENERAL SENSE , YOU KNOW, IT COULDA BEEN ANYBODY THAT KINDA THING. THE SIMPLE STATEMENT THAT IF IT WASN'T MR. FRANK DANIELS IT COULD'VE BEEN ANYBODY ELSE BECAUSE OF THE NATURE OF THIS DEPRAVITY OF HIS MIND AND HIS HEART AT THE TIME.

SO WE'RE LOOKING IN THE PERSON AT THIS POINT. THAT'S WHAT WE'RE DOING WE'RE LOOKING INSIDE THE PERSON OVER THERE. AND YOU CAN'T DO THAT VERY EASILY.

SO WE HAVE TO LOOK FOR LAWS THAT KINDA EXPRESS THAT PROBLEM, AND THEN FACTS THAT HELP IT DEMONSTRATE WHAT THAT PERSON MUST HAVE BEEN THINKING OR DOING BECAUSE THAT'S WHAT WE HAVE TO RELY ON. YOU KNOW WE DON'T HAVE THESE MACHINES THAT GO INSIDE PEOPLE'S MINDS AND SAY THAT'S EXACTLY WHAT YOU WERE THINKING AT THE TIME. IT NEVER HAS BEEN THE CASE. I DON'T KNOW ANY WAY YOU CAN DO THAT. MY MOTHER KNOWS WHAT I'M THINKING ABOUT 90 PERCENT OF THE TIME. OKAY? SHE KNOWS IT. WHY? SHE KNOWS ME. SHE KNOWS WHAT I'M THINKIN' OR DOIN'. DO YOU HAVE TO BE A MOTHER TO UNDERSTAND, BASED UPON YOUR COMMON SENSE AND BEHAVIOR -- BASICALLY, YOU JUST WATCH A PERSON'S BEHAVIOR AND SEE WHAT THEY *MUST* BE THINKING. AND YOU DON'T HAVE TO HAVE THE ABSOLUTE BOTTOM LINE ON EVERY THOUGHT. WHAT YOU

DO SPEAKS MORE LOUDLY THAN WHAT YOU SAY. YOU HAVE THAT AND YOUR COMMON SENSE TO LOOK INSIDE THE PERSON'S MIND. THAT'S WHERE THE EVIDENCE OF INTENT CAN COME FROM. BEHAVIOR, HOW THEY ACTED, WHAT THEY WERE DOING TO SHOW THE INTENT BECAUSE WHAT YOU DO SPEAKS LOUDER THAN WHAT YOU SAY. THAT'S TRUE IN ALL HUMAN EXPERIENCE. AND THAT'S WHY COMMON SENSE IN JURORS HERE. THANK YOU FOR WHAT YOU'RE DOING BECAUSE THIS IS THE HARD PART.

HERE'S WHERE WE GET A LITTLE STRANGE. I'M SORRY. THIS IS NOT HARD BUT IT'S – I WANT TO EXPRESS WHAT I SEEK IN YOU AS THE ISSUES HERE THAT YOU MAY STRUGGLE WITH A BIT.

EXPRESS INTENT. THAT'S WHAT YOU SAY. OKAY? THAT'S WHAT YOU SAY. IT CAN BE IN THE SENSE OF – THERE WERE SOME STATEMENTS THAT WERE OFFERED HERE. YOU RECALL WHEN INVESTIGATOR GREG ANTLEY TOOK THE STAND AND SAID HE INTERVIEWED THIS MAN AFTER HE WAS RETURNED TO CUSTODY. ASKED HIM WHAT HE HAD TO SAY ABOUT THIS. HE WAS TALKIN' ABOUT THE ESCAPE GENERALLY, BUT HE WENT INTO THE QUESTION OF WHAT HAPPENED TO HIM, THE CAR CHASE. HE SAID WHEN HE REACHED SALUDA HIS THOUGHTS WERE THAT I'M OUTTA GAS. OKAY? I'M COMIN' TOWARD SALUDA, I'M OUTTA GAS. AND HIS THOUGHTS WERE HE WOULD EITHER – AND I'M GONNA PUT IT IN HIS SPIN IN THE FIRST PERSON. I THINK HE SAID ACTUALLY HIS THOUGHTS WERE THAT HE WOULD EITHER KILL SOMEONE OR BE KILLED.

NOW IF YOU PUT IT IN THE FIRST PERSON I AM ABOUT TO BE KILLED OR I WILL END UP KILLING SOMEONE. NOW THAT'S HIS – THAT'S HIS WORDS. THAT'S AN EXPRESS STATEMENT THAT I THINK YOU SHOULD CONSIDER WHEN YOU GO BACK IN TO DELIBERATE ABOUT HIS INTENT. EXPRESS INTENT.

NOW THAT'S SOME EVIDENCE THAT YOU CAN RELY ON. FROM THE STATE'S PERSPECTIVE I THINK YOU SHOULD RELY ON PART OF IT. THAT'S EXPRESS.

NOW I SAID IMPLIED AND I PUT UNDER HERE INFERRED. NOW YOU MAY -- IMPLIED IS MY WORD. THE JUDGE MAY TELL YOU YOU CAN INFER INTENT. OKAY. NOW INFER IS SOMETHING MEANING THAT YOU CAN FIND IT EXISTING IF YOU CHOOSE TO DO SO. BUT YOU'RE -- IT'S NOT SOMETHIN' YOU HAVE TO DO; IT'S SOMETHING YOU COULD FIND. AND THIS IS WHERE YOUR COMMON SENSE CAN COME INTO PLAY IN THE WAYS OF THE WORLD. YOU UNDERSTAND HOW THINGS ARE.

FOLKS, LAWYERS DON'T GET TO DECIDE THE FACTS ON CASES. I TOLD YOU THAT I THINK WHEN YOU CAME IN HERE, WE TRUST YOU. THE WHOLE CONSTITUTIONAL SYSTEM DOES NOT TRUST A LAWYER TO MAKE A DECISION ON THE FACTS. TRUST JURIES. THAT'S EXACTLY WHAT WE HAVE TO DO HERE IS DECIDE THE FACTS ON WHAT YOU SEE FROM THIS EVIDENCE. OKAY? AND THIS EVIDENCE ABOUT IMPLIED OR INFERRED MALICE -- I'VE GOT IT ON THE PAGE HERE FOR YOU.

THE JUDGE IS GONNA GIVE YOU INSTRUCTIONS ABOUT THIS AND I'M GONNA -- AND HIS WORDS ARE THE ONES THAT ARE IMPORTANT, BUT I'M GONNA SUMMARIZE WHAT I THINK HE'S GONNA TELL YOU.

GENERAL MALIGNANT RECKLESSNESS IS TOWARD LIVES AND SAFETY OF OTHERS. AND I MENTIONED THIS EARLIER. OKAY? BEHAVIOR. THE POLICE HAD BACKED OFF WANTIN' HIM TO DO THE RIGHT THING. WORRIED ABOUT THE SAFETY OF THE PUBLIC. WHAT IS HE DOING? HE'S GOING THROUGH SCHOOL ZONES AND THE SPEED LIMIT DROPPING AND HE'S NOT SLOWING DOWN. HE'S RUNNIN' FROM THE LAW AND HE'S TRYIN' TO GET AWAY. I THINK HE SAID HE PANICKED. WELL, PANIC IS A CERTAIN ELEMENT OF HUMAN BEHAVIOR THAT'S ASSOCIATED WITH HOW A PERSON CAN REACT TO CIRCUMSTANCES THAT'S TRUE. BUT IT CAN ALSO CLOSE YOU INTO SELFISHNESS TOO WHEN YOU CARE ABOUT YOURSELF MORE THAN OTHERS. WHEN YOU START WORRYING ABOUT YOURSELF MORE THAN ANYBODY ELSE, THAT'S SELFISHNESS. AND WHEN YOU

GET TO THE POINT THAT YOUR BEHAVIOR IS STARTING TO PUT OTHER PEOPLE AT RISK, PUT THEIR LIVES AT RISK, THAT'S EVIDENCE YOU CAN RELY, IF YOU CHOOSE, TO SAY THIS PERSON HAD A MALIGNANT ATTITUDE. DEPRAVED HEART. THE CONDITION OF HIS MIND AND HIS HEART WAS BAD TOWARD THE LIVES AND SAFETY OF OTHERS AS HE CAME INTO SALUDA.

WHEN YOU SAY A HEART IS DEVOID OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF, I'M GONNA GET AWAY AT ANY COST. I'M GONNA GET AWAY AT ANY COST. WHY DO I KEEP SAYING THAT? FOLKS, SLED HAD TO GO UP IN THE ROOF OF THE BUILDING OVER HERE AND PULL HIM OUT. I MEAN THEY -- THEY LITERALLY HAD TO PULL HIM OUT OF THE BUILDING. WELL, WE GOTCHU; WE SEE YOU; THERE YOU ARE; WE -- WE SEE YOU; YOU CAN'T HIDE ANYMORE. HE WASN'T GONNA TURN HIMSELF IN. HE WASN'T GONNA GIVE UP. ASK YOURSELF SOME QUESTIONS AS WE GO THROUGH THIS.

I WANNA POSE THIS QUESTION: WHEN YOU ARE LOOKING AT THE CIRCUMSTANCES OF THIS INTERSECTION RIGHT HERE, LET ME REMIND OF THIS REAL QUICKLY. JUST -- Y'ALL -- I'M SORRY.

I BELIEVE THIS IS THE MCCORMICK DIRECTION. THE COLUMBIA DIRECTION 378. 121. MS. HOLMES IS COMING FROM THE SOUTH UP HERE. BASICALLY, DEPUTY DANIELS HAS COME OFF THIS ROAD AND ALSO COME UP THE SOUTH. HE HAS HIS BLUE LIGHTS AND SIREN ON. THERE'S SOME EVIDENCE THEY WERE ON WHEN THEY WENT TO THE CAR LATER AND CHECKED IT. BUT MS. HOLMES SAID SHE TURNED AROUND BECAUSE HE MUSTA HAD THE SIREN WHEN I TURNED TO LOOK AT HIM BEHIND ME. HE SAYS HE HAS 'EM ON. AND WHEN THE OFFICER GOT TO THE LOCATION THAT MR. DANIEL WAS IN THE CAR, BASICALLY, YOU KNOW; YOU NEED TO GET OUT OF HERE, HE SAID THE LIGHTS WERE STILL ON. I THINK YOU'VE GOT EVIDENCE TO SUPPORT THAT HE HAD HIS LIGHTS ON. HE'S TRYIN' TO RUN. HE HAPPENS TO BE IN THE MIDDLE OF THE INTERSECTION AND

MS. MARY RUTH HOLMES WHO'S TURNIN' RIGHT DOES SAY WE TRY TO AVOID W MIGHT'VE HAPPENED IF SHE KEPT GOING.

SHE BASICALLY SAID SHE THOUGHT IF SHE KEPT GOIN' SHE'D GOT HIT. SHE A CHILD IN THE BACK OF THAT CAR WITH HER.

THIS IS DECEMBER 26TH 2003 THE DAY AFTER CHRISTMAS. THERE'S TRAFFIC THE ROADS COMIN' AND GOING.

DEPUTY DANIELS IS STOPPED IN ORDER TO TRY TO PREVENT -- OR RESPONI THE SCENE OF AN ACCIDENT. VERY SERIOUS -- WELL, NOT AN ACCIDENT SCENE. CAR CHASE. HE'S TRYIN' TO RESPOND TO THAT, AND AS HE DOES SO, THE MAN DOES REMEMBER.

THE BLOW WAS THAT SIGNIFICANT. THE IMPACT WAS THAT GREAT. HE DOES REMEMBER BECAUSE OF THE IMPACT. HE HAD TO BE CARRIED OUT OF THE CAR DO TO THE DETENTION CENTER WHERE PEOPLE SAW HIM AND HE COULDN'T STAND WITHOUT ASSISTANCE AND HE FEELS HE'S LUCKY TO BE ALIVE.

IF YOU REMEMBER, I THINK THERE WAS SOME QUESTION ABOUT WH WOULD'VE HAPPENED, YOU KNOW, IF YOU'D A GONE FURTHER YOU COULD' CLEARED THE INTERSECTION, HE'D GONE TO THE RIGHT AROUND YOU AND JUST MA IT ON THROUGH THE INTERSECTION. THERE'S A QUESTION ABOUT THAT. HE WAS ASK THAT KINDA QUESTION. IF HE'D JUST KEPT GOIN' AND TURNED LEFT AND MADE TH TURN THERE'D A BEEN ROOM FOR HIM TO GO PAST YOU AND YOU WOULDN'T A BE STRUCK. WELL, IF THEY'D A DONE THAT, MS. MAE WOULDA BEEN PLOWED IN ACCORDING TO WHAT SHE SAID. THEY'D A PLOWED RIGHT INTO HER. OR HE WOU HAVE. AND THERE WERE, I THINK SHE SAID HERSELF, THE BABY IN THE BACK SEAT AN SOMEONE ELSE TO THE RIGHT AND HER SON AND DAUGHTER-IN-LAW IN THE FRO SEAT. I MEAN THAT'S FIVE PEOPLE IN THE CAR.

SO WHEN I SAY WHAT IF, I'M PUTTING THAT IN THE CONTEXT OF THIS GENERAL DISREGARD FOR THE SAFETY OF OTHERS. HE GETS TO THE TOP OF THIS HILL AT 80 OR 90 MILES AN HOUR AND THAT'S GIVING HIM THE BENEFIT OF THE DOUBT. OKAY? AT 80 OR 90 MILES AN HOUR, HE'S GOT SOMETHIN' LIKE 800 FEET TO SEE THE INTERSECTION AND HE'S GOIN' SO FAST. WHAT'S GONNA HAPPEN? DO YOU CARE WHAT'S GONNA HAPPEN IF YOU'RE TRYIN' TO GET AWAY FROM THE LAW AND YOU'RE RUNNIN' FROM THE LAW AND YOU'RE ESCAPING? ARE YOU -- ARE YOU CARING ABOUT ANYTHING OTHER THAN YOUR PANIC AND YOU WANT TO GET AWAY? THAT'S THE SELFISHNESS. THAT'S THE KIND OF COMPLETE I DON'T REALLY CARE ATTITUDE WHEN HE SAYS I'M GONNA GET AWAY. KILL OR BE KILLED. THOSE ARE HIS WORDS. I'M JUST PARAPHRASING FOR YOU.

THEY GO THROUGH THE INTERSECTION. HE HITS THE CAR. HE GETS OUT AND HIDES IN THE ROOF. THE GIRL IS IN THE CAR FINDS HER WAY OUT.

IS THE CAR IN THIS CASE -- AND I'M GONNA ASK THESE QUESTIONS AND I THINK THESE ARE JUST SOME THINGS THAT YOU'LL BE ASKING YOURSELVES. IS THE CAR DRIVEN IN A MANNER AND UNDER CIRCUMSTANCES WHERE IN THIS CASE IT'S A DEADLY WEAPON? BECAUSE THE WAY YOU DRIVE A CAR AND THE WAY YOU ACT BEHIND THE WHEEL OF A CAR, I THINK YOU CAN ANALOGIZE IT'S A LOADED WEAPON. IF YOU DON'T ACT CAREFULLY WITH REGARD TO THAT, YOU KNOW, YOU -- YOU CAN DO SOMETHING VERY SERIOUS. YOU CAN PULL THE HAMMER BACK ON A PISTOL AND START WAVIN' IT AROUND SOMETHIN' COULD HAPPEN AND IT COULD GO OFF. BUT WHEN YOU START PLAYIN' WITH A PISTOL AND THERE'S PEOPLE IN THAT DIRECTION, AND YOU'RE POINTIN' IN THEIR DIRECTION AND YOU KEEP DOIN' THINGS THAT ARE LIKELY TO CAUSE IT TO GO OFF, ARE YOU CARING ABOUT WHAT SOMEBODY'S DOING? DO YOU CARE ABOUT WHAT YOU'RE DOING? ARE YOU CARING ABOUT THEM OR ARE YOU CARING ABOUT YOURSELF JUST PLAYING AROUND?

WELL, IN THIS CASE IT'S NOT PLAYING AROUND. THERE'S SOMEBODY IN CONTROL OF THIS CAR. THIS CAR IS BEING DRIVEN AT RECKLESS SPEEDS THROUGH THE MIDDLE OF TOWN IN ORDER TO GET AWAY FROM THE POLICE. COULD IT CAUSE DEATH?

FOLKS, YOU GOT SOME PICTURES YOU'RE GONNA GET A CHANCE TO LOOK AT HERE IN DETAIL, AND I -- I -- YOU KNOW, WE WAVE THESE THINGS AROUND, AND I APOLOGIZE, BUT YOU'RE GONNA GET A CHANCE TO GO BACK AND LOOK AT ALL THIS IN DETAIL AS LONG AS YOU WANT TO.

I'M GONNA PULL OUT ONE OF THESE PHOTOGRAPHS HERE, AND I WANT YOU TO LOOK AT THAT. STATE'S EXHIBIT 9. I WANT YOU TO LOOK AT THE DEGREE OF IMPACT ON THE CAR THAT DEPUTY FRANK DANIELS WAS DRIVING. LOOK AT THAT. THAT CAR IS NO LONGER POINTED IN THE SAME DIRECTION IT WAS HEADED. IT'S -- IT'S HEADED BACK OUT THIS WAY. IT WAS GOIN' THAT WAY? AND IT WAS BACK THIS WAY. 180 DEGREES. SPUN AROUND. RIGHT ABOVE THE DRIVER'S SIDE FRONT WHEEL. PLOWED INTO IT, DENT THAT WHEEL IN, JUST THE WHOLE -- LOOKS LIKE THE WHOLE FRAME SHIFTED. HUGE IMPACT. IF YOU MOVE THAT POINT OF IMPACT BACK JUST A TINY LITTLE BIT TOWARD THE DOOR, YOU KNOW, I COULD KINDA -- WE HADN'T GOT TO THAT POINT WITH MR. DANIEL'S QUESTIONS.

DEPUTY DANIELS WAS ASKED, I BELIEVE AT SOME POINT, WHAT WOULD -- IF IT'D A BEEN A LITTLE BIT FURTHER BACK WHAT WOULD'VE HAPPENED. WELL, YOU REMEMBER? HE SAID IT COULD'VE BEEN A LOT DIFFERENT. THAT'S WHAT WE'RE TALKIN' ABOUT. WHAT IF ANOTHER CAR, ANOTHER PEDESTRIAN, SOMEONE IN THAT INTERSECTION AT THAT TIME WITH THIS KINDA DRIVER, THIS KINDA BEHAVIOR UNDER THESE CIRCUMSTANCES, THAT'S WHAT YOU'RE LOOKIN' AT.

NOW I THINK THE DEFENSE IS GOING TO SAY, AND I'M JUST GONNA ANTICIPATE -- YOU WON'T HEAR FROM ME BUT ONCE. DEFENSE IS GONNA SAY WELL LOOK HE TRIED

TO SWERVE. HE TRIED TO GET OUTTA THE WAY. HE TRIED TO CLEAR THE WAY. WELL, IF HIS MOTIVE IS GETTING AWAY, HE CERTAINLY WAS INTENT UPON THAT, BUT I'M SAYING YOU'VE GOT OTHER EVIDENCE HERE TO SUPPORT WHAT HE DID. AND YOU'LL NOTICE THAT THIS DIAGRAM IS DRAWN IN SUCH A FASHION -- I'M SORRY -- I'M NOT VERY GOOD TURNIN' THIS THING RIGHT. I APOLOGIZE. WHERE THE POINT OF IMPACT WAS DISPLAYED HERE IN THIS DIAGRAM, DEPUTY DANIELS IS AT A STOP IN THE INTERSECTION. OKAY? IF HE COMES OVER THAT HILL AT 800 FEET, 900 FEET, WHATEVER IT IS FROM THE POINT YOU CAN FIRST SEE IT, DEPUTY DANIELS MAY HAVE COME INTO THAT INTERSECTION A LITTLE BIT LATER THAN HE FIRST, YOU KNOW, HE MAY -- ACTUALLY HE MAY HAVE BEEN OVER THE HILL BY THE TIME DEPUTY DANIELS EITHER GOT IN THE INTERSECTION OR DEPUTY DANIELS MAY HAVE DRIVEN IN THE INTERSECTION AFTER HE TOPPED THE SALUDA HILL UP HERE. SO THE PERSON BECAME ABLE TO SEE DEPUTY DANIEL'S CAR. THAT'S POSSIBLE.

MS. MAE SAW IT, SHE SAW IT BY THE POST OFFICE I THINK IS WHAT SHE SAID.

THIS CAR NOW IS IN A DOWNWARD PLUNGE DOWN THAT HILL TOWARD THE CENTER OF THIS INTERSECTION AND DEPUTY DANIEL'S CAR IS SITTIN' THERE WITH THESE LIGHTS ON. THERE'S NO EVIDENCE OF ANY SWERVING. THERE'S NO EVIDENCE OF ANY BRAKING. THE IMPACT ON THIS CAR IS SUCH THAT THE WHEEL -- MOST OF THE IMPACT APPEARS TO GO ABOVE OR THROUGH THE WHEEL, AND I ASKED QUESTIONS ABOUT BRAKING. REMEMBER ME ASKIN' ABOUT BRAKIN' AND WHAT HAPPENS TO THE FRONT OF THE CARS IF I BRAKE TOO HARD? AND THOSE THINGS? SEE WHERE THE IMPACT IS. HE'S NOT SLOWIN' DOWN. THE PHYSICAL EVIDENCE DOESN'T SEEM TO SUPPORT THAT EITHER.

FOLKS, EVERYBODY TRIED TO GIVE THIS MAN THE BENEFIT OF THE DOUBT. JUST BACK OFF AND LET HIM GO. WE'RE GONNA PLACE MORE PEOPLE AT RISK BY CHASING

HIM. BACK OFF. LET HIM TRY TO SLOW DOWN. LET HIM DO THE RIGHT THING. DID HE DO IT? NO. DID HE SLOW DOWN? NO. IF HE DID HE JUST LET OFF THE GAS MAYBE BECAUSE HE WAS NOT ABLE TO CONTROL IT. HE'D BEEN ALL OVER THE ROAD. HE'D RUN OTHER PEOPLE OFF THE ROAD. HEAD ON TRAFFIC, RUN 'EM INTO THE DITCH. THAT'S A PRETTY STRONG POSITION FOR THE STATE TO BE IN. BUT I SUBMIT TO YOU WE'RE IN THAT SITUATION. THAT'S PRETTY STRONG FOR US TO SAY. HIS BEHAVIOR TOWARD EVERYONE ELSE WAS JUST LIKE WHAT HAPPENED IN THAT INTERSECTION. RUN 'EM OFF THE ROAD. GET OUTTA MY WAY. IF YOU AIN'T OUTTA MY WAY I'M COMIN' THROUGH YOU.

I'VE KINDA UNDER COVERED THIS. I SAID THIS WAS WHERE WAS THE CAR BEFORE IT ENTERED THE CITY LIMITS. IT WAS DOWN THE ROAD, HIGHWAY PATROL CHASIN' IT. RUNNIN' PEOPLE OFF THE ROAD. AFTER ENTERING THE CITY, KEPT GOIN'. ALMOST OUTTA GAS. THEY BACKED OFF TO PROTECT LIFE. HE DID NOT. WHAT REGARD DID HE HAVE AT THE POINT IN TIME HE WAS AT THIS INTERSECTION FOR PUBLIC SAFETY? FOR THE SAFETY OF ANYBODY IN THAT STREET. ANYBODY WHO HAPPENED TO BE THERE. IN THIS CASE DEPUTY FRANK DANIELS.

FOLKS, I WANNA TELL YOU SOMETHIN'. POLICE OFFICERS -- POLICE OFFICERS ARE OUT THERE TO PROTECT AND DEFEND THE PUBLIC, BUT NO ONE IS EXPECTED TO BE THE SACRIFICIAL LAMB. HE DID WHAT HE COULD BECAUSE HE WAS THERE. HE DOESN'T REMEMBER WHAT HAPPENED BECAUSE OF THE IMPACT, BUT HE WAS IN THE RIGHT PLACE AT THE RIGHT TIME TO RECEIVE THIS BLOW. IF HE'D A TAKEN A SIDE STREET, TURNED AROUND OR DELAYED OR HE HEARD A MESSAGE TO TURN AROUND AND DELAY OR DO ANYTHING ELSE, IT MIGHT'VE BEEN MS. MAE'S CAR BECAUSE OF THE TIME. THAT'S THE POINT.

CONSIDER HIS MOTIVE. THE FAILURE TO STOP; THE FACT THAT HE'S AN ESCAPEE; THE FACT THAT HE'S RUNNING FROM THE LAW AND OUT OF GAS TIES IT INTO THE QUESTION OF INTENT TO SHOW THE STATE OF MIND. THE EVIDENCE OF THE STATE OF MIND IS FOUND IN THE CIRCUMSTANCES AND THE FACTS. I DON'T WANT YOU TO GO INTO THAT COURTROOM -- OUT OF THIS COURTROOM INTO THAT DELIBERATION AND THINK THAT I'M TRYING TO TELL YOU WHAT TO THINK. I CAN'T. I DON'T WANT TO. THAT'S YOUR JOB. I'M TRYING TO GIVE YOU WHAT I THINK THE JUDGE IS GONNA GIVE YOU AS THE LEGAL TOOLS TO GO IN AND USE THE FACTS ONCE YOU SEE 'EM. IT'S OUR BURDEN TO PROVE THIS BEYOND A REASONABLE DOUBT. WE'VE MET THAT BURDEN. WE'VE SHOWN A CONSISTENT PATTERN OF CONDUCT ON THE PART OF THIS MAN, HOW HE'S BEHAVED.

AND I CAN TELL YOU AGAIN, FOLKS, WHAT YOU DO SPEAKS A LOT LOUDER THAN WHAT YOU SAY BECAUSE IN THIS CASE HIS WORDS GO WITH HIS ACTIONS. HE HAD A KILL-OR-BE-KILLED ATTITUDE.

I REALLY THANK YOU FOR YOUR TIME AND ATTENTION. THIS IS NOT AN EASY THING TO DO. BUT I DO ASK YOU TO GO BACK IN THAT COURTROOM -- THIS COURTROOM WITH JUDGE KEESLEY'S INSTRUCTIONS, GO BACK AND DELIBERATE AND FIND THIS MAN GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL THANK YOU.

THE COURT: THANK YOU, MR. YOUNG. ALL RIGHT, LADIES AND GENTLEMEN, I'M GOING TO ASK YOU TO STEP IN THE JURY ROOM. YOU'LL BE BACK THERE ABOUT 5 MINUTES. I'LL BRING YOU BACK OUT AND YOU'LL HEAR MR. FALGIONE'S CLOSING ARGUMENT. (THERE WAS A BRIEF RECESS.) ALL RIGHT. MR. FALGIONE, YOU'RE RECOGNIZED FOR YOUR CLOSING ARGUMENT.

MR. FALGIONE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT?

THE COURT: YES, SIR.

MR. FALGIONE: GOOD MORNING. (RESPONSE.)

AT LAST. AT LAST I GET TO TALK TO YOU ONCE AGAIN. WE STARTED THIS ON MONDAY AND WHEN YOU WERE SEATED, I TOLD YOU THAT WE WERE CAREFUL, WE WANTED PEOPLE ON THIS JURY THAT HAD INTEGRITY, INTELLIGENCE AND COMMON SENSE. AND I HOPE NOW YOU SEE WHY THAT'S SO IMPORTANT.

MR. YOUNG HAS A VERY DIFFERENT JOB. HE JUST SPENT THE LAST 20, 30 MINUTES GIVING YOU HIS SUMMARY, HIS SYNOPSIS OF WHAT Y'ALL HEARD. AND WE HAD A LOTTA CHARTS GOIN' THROUGH HERE AND THERE AND ALL THAT KINDA THING. WELL, I'M GONNA SHARE A LITTLE SECRET WITH YOU. I GREW UP ON A FARM IN NEBRASKA. WITH A NAME LIKE FALGIONE I BET MOST OF YOU THOUGHT I CAME OUTTA NEW YORK OR SOMETHIN' BUT I DIDN'T.

AND I'M NOT USED TO BIG CHARTS. I'M CONCERNED ABOUT CHARTS. WHEN SOMEBODY TELLS ME I'VE GOTTA KNOW THIS TO GET TO THIS TO GET TO THAT AND I'VE GOTTA GO BACK OVER HERE, THERE'S SOMETHING THAT JUST ISN'T RIGHT THERE. AND THERE'S SOMETHIN' THAT JUST ISN'T RIGHT WITH THIS CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL.

NOW I'M NOT GONNA TELL YOU TO SPECULATE. IN FACT, YOUR OATH REQUIRES YOU NOT TO SPECULATE. SO MR. YOUNG'S COMMENTS ABOUT WELL WHAT IF MR. DANIELS HAD BEEN HERE OR WHAT IF MS. EMMA HAD BEEN OVER HERE, THAT'S NOT THE CASE. IN FACT, THE JUDGE HAS GIVEN YOU A LIMITING INSTRUCTION. OKAY? WHEN THIS BUSINESS ABOUT MY CLIENT SHAWN WILES ESCAPING FROM A MEDIUM SECURITY INSTITUTION. YOU'RE NOT ALLOWED TO CONSIDER THAT FOR ANYTHING OTHER THAN THE PURPOSES THE JUDGE WILL TELL YOU ABOUT. YOU'RE NOT ALLOWED TO EVEN SPECULATE AS TO WHAT CONDITIONS OR WHAT MADE HIM ESCAPE FROM THAT

INSTITUTION AS TO WHY HE DID THAT. YOU'RE NOT ALLOWED TO SPECULATE. THAT'S NOT PART OF THIS CASE. SO WE HAVE TO STAY WITH WHAT WE HAVE. AND THERE IS NO QUESTION THAT SHAWN WILES WAS DRIVING TOO FAST AND HE WAS RUNNING FROM THE HIGHWAY PATROL. YOU'VE NOT HEARD ME SAY ANYTHING OTHER THAN THAT, AND I CAN'T TESTIFY FOR MR. WILES OR ON HIS BEHALF. BUT I CAN CERTAINLY UNDERSTAND HOW YOU WOULD ACCEPT THAT PORTION. BUT HERE'S WHERE YOUR INTELLIGENCE, HERE'S WHERE YOUR COMMON SENSE AND HERE'S WHERE YOUR INTEGRITY COMES IN. AND THAT'S REGARDING THIS CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL.

FOLKS, PLAIN LANGUAGE, THAT'S MURDER EXCEPT THE VICTIM DIDN'T DIE. THAT'S WHAT THAT IS. YOU HAVE TO DETERMINE WHILE HE WAS PANICKING, GETTING AWAY FROM THE HIGHWAY DID HE TRY TO MURDER FRANK DANIELS AND MR. DANIELS, DEPUTY DANIELS WAS JUST LUCKY ENOUGH HE DIDN'T DIE?

WELL, LET'S TALK ABOUT SOME THINGS HERE. OKAY? THERE ARE SOME THINGS THAT I HATE TO GO BACK OVER AND ADDRESS BUT WE'RE GONNA DO THAT. ONE IS THIS KILL-OR-BE-KILLED ATTITUDE. NOW WHERE DID THAT COME FROM? YOU SAW THE WITNESSES. THAT CAME FROM AN INVESTIGATOR ON THIS WITNESS STAND WHO SAID THAT'S WHAT MR. WILES TOLD HIM. BUT REMEMBER WHEN I GOT TO CROSS EXAMINING HIM, WHAT DID HE TELL YOU? WHAT DID INVESTIGATOR ANTLEY TELL YOU? WELL, HE DIDN'T WANT TO ADMIT IT, BUT HE DIDN'T TAPE RECORD THAT, DID HE? HE DIDN'T WANT TO ADMIT IT, BUT THAT WASN'T EVERYTHING THAT SHAWN WILES TOLD HIM, AND HE DIDN'T WANNA ADMIT IT, BUT THAT WASN'T EVEN SHAWN WILES' EXACT WORDS. WHAT SHAWN WILES TOLD HIM WAS HE THOUGHT SOMETHIN' BAD WAS GONNA HAPPEN. NOW I SUBMIT TO LADIES AND GENTLEMEN THAT'S A WHOLE DIFFERENT THAN KILL OR BE KILLED. AND I THINK YOUR COMMON SENSE TELLS YOU

THAT. INVESTIGATOR ANTLEY DIDN'T WANT YOU TO KNOW THAT. WE HAD TO PRY IT OUT OF HIM. NOW WHY WOULD HE HIDE THAT? I DON'T KNOW. I DON'T SPECULATE. OKAY? BUT THAT IS NOT A KILL-OR-BE-KILLED ATTITUDE.

IN FACT, WHAT DO WE KNOW? THE HIGHWAY PATROLMAN THAT STOPPED SHAWN WILES SAYS IN HIS WORDS HE PANICKED. HE PANICKED. ISN'T THAT A FUNCTION OF FEAR? HAVE YOU EVER BEEN SCARED? YOU EVER PANIC? OKAY. PANIC IS A WHOLE DIFFERENT THAN KILL OR BE KILLED. COMMON SENSE, LADIES AND GENTLEMEN.

LET'S -- YOU KNOW, MAYBE THE WAY TO DO THIS IS TO GO THROUGH JUST A FEW THINGS THAT WE HAD HERE. THIS THING ABOUT SHAWN WILES BEING SO DANGEROUS AS MR. YOUNG WOULD PUT HIM OUT THERE. WHAT DO WE KNOW? WE KNOW THAT WHEN AFTER THE ACCIDENT HE COWERED UP IN THE RAFTERS OF THIS BUILDING. COWERED. DID HE GET IN TROUBLE AND THEY SAY COME ON DOWN, WE KNOW WHERE YOU'RE AT, COME ON DOWN. HE CAME DOWN, DIDN'T HE? DID HE HAVE GUNS OR WEAPONS, ANY HINT OF ANY VIOLENCE? NO. IS THAT AN INTENT TO KILL?

NOW I DON'T KNOW ABOUT YOU. I WISH I COULD LOOK AT YOU ALL AND SAY WHAT ARE YOU THINKING AND KNOW WHAT YOU'RE THINKING 'CAUSE THEN I WOULD ANSWER YOUR QUESTIONS. BUT I WOULD SUBMIT TO YOU THAT TO TRY AND SPECULATE AS MR. YOUNG HAS ASKED YOU TO DO AND READ INTO SOMEONE ELSE'S MIND IS NOT APPROPRIATE ESPECIALLY WHEN IT'S A SERIOUS, SERIOUS SITUATION LIKE THIS.

NOW WHAT YOU NEED TO DO, IN FACT WHAT YOUR OATH REQUIRES YOU TO DO IS TO DECIDE ONLY THOSE CHARGES THAT ARE BEFORE YOU REGARDING SHAWN WILES AND NOTHING ELSE. AND THAT'S AWFULLY HARD TO DO. THAT'S ALMOST SUPER HUMAN. I KNOW THAT. BUT YOUR OATH REQUIRES YOU TO DO THAT. IT REQUIRES TO PUT ALL THIS OTHER INFLAMMATORY STUFF OUTTA YOUR MIND. AND YOU KNOW WHAT

ELSE YOUR OATH REQUIRES YOU TO DO BECAUSE IT IS THE HINGE PIN OF OUR FREEDOMS? IS THAT BEFORE YOU CAN FIND ANYONE, ANYONE GUILTY OF ANYTHING, THE STATE HAS TO PROVE EACH AND EVERYTHING THAT THEY'VE ALLEGED, EVERY ELEMENT OF THEIR OFFENSE BEYOND A REASONABLE DOUBT.

NOW IF ANY OF YOU HAVE SERVED ON A CIVIL JURY, THAT STANDARD IS LESS BECAUSE CIVIL JURIES DECIDE ISSUES ABOUT MONEY AND PROPERTY. SO IN A CIVIL JURY ALL ONE SIDE IN ORDER TO SUCCEED HAS TO SHOW IS BY A PREPONDERANCE OF THE EVIDENCE, AND PEOPLE LIKE ME STAND IN FRONT OF CIVIL JURIES AND WE SAY OKAY IF YOU FIND THAT MY CLIENT HAS MET THEIR BURDEN OF PROOF BY EVER SO SLIGHT A MARGIN, 51 PERCENT, THEN YOU ARE TO FIND IN FRONT OF MY CLIENT -- IN FAVOR OF MY CLIENT. AND THE JUDGE WILL INSTRUCT YOU ABOUT THAT. THAT IS NOT THE CASE IN A CRIMINAL CASE. IT IS BEYOND A REASONABLE DOUBT. BEYOND ANY REASON THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT. THAT IS A MUCH HIGHER STANDARD. AND WHY IS THAT? THAT'S BECAUSE THERE IS NOTHING MORE PRECIOUS TO US THAN OUR LIBERTY AND OUR LIBERTIES. AND THAT'S WHY WE HAVE THAT HIGH STANDARD, AND THAT'S THE STANDARD THE STATE HAS TO BE HELD TO NOT ONLY IN THIS CASE, BUT IN ALL CASES.

WELL, LET'S TALK ABOUT REASONABLE DOUBT FOR JUST A LITTLE BIT IF WE CAN. AND I THINK PROBABLY THE BEST WAY TO DO THAT IS TO GO BACK AND READ -- AND THINK ABOUT WHAT YOU HEARD. OKAY? WHAT YOU HEARD FROM THIS WITNESS STAND.

WE HEARD THE HIGHWAY PATROLMAN SAY WHAT? SHAWN DAVIS (SIC) PANICKED. OKAY? THAT WAS HIS OBSERVATION. HE PANICKED.

THEN WE HEARD MS. HOLMES, I BELIEVE. SHE SAID THAT SHE LOOKED UP THE STREET AND HER SON HAD TIME ENOUGH TO TELL HER DAUGHTER -- HER DAUGHTER

WHO WAS DRIVING THE CAR TO GO AHEAD AND MAKE A RIGHT HAND TURN. AND SHE TURNED. WASN'T IN THE INTERSECTION. OKAY? SO THERE'S A TIME ELEMENT THERE.

THIS ALLEGATION THAT – THAT SHAWN WILES IS THIS DESPERATE PERSON, THIS DESPERATE, DANGEROUS PERSON. WHAT DO WE KNOW? CAPTAIN SHORTER – EVEN CAPTAIN SHORTER WHO SWORE OUT THIS WARRANT TESTIFIED THERE WAS NO GUN FOUND ON SHAWN WILES. THERE WAS NO INDICATION HE WAS A VIOLENT PERSON.

AND DEPUTY DANIELS. YOU KNOW, WE ARE ALL VERY, VERY THANKFUL THAT DEPUTY DANIELS WASN'T SERIOUSLY INJURED.

HOW SERIOUS WAS IT? WELL, WE KNOW THAT DEPUTY DANIELS, UNLIKE WHAT MR. YOUNG HAS LED YOU TO BELIEVE, WE HEARD THE TESTIMONY. HE WALKED. HE WAS SUPPORTED BY DEPUTY BYRD. BUT HE WALKED A BLOCK OR TWO DOWN TO THE JAIL. DIDN'T HE? WE HEARD THAT HE WAS CONVERSING. AND YOU HEARD US GO THROUGH THE TRAUMA ASSESSMENT BY THE E.M.S. PERSON RIGHT THERE. OKAY? WHAT DID SHE SAY? SHE TOLD YOU THERE WAS NO INJURY TO HIS LUNGS. WE'RE THANKFUL OF THAT. HIS EYES WERE REACTING TO LIGHT INDICATING NO CONCUSSION. WE WERE THANKFUL OF THAT. SKIN WARM, DRY. HE WASN'T IN SHOCK. WE WERE ALL THANKFUL OF THAT. AND THEN THEY TRANSPORTED HIM TO THE LEXINGTON COUNTY EMERGENCY CENTER WHERE THEY EXAMINED HIM. HE CAME BACK WITHIN HOURS OF THIS HAPPENING AND LOOKED AT HIS CAR, DIDN'T HE? AND HE DIDN'T FILE A WORKER'S COMPENSATION CLAIM. SO I THINK THERE'S SOME INDICATION OF THE LACK OF SERIOUSNESS OF HIS INJURIES.

AND WE KNOW THAT DEPUTY DANIELS IS A GOOD PERSON. IS A GOOD PERSON. AND HE WAS PERFORMING A DUTY. BUT DON'T YOU HAVE TO WONDER IF DEPUTY DANIELS HEARD THAT THIS CAR WAS COMING THIS WAY, I'M STILL CURIOUS AND I THINK YOU PROBABLY ARE TOO AS TO WHY WAS HE TRYING TO GO THIS WAY. I DON'T

KNOW. I DON'T KNOW. BUT THAT CERTAINLY DOESN'T MAKE SHAWN WILES A MURDERER.

THIS IS A TRAFFIC COLLISION, A HIGH SPEED, GRANTED, TRAFFIC COLLISION. THIS IS NOT ASSAULT AND BATTERY WITH INTENT TO KILL.

AND I APOLOGIZE FOR USING MY NOTES, BUT I FIND THAT THIS IS JUST SO SERIOUS I DIDN'T WANT TO MISS THESE THINGS WITH YOU IF WE COULD.

I THINK REALLY SOME OF THE BEST TESTIMONY THAT WAS TOLD ABOUT THIS REALLY CAME FROM INVESTIGATOR DENNIS WHO TESTIFIED AND WE STOOD HERE. AND I THINK THIS IS A CHART THAT WAS DONE BY INVESTIGATOR DENNIS. YOU MIND IF I PUT THIS HERE?

NOW INVESTIGATOR DENNIS TOLD US THAT THIS CAR THIS IS DEPUTY DANIELS AND THIS IS SHAWN WILES. OKAY? AND HE SHOWED THAT THIS CAR WAS MAKING A LEFT HAND TURN. LET ME ASK YOU THIS: IS THERE MORE DISTANCE ON THIS SIDE OF THE ROAD; IS THERE MORE DISTANCE HERE THAN HERE? IF YOU WERE GONNA PASS AND TRY AND AVOID A COLLISION WITH THIS CAR, WOULD YOU SWERVE LEFT OR WOULD YOU SWERVE RIGHT? WELL, WHEN I ASKED THAT OF MR. DENNIS HE INDICATED THIS WOULD BE THE -- THIS WOULD BE THE PREFERABLE, DIDN'T HE? THE LEFT WOULD BE THE PREFERABLE LANE.

NOW LET'S LOOK AT THE PHYSICAL EVIDENCE OF THAT. IF WE CAN FIND THOSE SAME PHOTOS WE TALKED ABOUT. HERE'S ONE. OKAY. NOW REMEMBER WHEN I ASKED INVESTIGATOR DENNIS ABOUT THE FORWARD MOTION OF THIS COLLISION? OKAY. HE INDICATED THAT THIS WOULD BE THE DIRECTION OF IMPACT, WOULDN'T IT? OKAY. NOW IF YOU HAVE THIS CAR SITTING IN THIS LOCATION AND THIS POINT IS THIS POINT HERE, DOESN'T THAT INDICATE TO YOU THAT THIS CAR WAS TRYING TO GO THIS WAY? INVESTIGATOR DENNIS TESTIFIED THAT'S WHAT IT INDICATED. YOU HEARD HIM

ON THE WITNESS STAND THAT THAT WAS IT.

DID HE ALSO TELL YOU THAT THIS CAR WOULD BE CARRIED FORWARD AND ROTATED AS SHOWN HERE IF THAT WERE THE CASE? HE SAID YES THAT WOULD -- HE AGREED THAT WOULD BE THE CASE.

NOW AS TO THIS BEING THE CAR THAT WAS DRIVEN BY SHAWN WILES, DO WE HAVE ANY EVIDENCE THAT HE WAS TURNING LEFT AND TRYING TO AVOID THAT COLLISION? YOU'LL HAVE THESE PICTURES SO YOU CAN GO BACK AND LOOK AT THEM. INVESTIGATOR WILES (SIC) AGREED WITH ME THAT THIS TIRE HERE EVEN THOUGH IT WAS FIRST UP HERE INDICATED THAT THAT HAD A LEFT HAND CURVE TO IT. IN OTHER WORDS, THE DRIVER WAS TURNING TO THE LEFT. ALL RIGHT? I WANT YOU TO TAKE THOSE BACK WITH YOU AND LOOK AT THOSE. SEE IF YOU DON'T AGREE WITH THE ACCIDENT RECONSTRUCTION PERSON INVESTIGATOR DENNIS.

ADDITIONALLY, IF THIS CAR IS SWERVING TO THE LEFT TRYING TO AVOID THIS CAR, WOULDN'T THE TRAJECTORY BE UP IN THIS BUILDING INVESTIGATOR DENNIS. HE SAID YES.

REASONABLE DOUBT? THERE'S REASONABLE DOUBT RIGHT HERE. THE IMPACT OF THE CAR. THIS TRAJECTORY CARRYING IT FORWARD TO THIS. IS THAT A REASON TO BELIEVE THAT SHAWN WILES TRIED TO AVOID THIS COLLISION? REASONABLE DOUBT, LADIES AND GENTLEMEN. REASONABLE DOUBT LIES IN THE PANIC AS OPPOSED TO THE INTENT TO KILL. REMEMBER THE CHARGE IS ASSAULT AND BATTERY WITH INTENT TO KILL. THAT'S THE NAME OF IT. THERE'S A REASON FOR THAT.

AND WE'VE SHOWN TIME AND TIME AGAIN, I MEAN DID YOU HEAR IT FROM THE WITNESSES THAT SHAWN WILES WAS PANICKED? I WOULD SUGGEST TO YOU SCARED OUT OF HIS MIND. NOW IF BEING SCARED OUT OF YOUR MIND IS A CRIME, THEN I WOULD SAY A WHOLE LOTTA PEOPLE IN THIS WORLD ARE GUILTY. DID HE CAUSE

INJURY? WAS HE DRIVING TOO FAST? YES. ARE WE ALLOWED TO SPECULATE AS TO WHY AS TO WHAT HE WAS CONCERNED ABOUT, WHAT WAS TRYING TO GET HIM? NO, WE'RE NOT. WE DON'T KNOW IF HE WAS TRYING TO GET AWAY FROM SOMETHING OTHER THAN THE LAW OR THE LAW. YOU'RE NOT ALLOWED TO SPECULATE.

WHAT YOU DO HAVE TO DO THOUGH IS TO DECIDE IF THERE HAS BEEN REASONABLE DOUBT SHOWN. AND NOW THAT'S MORE THAN JUST A CATCH PHRASE. IT'S MORE THAN JUST A CATCH PHRASE BECAUSE OUR VERY LIBERTY IS DEPENDENT ON THAT. THIS OATH WHEN YOU SWORE TO THAT OATH YOU SWORE TO APPLY THAT STANDARD AND THAT'S A JUST STANDARD. IT'S A JUST STANDARD. IF YOU HAVE ANY REASONABLE DOUBT, YOU'RE SUPPOSED TO RESOLVE THAT DOUBT IN FAVOR OF AN ACQUITTAL FOR SHAWN WILES.

NOW THE JUDGE IS ALSO GOING TO CHARGE YOU ABOUT SOMETHING CALLED A LESSER INCLUDED OFFENSE. OKAY? WHAT THAT MEANS IS MOST OF THE ELEMENTS OF THE OFFENSE ARE THERE BUT NOT ALL OF THE ORIGINAL OFFENSE.

NOW THE JUDGE IS GONNA PUT THIS IN MORE ELOQUENT LANGUAGE, AND CERTAINLY TAKE THE LAW AS THE JUDGE GIVES IT TO YOU FROM THE BENCH. OKAY? BUT THE JUDGE IS GOING TO CHARGE YOU THAT THERE IS A LESSER INCLUDED OFFENSE. IN OTHER WORDS, IF YOU FIND THAT THE STATE HAS NOT MET THEIR BURDEN OF PROOF BEYOND A REASONABLE DOUBT AS TO ALL ELEMENTS OF ASSAULT AND BATTERY WITH INTENT TO KILL, THEN YOU ARE TO CONSIDER THIS CHARGE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. AND THE JUDGE WILL GIVE YOU THE ELEMENTS OF THAT.

FOLKS, I'M NOT GONNA -- THE JUDGE HAS GOT A LENGTHY CHARGE. I ASK THAT YOU PAY VERY, VERY CLOSE ATTENTION TO THAT. AND I APPRECIATE YOUR PATIENCE, YOUR UNDERSTANDING, AND MOST OF ALL YOUR COMMON SENSE AND THE

SERIOUSNESS WITH WHICH YOU ARE TO TAKE THIS TASK. AN AWFUL LOT IS REQUIRED OF YOU TODAY. AN AWFUL LOT. BECAUSE YOU REALLY ARE THE HINGE PIN AMONG SOCIETY, NOT JUST THIS CASE, BUT OF SOCIETY. AND I KNOW -- I'M ALWAYS WORRIED -- YOU KNOW YOU HEAR ABOUT LAW ENFORCEMENT AND WE TEND TO PUT LAW ENFORCEMENT ON A PEDESTAL AND WE HAVE THIS BIG MACHINE THAT'S OUT HERE AND IT TAKES A LOT OF COURAGE TO STAND UP AND SAY WE DON'T THINK EVERYBODY'S PROVEN EVERYTHING THEY NEED TO.

LADIES AND GENTLEMEN, I SUGGEST TO YOU AND I REQUIRE -- I REQUEST OF YOU THAT YOU CAREFULLY CONSIDER ALL THE ELEMENTS OF REASONABLE DOUBT IN THIS CASE. AND I THINK THAT IF YOU DO THAT, YOU REALLY HAVE TO EXAMINE WAS SHAWN WILES TRYING TO AVOID THAT COLLISION; WAS SHAWN WILES IN A PANIC, AND IF YOU SAY YES TO EITHER OF THOSE, THEN CERTAINLY IT WOULD SEEM THAT REASONABLE DOUBT EXISTS TO FIND HIM NOT GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL.

I THANK YOU VERY, VERY MUCH. GOD SPEED.

THE COURT: THANK YOU, MR. FALGIONE. LADIES AND GENTLEMEN, I'M GOING TO ASK YOU TO STEP IN THE JURY ROOM. DON'T DISCUSS THE CASE YET. I'LL GET YOU BACK OUT HERE AS QUICKLY AS I CAN TO GIVE YOU THE LAW. THANK YOU. (THE FOLLOWING OCCURRED OUTSIDE THE PRESENCE OF THE JURY.) I HAVE GIVEN YOU PROPOSED VERDICT FORMS. I DON'T REALLY THINK THERE'S REALLY ANY QUESTION ON THE BLUE LIGHT CHARGE. IT'S JUST NOT GUILTY OR GUILTY OF FAILURE TO STOP FOR A BLUE LIGHT. NOW WHAT I GENERALLY DO IS USE THE VERDICT FORM WHERE THERE ARE LESSER INCLUDED OFFENSES AND LIST EVERYTHING ON ONE PAGE AS I'VE SHOWN YOU. AS A MATTER OF FACT, WHAT I'VE USED THE ENTIRE TIME I'VE BEEN JUDGE. BUT I'M AWARE THAT THERE'S A U. S. SUPREME COURT CASE THAT DEALS WITH

THE JURY HAVING THE OPTION OF FINDING NOT GUILTY ON EACH OF THE OFFENSES. SO THAT WOULD INCLUDE THE LESSER OFFENSE. SO I'VE PREPARED THE ALTERNATE VERSION SO YOU ALL CAN SEE THAT. IT JUST HAS ASSAULT AND BATTERY WITH INTENT TO KILL ON THE FIRST PAGE. THE OPTION IS NOT GUILTY OR GUILTY OR GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL. INSTRUCT THE JURY IF THEY FIND THE DEFENDANT GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL TO STOP AT THAT POINT, BUT IF THEY FIND THE DEFENDANT NOT GUILTY TO TURN TO PAGE 2 AND COMPLETE THAT VERDICT FORM WHICH DEALS WITH THE LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE AND GIVES THE JURY THE OPTION OF FINDING HIM NOT GUILTY OR GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. I'LL HEAR YOU ALL OUT. LIKE I SAID, I'VE ALWAYS USED THE ONE PAGE VERDICT FORM AND I'VE NEVER HAD A PROBLEM WITH IT, BUT I DO WANNA MAKE SURE THAT THERE IS NO OBJECTION TO IT. ALL RIGHT?

MR. FALGIONE: YOUR HONOR, THE DEFENSE WOULD PREFER THAT YOU USE YOUR TRADITIONAL VERDICT FORM LISTING ALL THREE ON THE PAGE.

THE COURT: ALL RIGHT. STATE?

MR. YOUNG: I KNOW OF NO LEGAL OBJECTION, YOUR HONOR, THE STATE COULD TAKE TO EITHER ONE. I DO NOTE THAT I BELIEVE THE PROPER ORDER WHICH A JURY IS SUPPOSED TO BE SEEING IS THE INITIAL CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL AND THEN THEREAFTER IF THEY DO NOT FIND THAT PERSON NOT GUILTY, THEN THEY SHOULD CONSIDER THE LESSER INCLUDED. IN THAT REGARD YOUR AMENDED OR NEWER VERDICT SEEMS TO COMPORT MORE WITH THAT APPROACH. I DON'T KNOW OF ANY LEGAL OBJECTION TO YOUR FORM.

THE COURT: ALL RIGHT. I'M GONNA USE THE ONE I'VE PREPARED. DURING THE CHARGE, FOLKS, YOU NEED TO STAY STILL AND STAY QUIET ABSENT AN EMERGENCY.

DON'T DO ANYTHING TO DISTRACT THE JURY. IT'S GONNA BE A PRETTY LONG CHARGE. SO IF YOU NEED TO BE IN THE COURTROOM, BE IN; IF YOU NEED TO BE OUT, NOW'S THE TIME. BRING THE JURY. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.)

MEMBERS OF THE JURY, ALL THE EVIDENCE HAS BEEN PRESENTED. YOU'VE HEARD THE ARGUMENTS OF COUNSEL.

NOW IT'S TIME FOR ME TO INSTRUCT YOU ON THE LAW THAT APPLIES TO THE CASE. FIRST YOU NEED TO UNDERSTAND THE BASIC GROUND RULES.

YOU THE JURY MEMBERS ARE THE SOLE JUDGES OF THE FACTS. YOU DECIDE ALL THE ISSUES OF FACT. YOU ALONE DETERMINE THE TRUTH OF THE EVIDENCE, ITS EFFECT, ITS VALUE, ITS WEIGHT. YOU ALONE JUDGE THE CREDIBILITY OF THE WITNESSES. IN OTHER WORDS, WHETHER OR NOT A WITNESS' TESTIMONY IS BELIEVABLE. IN THIS REGARD, YOU MAY BELIEVE ALL THAT A WITNESS SAID OR NONE OF IT. YOU MAY BELIEVE PART OF WHAT A WITNESS SAID AND NOT BELIEVE THE BALANCE. YOU MAY CONSIDER ANY BIAS, PREJUDICE OR INTEREST THAT YOU FEEL THAT A WITNESS HAS IN THE CASE. YOU MAY CONSIDER THE DEMEANOR AND THE APPEARANCE OF THE WITNESS AND THE OPPORTUNITY FOR KNOWLEDGE THAT THE WITNESS HAD. YOU MAY CONSIDER THE LACK OF EVIDENCE PRESENTED BY THE STATE, BUT YOU'RE NOT TO EXERCISE THESE CONSIDERATIONS ARBITRARILY. WHAT I WANT YOU TO DO IS TO USE YOUR COMMON SENSE. USE YOUR SENSE OF LOGIC AND REASON AND YOUR GOOD JUDGMENT.

IT'S NOT PROPER FOR ME TO GIVE YOU A CHARGE ON THE FACTS OF THE CASE. I CAN'T DISCUSS THE FACTS WITH YOU. I'M NOT EVEN PERMITTED TO CONVEY TO YOU AN IMPRESSION AS TO WHAT, IF ANY, PERSONAL OPINIONS I MAY DEVELOP ABOUT THE FACTS OF THE CASE AS IT GOES ALONG. SO IF DURING ANY STAGE OF THIS TRIAL YOU HAVE DEVELOPED AN IMPRESSION THAT I HAVE A PERSONAL OPINION ABOUT THE

FACTS, YOU MUST REMOVE THAT TOTALLY FROM YOUR MIND. YOU'RE THE SOLE JUDGES OF THE FACTS.

NOW I AM THE JUDGE OF THE LAW THAT APPLIES TO THE CASE, AND UNDER YOUR OATH YOU MUST ACCEPT AND APPLY THE LAW AS I GIVE IT TO YOU. AND THAT MEANS IF YOU HAVE CONFLICTING IDEAS ABOUT WHAT THE LAW IS OR WHAT IT SHOULD BE, YOU HAVE TO ABANDON THOSE. I GIVE YOU THE LAW; YOU APPLY IT TO THE FACTS AS YOU DETERMINE THEM TO BE, AND IN THAT WAY YOU REACH YOUR VERDICT.

IT'S ALSO MY JOB TO DECIDE WHAT EVIDENCE IS ADMISSIBLE. IF I HAVE RULED SOMETHING INADMISSIBLE OR TOLD YOU NOT TO CONSIDER SOMETHING, YOU MUST DISREGARD THOSE THINGS. BASE YOUR VERDICT ON THE COMPETENT EVIDENCE BEFORE YOU. CONSIDER THE TESTIMONY FROM THE WITNESS STAND, THE EXHIBITS ADMITTED IN THE TRIAL.

FOLKS, THIS IS VERY UNUSUAL FOR ME. I DON'T HAVE IT PRINTED OUT A COPY OF THE CHARGE. I'VE GOT IT, I'VE GOT SOMETHING BUT IF IT SWITCHES AROUND THE COMPUTER MAY HAVE – I MAY HAVE TOLD THE COMPUTER SOMETHING WRONG.

ALL RIGHT. THE DEFENDANT IN THIS CASE IS PRESUMED TO BE INNOCENT. THIS IS NO MERE LEGAL THEORY. IT'S A FUNDAMENTAL AND SUBSTANTIAL RIGHT TO WHICH EVERYONE IS ENTITLED. IT'S BEEN DESCRIBED AS BEING LIKE A ROBE OF RIGHTEOUSNESS THAT'S PLACED AROUND THE ACCUSED. IT REMAINS WITH HIM THROUGH EVERY STAGE OF THE TRIAL. IT CONTINUES TO EXIST AFTER YOU GO BACK TO YOUR JURY ROOM TO DELIBERATE SO THAT HE IS PRESUMED TO BE INNOCENT UNLESS AND UNTIL YOU THE JURY DETERMINE THAT THE STATE HAS PROVEN HIM GUILTY BEYOND A REASONABLE DOUBT. A DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. HE'S NOT REQUIRED TO PROVE ANYTHING AT ALL. THE BURDEN IS ON THE STATE TO PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, AND

IT'S REQUIRED THAT EVERY ESSENTIAL ELEMENT OF AN OFFENSE CHARGED TO BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT.

NOW THAT DOESN'T MEAN THE STATE IS REQUIRED TO PROVE THE GUILT OF THE DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT. THE APPROPRIATE STANDARD IS PROOF BEYOND A REASONABLE DOUBT.

NOW SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL COURT, AND IF YOU HAVE, YOU KNOW THAT THE BURDEN OF PROOF IN CIVIL COURT IS TO ESTABLISH THAT SOMETHING IS PROBABLE. IT'S MORE LIKELY THAN NOT. WE CALL THAT THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE, BUT HERE IN CRIMINAL COURT THE STANDARD IS MUCH HIGHER AND THE PROOF MUST BE MUCH STRONGER THAN WHAT'S REQUIRED IN CIVIL COURT.

THE BURDEN OF PROOF IN A CRIMINAL CASE SUCH AS THESE IS PROOF BEYOND A REASONABLE DOUBT.

SO WHAT DO I MEAN BY THAT? PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE A FEW THINGS IN THE WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN THE LAW THE STATE IS NOT REQUIRED TO PRODUCE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF A CRIME CHARGED, THEN YOU MUST FIND HIM GUILTY OF THAT CRIME. IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF A DOUBT AND FIND HIM NOT GUILTY. THERE'S NO OBLIGATION ON THE PART OF THE DEFENDANT TO RAISE ANY DOUBT OR ANY OTHER POSSIBILITY. HE IS PRESUMED TO BE INNOCENT. AND THE STATE HAS THE ENTIRE BURDEN OF PROOF, AND HAS TO PROVE TO YOU THAT THE DEFENDANT IS GUILTY TO THE EXCLUSION OF ANY OTHER REAL POSSIBILITY.

SUSPICION, HOWEVER STRONG, IS NOT ENOUGH TO SUSTAIN A CRIMINAL CONVICTION.

NOW I NEED TO REMIND YOU, LADIES AND GENTLEMEN, AND EMPHASIZE ONCE AGAIN THAT THE FACT THAT THE DEFENDANT IN THIS CASE ELECTED NOT TO TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN YOUR CONSIDERATION ON THE QUESTION OF WHETHER THE STATE HAS PROVEN HIM GUILTY OR HAS FAILED TO MEET ITS BURDEN OF PROOF.

THIS DECISION NOT TO TESTIFY MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER AGAINST MR. WILES. A PERSON ACCUSED OF A CRIME HAS A CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THAT RIGHT CANNOT AND MUST NOT BE CONSIDERED BY YOU IN ANY WAY AGAINST THE DEFENDANT. UNDER YOUR OATH YOU ARE TO REACH NO INFERENCE; YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE ELECTED NOT TO TESTIFY. HIS DECISION NOT TO TESTIFY SHOULD NOT BE DISCUSSED BY YOU IN THE JURY ROOM. IT SHOULD NOT ENTER YOUR MIND IN MAKING YOUR DECISION. THE STATE HAS THE ENTIRE BURDEN OF PROOF.

I NEED TO EXPLAIN TO YOU THAT THERE ARE TWO TYPES OF EVIDENCE GENERALLY PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

NOW DIRECT EVIDENCE IS EVIDENCE OF DIRECT PERCEPTION INCLUDING THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYEWITNESS.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN. PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.

NOW THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE; NOR IS A

GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. WHAT YOU NEED TO DO IS WEIGH ALL THE EVIDENCE IN THE CASE, AND AFTER WEIGHING ALL THE EVIDENCE, IF YOU'RE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND HIM NOT GUILTY.

NOW, FOLKS, Y'ALL HAVE TO LOOK AT ME. OKAY? I'M SORRY TO PUT THAT ON YOU, BUT I HAVE TO MAKE SURE YOU'RE NOT SLEEPING. SO YOU HAVE TO LOOK AT ME SO I WILL KNOW.

NOW THERE HAS BEEN ADMITTED INTO EVIDENCE STATEMENTS THAT ARE ALLEGED TO HAVE BEEN MADE BY THIS DEFENDANT TO A LAW ENFORCEMENT OFFICER. THE LAW REQUIRES THAT A DEFENDANT WHO IS SUBJECTED TO CUSTODIAL INTERROGATION BY A LAW ENFORCEMENT OFFICER MUST BE GIVEN CERTAIN WARNINGS BEFORE THE QUESTIONING CAN TAKE PLACE. ONCE AN ACCUSED HAS BEEN PLACED INTO CUSTODY OR HAD HIS FREEDOM OF MOVEMENT RESTRICTED IN ANY SIGNIFICANT WAY BY A LAW ENFORCEMENT OFFICER, THE OFFICERS CANNOT INTERROGATE THAT DEFENDANT UNTIL HE HAS FIRST BEEN GIVEN HIS MIRANDA WARNINGS AND FREELY, KNOWINGLY AND VOLUNTARILY WAIVED THOSE RIGHTS. SO YOU THE JURY HAVE TO EVALUATE CERTAIN ISSUES BEFORE YOU CAN CONSIDER ANY ALLEGED STATEMENTS -- ANY STATEMENTS ALLEGED TO HAVE BEEN MADE BY THIS DEFENDANT IN ANY WAY AGAINST HIM.

FIRST, YOU HAVE TO CONSIDER WHETHER THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT MADE THE STATEMENT IN QUESTION. IF HE DID NOT, THEN, OBVIOUSLY, YOU DISREGARD IT AND YOU GO NO FURTHER IN THIS INQUIRY.

THE SECOND THING THE STATE HAS TO PROVE IS THAT THE DEFENDANT WAS PROPERLY WARNED OF HIS CONSTITUTIONAL RIGHTS PRIOR TO THE QUESTIONING AND

GIVING OF THE STATEMENT. AS I TOLD YOU, WHEN AN INDIVIDUAL IS TAKEN INTO CUSTODY, HE HAS TO BE WARNED OF HIS CONSTITUTIONAL RIGHTS BEFORE HE CAN BE SUBJECTED TO CUSTODIAL QUESTIONING. AND THOSE RIGHTS ARE THAT HE HAS THE RIGHT TO REMAIN SILENT, THAT ANY STATEMENT HE DOES MAKE CAN AND WILL BE USED AGAINST HIM IN A COURT OF LAW, THAT HE HAS THE RIGHT TO HIRE A LAWYER BUT IF HE DOES NOT HAVE THE RESOURCES TO AFFORD A LAWYER, THAT THE COURT WILL APPOINT ONE FOR HIM WITHOUT COST IF HE SO DESIRES; THAT HE HAS THE RIGHT TO CONSULT WITH AN ATTORNEY BEFORE ANSWERING ANY QUESTIONS OR GIVING ANY STATEMENTS; THAT HE HAS A RIGHT TO HAVE A LAWYER PRESENT WITH HIM AT ALL TIMES DURING ALL INTERVIEWS AND ALL INTERROGATIONS AND THAT HE MAY STOP ANSWERING QUESTIONS AT ANY TIME.

NOW IT'S NOT REQUIRED THAT THESE EXACT WORDS BE USED IN THE WARNING BUT THE EQUIVALENT OF THESE WARNINGS HAVE TO BE COMMUNICATED TO THE DEFENDANT. IF YOU DETERMINE THAT THE CONSTITUTIONAL WARNINGS WERE NOT GIVEN TO THE DEFENDANT BEFORE THE STATEMENT OR THAT THE DEFENDANT WAS NOT AFFORDED THE OPPORTUNITY TO EXERCISE THESE RIGHTS, THEN YOU HAVE TO COMPLETELY DISREGARD THE STATEMENT AND YOU CANNOT CONSIDER THAT STATEMENT AS EVIDENCE IN ANY WAY WHATSOEVER AGAINST THE DEFENDANT.

THE THIRD REQUIREMENT THAT THE STATE HAS TO PROVE IS THAT THE DEFENDANT HAD TO HAVE KNOWINGLY AND INTELLIGENTLY WAIVED HIS CONSTITUTIONAL RIGHTS. THE STATE HAS TO PROVE TO YOU BEYOND A REASONABLE DOUBT THAT THE KNOWING AND INTELLIGENT WAIVER TOOK PLACE IN ORDER FOR YOU TO CONSIDER ANY STATEMENTS RESULTING FROM THE QUESTIONING.

AND THE FINAL REQUIREMENT THE STATE HAS TO PROVE IS THAT THE STATEMENT IN QUESTION WAS GIVEN VOLUNTARILY BY THE DEFENDANT. THE STATE

HAS TO PROVE BEYOND A REASONABLE DOUBT THAT THE STATEMENT OF THE DEFENDANT WAS THE EXPRESSION OF THE DEFENDANT'S OWN FREE WILL, THAT IT WAS NOT IMPROPERLY INDUCED BY COMPULSION, DURESS, FORCE OR FEAR, NOR BY PROMISE OF REWARD OR HOPE OF REWARD. IF THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE STATEMENT WAS FREELY AND VOLUNTARILY GIVEN, THEN YOU CANNOT CONSIDER IT IN ANY WAY AGAINST THE DEFENDANT.

NOW WITH REGARD TO ANY ALLEGED STATEMENTS BY THE DEFENDANT, I INSTRUCT YOU THAT THE STATE HAS TO PROVE BEYOND A REASONABLE DOUBT ALL OF THOSE REQUIREMENTS THAT I JUST INSTRUCTED YOU BEFORE YOU MAY CONSIDER THE ALLEGED STATEMENT AS EVIDENCE IN ANY WAY AGAINST THE DEFENDANT.

ALL RIGHT. I NEED TO REMIND YOU ABOUT THE LIMITING INSTRUCTION I GAVE YOU THAT THERE HAS BEEN ADMITTED INTO THE TRIAL OF THE CASE EVIDENCE RELATED TO ALLEGATIONS ABOUT THE ALLEGED ESCAPE FROM CUSTODY AND AN ALLEGED POSSESSION OF A STOLEN VEHICLE BY THIS DEFENDANT.

I REMIND YOU OF THE LIMITING INSTRUCTIONS PREVIOUSLY GIVEN THAT THE EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS IS NOT ADMITTED TO PROVE THE CHARACTER OF AN ACCUSED TO SHOW ACTION IN CONFORMITY WITH THAT CHARACTER. IN OTHER WORDS, EVEN IF YOU BELIEVE THAT HE HAS DONE SOMETHING WRONG RELATED TO AN ESCAPE OR RELATED TO HIS PREVIOUS CONFINEMENT OR RELATED TO POSSESSION OF STOLEN VEHICLE, THAT DOES NOT MEAN THAT HE IS GUILTY OF THE CRIMES CHARGED IN THIS CASE. THE EVIDENCE ABOUT THE ALLEGED ESCAPE AND THE ALLEGED POSSESSION OF A STOLEN VEHICLE, IF YOU DEEM IT TRUE, WAS ADMITTED FOR A LIMITED PURPOSE, AND YOU CAN ONLY USE IT, IF AT ALL, FOR THE LIMITED PURPOSE FOR WHICH IT WAS ADMITTED. THAT EVIDENCE WAS ADMITTED TO ALLOW THE STATE TO ATTEMPT TO ESTABLISH THE DEFENDANT'S MOTIVE, INTENT,

AND/OR THE ABSENCE OF ACCIDENT OR MISTAKE ON THE PART OF THE DEFENDANT. IF YOU DETERMINE THAT THE EVIDENCE IS TRUE, YOU MAY GIVE IT SUCH WEIGHT AS YOU CONSIDER IT SHOULD HAVE, BUT ONLY ON THE ISSUE OF MOTIVE, INTENT, ABSENCE OF MISTAKE OR ACCIDENT.

OKAY. NOW LET'S TURN TO THE SPECIFIC CHARGES THAT ARE ALLEGED IN THIS CASE. FIRST, MR. WILES IS CHARGED WITH FAILURE TO STOP FOR A BLUE LIGHT. SECONDLY, HE IS CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO KILL. THE INDICTMENTS WERE READ TO YOU AT THE BEGINNING OF THE TRIAL AND ALLEGE THAT THE CONDUCT OCCURRED IN SALUDA COUNTY ON OR ABOUT DECEMBER THE 26TH 2003. THE BLUE LIGHT CHARGES ALLEGE – THE BLUE LIGHT CHARGE – EXCUSE ME – ALLEGES THAT MR. WILES WILLFULLY, KNOWINGLY AND UNLAWFULLY FAILED TO STOP A MOTOR VEHICLE HE WAS DRIVING ON A ROAD, STREET OR HIGHWAY OF THE STATE WHEN TROOPER DAVIS OF THE HIGHWAY PATROL SIGNALED FOR HIM TO STOP BY USING A SIREN OR FLASHING BLUE LIGHT. THE CHARGE FOR ASSAULT AND BATTERY WITH INTENT TO KILL ALLEGES THAT MR. WILES KNOWINGLY – I'M SORRY – WILLFUL – GOT IT WRONG AGAIN. LET ME START AGAIN.

THE CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL ALLEGES THAT MR. WILES UNLAWFULLY, FELONIOUSLY AND WITH MALICE AFORETHOUGHT COMMITTED AN ASSAULT AND BATTERY WITH INTENT TO KILL DEPUTY FRANK DANIELS BY RAMMING THE VEHICLE OPERATED BY DEPUTY DANIELS WITH ANOTHER VEHICLE. NOW THESE INDICTMENTS ARE SEPARATE AND DISTINCT. THAT MEANS THE CHARGES THEMSELVES ARE SEPARATE AND DISTINCT. YOU EVALUATE THEM SEPARATELY AND THEY HAVE TO STAND OR FALL ON THEIR OWN MERIT OR LACK OF MERIT, AND I REMIND YOU THAT AN INDICTMENT IS NOT EVIDENCE OF ANYTHING. IT'S JUST A CHARGING PAPER.

NOW FIRST LET'S GO TO FAILURE TO STOP. IT'S ALLEGED THAT THE DEFENDANT WILLFULLY AND UNLAWFULLY FAILED TO STOP FOR A LAW ENFORCEMENT VEHICLE. THE LAW PROVIDES THAT IN THE ABSENCE OF MITIGATING CIRCUMSTANCES, CIRCUMSTANCES THAT WOULD EXCUSE THE CONDUCT.

IT IS UNLAWFUL FOR A MOTOR VEHICLE DRIVER OPERATING ANY VEHICLE ON A PUBLIC STREET OR HIGHWAY TO FAIL TO STOP WHEN SIGNALED BY A LAW ENFORCEMENT VEHICLE BY MEANS OF A SIREN OR FLASHING LIGHT.

AN ATTEMPT TO INCREASE SPEED OR IN ANY MANNER TO AVOID THE PURSUING LAW ENFORCEMENT VEHICLE WHEN SIGNALED MAY GIVE RISE TO AN INFERENCE THAT THE DRIVER FAILED TO STOP FOR THE SIGNAL.

THIS INFERENCE CREATED BY LAW IS AN INFERENCE ONLY. IT IS EVIDENTIARY IN NATURE. AND IF YOU FIND IT APPROPRIATE UNDER THE CIRCUMSTANCES, MAY BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH ALL THE EVIDENCE IN THE CASE AND GIVEN SUCH WEIGHT, IF ANY, THAT YOU THINK IT SHOULD RECEIVE.

SO IN ORDER TO PROVE THE DEFENDANT GUILTY OF THIS CHARGE OF FAILURE TO STOP FOR A BLUE LIGHT, THE STATE HAS TO PROVE TO YOU BEYOND A REASONABLE DOUBT THAT ON THE DATE AND AT THE TIME AND PLACE ALLEGED IN THE INDICTMENT, MR. WILES WAS OPERATING A MOTOR VEHICLE ON A PUBLIC ROAD, STREET OR HIGHWAY, THAT HE WAS SIGNALED TO STOP BY A LAW ENFORCEMENT OFFICER BY MEANS OF A FLASHING LIGHT OR SIREN AND THAT HE WILLFULLY AND UNLAWFULLY FAILED TO STOP THE MOTOR VEHICLE HE WAS DRIVING. THE STATE HAS TO PROVE THAT MR. WILES KNEW THAT HE WAS FAILING TO STOP FOR THE POLICE VEHICLE AND THAT THERE WERE NO MITIGATING FACTORS JUSTIFYING HIS FAILURE TO STOP OR ANY DELAY IN STOPPING THE VEHICLE. IN DETERMINING WHETHER OR NOT THERE ARE MITIGATING FACTORS THAT WOULD JUSTIFY FAILING TO STOP FOR A BLUE LIGHT, YOU COULD

CONSIDER SUCH THINGS AS THE ROAD CONDITIONS, THE ROADSIDE CONDITIONS, LIGHTING CONDITIONS, WEATHER CONDITIONS, OFFICER, DRIVER AND PASSENGER SAFETY AND ANY OTHER CIRCUMSTANCES THAT YOU BELIEVE WOULD BE REASONABLE TO MITIGATE THE ALLEGED VIOLATION.

THE DEFENDANT IS CHARGED IN A SEPARATE INDICTMENT WITH ASSAULT AND BATTERY WITH INTENT TO KILL. NOW THIS ONE IS GONNA TAKE LONGER TO EXPLAIN. IT DOESN'T MEAN IT'S ANY MORE OR LESS IMPORTANT. IT JUST TAKES LONGER TO EXPLAIN IT.

ASSAULT AND BATTERY WITH INTENT TO KILL IS AN UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER WITH MALICE AFORETHOUGHT. I'M GONNA SPELL AFORETHOUGHT FOR YOU. A-F-O-R-E-T-H-O-U-G-H-T. THOUGHT OF AT THE TIME JUST BEFORE THE ACT THAT'S CHARGED. IT'S AFORETHOUGHT. IT'S ALSO BEEN DEFINED AS AN UNLAWFUL ACT OF A VIOLENT NATURE TO THE PERSON OF ANOTHER ACCOMPANIED WITH MALICE AFORETHOUGHT.

NOW I NEED TO EXPLAIN TO YOU FIRST SOME THINGS ABOUT THE TERMS ASSAULT AND BATTERY 'CAUSE PEOPLE HAVE THOSE SORT OF REVERSED. AN ASSAULT OCCURS WHEN A PERSON UNLAWFULLY ATTEMPTS OR OFFERS TO COMMIT A VIOLENT INJURY TO ANOTHER PERSON AND THE PERPETRATOR HAS THE PRESENT ABILITY TO CARRY OUT THE INTENDED INJURY. AN ASSAULT IS THE INTENTIONAL CREATION OF A REASONABLE FEAR OF IMMEDIATE BODILY HARM. IT'S NOT NECESSARY THAT THERE BE ANY FOLLOW THROUGH WITH THAT TO BE AN ASSAULT. AN ASSAULT IS A THREAT OF HARM. IT DOESN'T HAVE TO BE COMMUNICATED IN WORDS. IT COULD BE COMMUNICATED BY ACTS OR EVEN BY POSTURE. SO TO GIVE YOU AN EXAMPLE OF WHAT I MEAN, IF I STAND IN FRONT OF YOU AND I HAVE MY FIST DRAWN AND I DRAW BACK LIKE I'M GOING TO HIT YOU, AND I'M WITHIN ARMS REACH OF YOU, THAT'S AN

ASSAULT. OKAY? HADN'T TOUCHED YOU. THAT'S AN ASSAULT.

NOW IF I'M AT THE BACK OF THE ROOM AND I DO THAT, IT'S NOT AN ASSAU 'CAUSE MY ARM'S NOT THAT LONG.

A BATTERY IS THE UNLAWFUL TOUCHING. IT'S AN UNLAWFUL TOUCHING (ANOTHER PERSON BY THE PERSON WHO COMMITTED THE ASSAULT. AN UNLAWFI TOUCHING CAN BE CAUSED BY PART OF A PERSON'S BODY, A FIST, A HEAD, PART OF PERSON'S BODY OR BY ANY OBJECT THAT'S PUT IN MOTION BY THE PERPETRATOR. SO CAN BE COMMITTED, A BATTERY CAN BE COMMITTED BY A FIST OR BY SOME OBJECT PI IN MOTION BY THE PERPETRATOR. THE BATTERY IS THE COMPLETION OF THE ASSAU BY USING OR APPLYING FORCE TO ANOTHER HOWEVER SLIGHT IN A RUDE, ANGRY (RESENTFUL MANNER WITHOUT LEGAL JUSTIFICATION FOR DOING SUCH. SO TO U THAT EARLIER EXAMPLE, IF I DRAW BACK TO HIT YOU AND I HIT YOU, THAT'S ASSAU TO DRAW BACK AND THE BATTERY IS TO STRIKE.

NOW AS I TOLD YOU, ASSAULT AND BATTERY WITH INTENT TO KILL IS A UNLAWFUL ACT OF VIOLENT INJURY OR OF A VIOLENT NATURE TO THE PERSON (ANOTHER ACCOMPANIED BY MALICE AFORETHOUGHT. SO I NEED TO EXPLAIN TO YC WHAT MALICE IS. MALICE IS HATRED, ILL WILL, HOSTILITY TOWARD ANOTHER PERSO IT'S ALSO THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE C EXCUSE AND WITH THE INTENT TO INFLICT AN INJURY OR COMMITTED UNDER SUC CIRCUMSTANCES THAT THE LAW WOULD INFER THAT THE PERPETRATOR HAD TH NECESSARY EVIL INTENT.

NOW FOR ASSAULT AND BATTERY WITH INTENT TO KILL, MALICE DOES NC NECESSARILY REQUIRE ILL WILL TOWARD ANY PARTICULAR PERSON, BUT MAY I ESTABLISHED BY PROVING BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WA ACTING WITH A GENERAL MALIGNANT RECKLESSNESS TOWARD THE LIVES AND SAFE

OF OTHERS OR A CONDITION OF THE MIND THAT SHOWS A HEART DEVOID OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF. SO ASSAULT AND BATTERY WITH INTENT TO KILL IS AN UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER WITH MALICE AFORETHOUGHT EITHER EXPRESS OR IMPLIED. ASSAULT AND BATTERY WITH INTENT TO KILL INCLUDES ALL THE ELEMENTS OF MURDER EXCEPT THE DEATH OF THE VICTIM. MURDER IS DEFINED AS THE KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT EXPRESSED OR IMPLIED. NOW YOU SEE THE DIFFERENCE IS THE KILLING.

TO BE CONVICTED OF ASSAULT AND BATTERY WITH INTENT TO KILL, THE JURY HAS TO BE SATISFIED THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT IF THE PURPORTED VICTIM DIED, THE DEFENDANT WOULD'VE BEEN GUILTY OF MURDER.

NOW LET ME GO BACK THROUGH SOME OF THIS IN A LITTLE MORE DETAIL. ASSAULT AND BATTERY WITH INTENT TO KILL, AS I TOLD YOU, DOES NOT REQUIRE THE SPECIFIC INTENT TO KILL A PARTICULAR INDIVIDUAL. IT IS ADEQUATE FOR THE STATE TO SHOW A GENERAL INTENT BEYOND A REASONABLE DOUBT. SPECIFIC INTENT IS NOT NECESSARY. THE STATE HAS TO PROVE TO YOU THAT THE DEFENDANT WAS ACTING WITH MALICE.

NOW THE INTENT MAY BE SHOWN BY ACTS OR BY CONDUCT OF THE ACCUSED AND OTHER CIRCUMSTANCES FROM WHICH THE JURY CAN NATURALLY AND REASONABLY INFER THAT THE DEFENDANT HAD THE NECESSARY CRIMINAL INTENT. INTENT TO KILL MAY BE INFERRED FROM THE CHARACTER OF THE ASSAULT, THE USE OF A DEADLY WEAPON WITH AN OPPORTUNITY TO DELIBERATE ABOUT THAT OR THE USE OF A DANGEROUS OR DEADLY WEAPON IN A MANNER REASONABLY CALCULATED TO CAUSE DEATH OR GREAT BODILY HARM. INTENT MAY BE INFERRED WHEN IT'S

DEMONSTRATED THAT THE ACCUSED VOLUNTARILY AND WILLFULLY COMMITTED AN ACT THE NATURAL TENDENCY OF WHICH IS TO END THE LIFE OF ANOTHER HUMAN BEING. HOWEVER, ANY INFERENCE OF MALICE OR ANY INFERENCE OF INTENT THAT ARISES IS PERMISSIVE AND IT'S EVIDENTIARY AND YOU CAN ACCEPT IT OR YOU CAN REJECT IT. SO IF FACTS ARE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT SUFFICIENT TO ESTABLISH A JUSTIFICATION FOR AN INFERENCE OF MALICE OR INTENT, THAT IS MERELY EVIDENCE THAT YOU CAN CONSIDER ALONG WITH ALL THE OTHER EVIDENCE IN THE CASE TO DECIDE WHETHER THE STATE HAS PROVEN MALICE AND INTENT BEYOND A REASONABLE DOUBT.

NOW I TOLD -- I SPELLED OUT AFORETHOUGHT, AND IT'S IMPORTANT THAT YOU UNDERSTAND THAT THE MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXIST FOR ANY PARTICULAR AMOUNT OF TIME BEFORE THE ACT IS COMMITTED, BUT IT HAS TO EXIST IN THE MIND OF THE ACCUSED JUST BEFORE AND AT THE TIME OF THE COMMISSION OF THE ACT. THERE HAS TO BE A COMBINATION OF THE PREVIOUS MALICE, EVIL INTENT AND THE ACT. MALICE AFORETHOUGHT MAY BE EXPRESS OR IT MAY BE INFERRED.

NOW THESE TERMS EXPRESS OR -- AND INFERRED DON'T MEAN DIFFERENT KINDA MALICE, BUT MERELY A MANNER IN WHICH THE MALICE IS SHOWN TO EXIST. THAT IS, THAT MALICE MAY BE SHOWN BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACT THAT CIRCUMSTANCES -- FACT AND CIRCUMSTANCES PROVE.

NOW TO GIVE YOU AN EXAMPLE OF EXPRESS MALICE. EXPRESS MALICE WOULD BE WHERE SOMEONE COMMUNICATES A THREAT ORALLY. OR WHEN A PERSON SPEAKS HATRED OR ILL-WILL TOWARDS ANOTHER PERSON WHOM HE THEN ASSAULTS AND BATTERS. OR WHEN A PERSON LIES IN WAIT TO COMMIT AN ASSAULT AND BATTERY WITH INTENT TO KILL ANOTHER PERSON. THOSE ARE EXPRESS MALICE.

MALICE CAN BE INFERRED FROM THE CONDUCT OF THE ACCUSED. IT CAN BE INFERRED FROM CONDUCT THAT SHOWS A TOTAL DISREGARD FOR HUMAN LIFE INFERRED MALICE MAY ALSO ARISE WHERE A DEED IS DONE WITH A DEADLY WEAPON.

NOW A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT OR THING THAT IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES IN EACH CASE. AN OBJECT THAT ORDINARILY WOULD NOT BE CONSIDERED A DEADLY WEAPON MAY BECOME A DEADLY WEAPON WHEN THE FACTS SHOW THAT THE OBJECT IS USED TO INFLICT SERIOUS BODILY HARM OR DEATH OR WHEN IT'S USED IN A MANNER THAT'S LIKELY TO CAUSE SERIOUS BODILY HARM OR DEATH.

I REMIND YOU AGAIN, LADIES AND GENTLEMEN, WITH REGARD TO ANY INFERENCES THAT IF FACTS ARE PROVEN BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE FROM THE USE OF A DEADLY WEAPON, THIS INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT THAT YOU CONSIDER ALONG WITH ALL THE OTHER EVIDENCE IN THE CASE AND GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE.

NOW INTENT MAY BE SHOWN BY ACTS AND BY CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER THE NECESSARY INTENT. EVIDENCE OF THE CHARACTER OF THE ASSAULT, THE CHARACTER OF THE INSTRUMENT USED, THE MANNER IN WHICH IT WAS USED, THE PURPOSE TO BE ACCOMPLISHED, ANY RESULTING WOUNDS OR INJURIES MAY BE CONSIDERED IN EVALUATING THE INTENT WITH WHICH THE ASSAULT WAS COMMITTED. INTENT MAY BE INFERRED WHEN IT'S DEMONSTRATED THAT THE DEFENDANT VOLUNTARILY AND WILLFULLY COMMITTED AN ACT, THE NATURAL TENDENCY OF WHICH IS TO DESTROY ANOTHER HUMAN BEING'S LIFE.

NOW I NEED TO EXPLAIN TO YOU THAT THE LAW RECOGNIZES THAT CERTAIN CRIMES INCLUDE WITHIN THEM LESSER CRIMES. WE CALL THOSE LESSER INCLUDED OFFENSES.

ASSAULT AND BATTERY WITH INTENT TO KILL INCLUDES WITHIN IT A LESSER OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. IF YOU FIND THAT THE STATE HAS NOT PROVEN THAT THE DEFENDANT IS GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL, YOU MUST THEN DETERMINE WHETHER THE STATE HAS PROVEN THAT THE DEFENDANT IS GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE INCLUDES ALL THE ELEMENTS OF ASSAULT AND BATTERY WITH INTENT TO KILL EXCEPT MALICE AFORETHOUGHT.

NOW, AS I TOLD YOU, MURDER IS THE UNLAWFUL KILLING OF ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT. I TOLD YOU THAT ASSAULT AND BATTERY WITH INTENT TO KILL HAS ALL THE ELEMENTS OF MURDER EXCEPT KILLING. SO IT'S THE UNLAWFUL -- AN UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER WITH MALICE AFORETHOUGHT. ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE IS AN UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER. YOU DON'T HAVE THE MALICE BUT THERE'S AN ADDED FACTOR AND THAT IS ONE OR MORE CIRCUMSTANCES OF AGGRAVATION HAVE TO EXIST.

SO I NEED TO EXPLAIN TO YOU HOW AN ASSAULT AND BATTERY IS DETERMINED TO BE ACCOMPANIED BY AN AGGRAVATING CIRCUMSTANCE. CIRCUMSTANCES OF AGGRAVATION ARE SET FORTH IN THE LAW, AND THEY INCLUDE SUCH THINGS AS THE USE OF A DEADLY WEAPON; THE INFLICTION OF SERIOUS BODILY INJURY; THE RESISTANCE OF LAWFUL AUTHORITY. NOW THOSE ARE ONLY EXAMPLES OF CIRCUMSTANCES OF AGGRAVATION. IF YOU FIND THAT THE STATE HAS PROVEN

BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED AN UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER AS ALLEGED IN THE INDICTMENT AND THAT THE EVENT WAS ACCOMPANIED BY ONE OR MORE CIRCUMSTANCES OF AGGRAVATION, THEN YOU MAY FIND THE DEFENDANT GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE EVEN THOUGH THAT CHARGE IS NOT WRITTEN ON THE FACE OF THE INDICTMENT. IT IS INCLUDED WITHIN THE GREATER CHARGE.

THE FINAL THING I HAVE TO TELL YOU ON THE LAW, LADIES AND GENTLEMEN, IS THAT THE DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT ARISING IN AN ENTIRE CASE. IF UPON REVIEWING AN ENTIRE CASE YOU HAVE A REASONABLE DOUBT AS TO HOW IT SHOULD BE RESOLVED, YOU MUST RESOLVE THAT DOUBT IN FAVOR OF THE DEFENDANT AND FIND HIM -- I'M SORRY -- RESOLVE THAT DOUBT IN FAVOR OF THE DEFENDANT. IF UPON REVIEWING THE ENTIRE CASE YOU HAVE A REASONABLE DOUBT AS TO ANY FACT ESSENTIAL TO A CONVICTION, YOU HAVE TO RESOLVE THAT DOUBT IN FAVOR OF THE DEFENDANT AND FIND HIM NOT GUILTY. IF, ON THE OTHER HAND, YOU FIND THAT THE STATE HAS PROVEN EVERY ESSENTIAL ELEMENT OF AN OFFENSE CHARGED BEYOND THE DEFENDANT -- I'M SORRY -- AGAINST THE DEFENDANT BEYOND A REASONABLE DOUBT, IT'S EQUALLY YOUR JOB TO FIND HIM GUILTY.

IF YOU HAVE A REASONABLE DOUBT AS TO WHETHER THE DEFENDANT HAS BEEN PROVEN OF A GREATER CRIME CHARGED OR A LESSER INCLUDED OFFENSE, YOU HAVE TO GIVE HIM THE BENEFIT OF THE DOUBT, FIND HIM GUILTY ONLY OF THE LESSER CHARGE.

BUT YOU CANNOT FIND HIM GUILTY OF ANY CHARGE GREATER OR LESSER UNLESS THE STATE HAS PROVEN ALL THE ELEMENTS OF THAT OFFENSE BEYOND A REASONABLE DOUBT. THAT'S THE LAW.

FOLKS, WHEN YOU GO BACK TO YOUR JURY ROOM TO DECIDE THE CASE, YOU'RE GONNA HAVE WITH YOU ALL THE EXHIBITS AND YOU'RE GONNA HAVE WITH YOU THESE VERDICT FORMS. ON THESE VERDICT FORMS YOU'RE GONNA TELL US YOUR DECISIONS. I'M SUPPOSED TO TELL YOU THAT YOU ARE NOT TO INFER FROM THE ORDER IN WHICH I STATE THESE THINGS THAT I'M SUGGESTING ANYTHING TO YOU. I'VE GOTTA SAY ONE THING FIRST AND ONE THING SECOND AND SO ON. THE TRUTH IS I DID THESE FORMS AT A COMPUTER SCHOOL IN 1993 OR 1994. ALL I DO NOW IS CHANGE NAMES AND CASE NUMBERS. YOU HAVE TWO DIFFERENT VERDICT FORMS. YOU HAVE THE FAILURE TO STOP CHARGE AND YOU'VE GOT ASSAULT AND BATTERY WITH INTENT TO KILL CHARGE.

ON THE FAILURE TO STOP YOU HAVE TWO POSSIBLE FORMS OF VERDICT. WE THE JURY FIND THE DEFENDANT NOT GUILTY OR WE THE JURY FIND THE DEFENDANT GUILTY OF FAILURE TO STOP FOR A BLUE LIGHT.

ON ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE YOU HAVE THREE POSSIBLE FORMS OF VERDICT. YOU MAY FIND THE DEFENDANT NOT GUILTY. ASSAULT AND BATTERY WITH INTENT TO KILL.

ON THE CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL YOU HAVE THREE POSSIBLE FORMS OF VERDICT. YOU MAY FIND THE DEFENDANT GUILTY -- I'M SORRY -- NOT GUILTY; YOU MAY FIND THE DEFENDANT GUILTY OF THE LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. OR YOU MAY FIND THE DEFENDANT GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL. OKAY? SO YOU GOT A LESSER INCLUDED ON THAT ONE. YOU HAVE THREE POSSIBLE FORMS OF VERDICT.

MR. FOREMAN, PART OF YOUR JOB IS TO RECORD THE VERDICT FOR ME. I THINK YOU'LL FIND THE FORM SELF EXPLANATORY. JUST CHECK THE RESPONSES CHOSEN BY THE JURY AND SIGN YOUR NAME ON THE SIGNATURE LINE ON EACH OF THE VERDICT

FORMS.

FOLKS, HOW YOU GO ABOUT YOUR DELIBERATIONS; HOW YOU GO ABOUT TAKING YOUR VOTES, ALL OF THAT IS IN YOUR DISCRETION SUBJECT TO THIS REQUIREMENT: YOUR VERDICTS MUST BE UNANIMOUS. ALL 12 OF YOU MUST AGREE IN ORDER FOR THE FOREMAN TO RECORD YOUR VERDICT. YOU CANNOT DO ANYTHING TO CHANGE THE REQUIREMENT OF A UNANIMOUS VERDICT.

AND AS I TOLD YOU, THESE INDICTMENTS ARE SEPARATE AND DISTINCT. THEY'RE TWO SEPARATE AND DISTINCT MATTERS. WHEN YOU COME BACK OUT AND YOUR VERDICTS ARE READ, YOU CAN BE ASKED INDIVIDUALLY ABOUT YOUR VERDICT IF THAT IS YOUR VERDICT. SO, PLEASE, UNDERSTAND YOU'RE NOT TO DO ANYTHING TO CHANGE THE REQUIREMENT THAT YOUR VERDICT HAS TO BE UNANIMOUS. WHEN YOU HAVE REACHED YOUR VERDICTS, IF YOU'LL KNOCK ON THE DOOR, THE BAILIFF WILL RESPOND TO YOUR KNOCK. I'VE PROBABLY TOLD YOU NOW SEVERAL DOZEN TIMES NOT TO DISCUSS THE CASE UNTIL I TELL YOU TO. WELL, IT'S NOT QUITE TIME. THE LAW SAYS THAT I HAVE TO LET THE ATTORNEYS DISCUSS WITH ME WHAT I JUST TOLD YOU. AND THAT'S JUST COMMON SENSE. WE DON'T WANT YOU BACK THERE DECIDING THE CASE USING THE WRONG LAW. SO IF I TOLD YOU SOMETHING WRONG, THEY HAVE TO BE GIVEN A CHANCE TO POINT IT OUT TO ME BEFORE YOU START DELIBERATING.

NOW WHAT I DID WAS I GAVE THEM A DRAFT OF THE CHARGE LAST NIGHT BEFORE WE LEFT. WE TALKED ABOUT IT SOME BEFORE WE LEFT. THEY HAD ALL NIGHT TO LOOK AT IT. WE MET 30 MINUTES BEFORE YOU GOT HERE THIS MORNING AND WE TALKED ABOUT IT FOR 30 MINUTES. SO WE'VE ALREADY TALKED ABOUT THIS. BUT I DON'T EVER READ THIS THING VERBATIM, AND SOMETIMES I MISSTATE THINGS, AND SOMETIMES I JUST SAY THINGS WRONG. HERE'S THE SIGNAL YOU NEED TO LOOK FOR: IF I'M SATISFIED WITH WHAT I TOLD YOU, I WILL GIVE THE BAILIFF THESE VERDICT

FORMS; SHE WILL BRING THE EXHIBITS AND THE VERDICT FORM INTO THE JURY ROOI SHE WILL BRING THE TWO ALTERNATES OUT. WHEN SHE'S OUTTA THE ROOM AND TH TWO ALTERNATES ARE OUTTA THE ROOM AND Y'ALL GOT ALL THESE EXHIBITS AND TH VERDICT FORMS AND IT'S JUST THE 12 OF YOU IN THERE, YOU START TALKIN' ABOUT TH CASE. YOU DON'T HAVE TO WAIT ANYMORE, BUT DON'T DO IT UNTIL THEN. ALL RIGHT THANK YOU VERY MUCH FOR YOUR ATTENTION. YOU MAY RETIRE TO YOUR JURY ROOM (THE JURY RETIRED TO THE JURY ROOM AT 11:56 A.M.) PLEASE STATE FOR THE RECORI EXCEPTIONS, ADDITIONS, OBJECTIONS TO THE CHARGE FROM THE STATE.

MR. YOUNG: NONE FROM THE STATE.

THE COURT: FROM THE STATE.

MR. FALGIONE: YOUR HONOR, I WOULD JUST FOR THE RECORD RENEW THOSE TWO OBJECTIONS. ONE IS THAT THE DEFENSE REQUESTED THAT ASSAULT AND BATTERY WITH INTENT TO KILL THAT THE STATEMENT REQUIRES INTENT TO KILL BE INSERTED IN THE INSTRUCTIONS AND THAT WAS DECIDED NOT TO BE BY THE COURT.

THE COURT: YES, SIR.

MR. FALGIONE: AND THAT'S OUT OF STATE V. WILDS CASE. AND OF COURSE WE RENEW OUR OBJECTION TO THE INTENT LANGUAGE BASED UPON OUR PREVIOUS ARGUMENT TO THE COURT.

THE COURT: ALL RIGHT. DO YOU WANT ME TO MAKE THE WRITTEN REQUEST PART OF THE RECORD AND OBJECT TO THE FAILURE TO CHARGE ALL THOSE WRITTEN REQUEST?

MR. FALGIONE: NO, YOUR HONOR.

THE COURT: SURE?

MR. FALGIONE: THINKIN' ABOUT IT, YES, YOUR HONOR. I APPRECIATE THAT.

THE COURT: MAKE THESE COURTS EXHIBITS. THE OBJECTION IS NOTED FOR FAILURE TO CHARGE THE WRITTEN INSTRUCTIONS THAT WERE SUBMITTED AND THEY'LL BE MADE PART OF THE RECORD. NOW, FOLKS, I REALLY APPRECIATE THE RESPECT YOU'VE SHOWN THE COURT, THE WAY YOU'VE CONDUCTED YOURSELVES THROUGHOUT THE TRIAL. IT'S BEEN A PLEASURE TRYING THE CASE WITH YOU. WE'LL PUT IT IN THE JURY'S HANDS AND WE'LL SEE WHAT THEY SAY.

(THE ALTERNATES WERE DISMISSED BY THE COURT.) (THE FOLLOWING OCCURRED SOMETIME LATER.) I'VE BEEN INFORMED THE JURY HAS A VERDICT. OBVIOUSLY, I HAVE NO WAY OF KNOWING WHAT THEY'VE DECIDED. IT'S SOMETHING I SAY IN EVERY CASE. PLEASE, STAY STILL AND STAY QUIET. DON'T SHOW SIGNS OF APPROVAL OR DISAPPROVAL OF THE VERDICT. DON'T SHAKE YOUR HEAD IN AGREEMENT OR DISAGREEMENT. BRING THE JURY. (THE JURY RETURNED TO THE OPEN COURTROOM TO RENDER ITS VERDICT AT 12:40 P.M.) MADAM CLERK?

THE CLERK: MR. FOREMAN, HAVE YOU REACHED A VERDICT?

THE FOREMAN: YES, WE HAVE.

THE CLERK: WOULD YOU PASS IT UP.

THE COURT: PUBLISH THE VERDICTS, PLEASE.

THE CLERK: STATE OF SOUTH CAROLINA -VS- SHAWN WAYNE WILES, INDICTMENT #2006-GS-41-078. AS TO THE CHARGE OF FAILURE TO STOP FOR A BLUE LIGHT, WE THE JURY FIND THE DEFENDANT GUILTY OF FAILURE TO STOP FOR A BLUE LIGHT. SLYVESTER CULBREATH, FOREMAN. INDICTMENT #2004-GS-41-091 STATE OF SOUTH CAROLINA -VS- SHAWN WAYNE WILES. AS TO THE CHARGE FOR ASSAULT AND BATTERY WITH INTENT TO KILL, WE THE JURY FIND THE DEFENDANT GUILTY OF THE LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. SYLVESTER CULBREATH, FOREMAN.

THE COURT: ARE THERE ANY MATTERS TO TAKE UP PRIOR TO THE JURY BEING DISCHARGED FROM THE STATE?

MR. YOUNG: NO, SIR.

THE COURT: DEFENSE?

MR. FALGIONE: NO, YOUR HONOR. (THE COURT DISMISSED THE JURY.)

THE COURT: MOTIONS.

MR. FALGIONE: I'M SORRY, YOUR HONOR.

THE COURT: YOU HAVE ANY MOTIONS?

MR. FALGIONE: NO, YOUR HONOR.

THE COURT: ALL RIGHT. MR. WILES, I WANT TO MAKE SURE YOU UNDERSTAND IF HE DOESN'T MAKE ANY POST TRIAL MOTIONS THAT'S PRETTY MUCH GONNA DO AWAY WITH YOUR ABILITY TO PURSUE ANY APPEAL. YOU UNDERSTAND THAT?

MR. FALGIONE: MR. WILES, AS YOUR COURT APPOINTED ATTORNEY ARE YOU INSTRUCTING ME NOT TO RAISE ANY POST-TRIAL MOTIONS?

THE DEFENDANT: YES, SIR.

MR. FALGIONE: NOW YOU UNDERSTAND IF I DO NOT RAISE THOSE MOTIONS YOU WILL HAVE NO BASIS FOR APPEALING ANY OF THESE DECISIONS OR ANY OF THE OBJECTIONS, TO GET A NEW TRIAL OR OTHERWISE RAISE ANY ISSUES IN THE TRIAL.

THE DEFENDANT: I UNDERSTAND. I'M HAPPY WITH THE VERDICT.

THE COURT: YOU'RE HAPPY WITH THE VERDICT. IS THAT WHAT YOU SAID?

THE DEFENDANT: YES, SIR.

THE COURT: I HAVEN'T SENTENCED YOU YET.

THE DEFENDANT: I UNDERSTAND.

MR. FALGIONE: YOU UNDERSTAND YOU CAN BE SENTENCED UP TO TEN YEARS.

THE COURT: HE CAN BE SENTENCED UP TO 13.

MR. FALGIONE: SIR?

THE COURT: FAILURE TO STOP AND THE ABHAN.

MR. FALGIONE: UP TO 13 YEARS.

THE DEFENDANT: YES, SIR.

MR. FALGIONE: BOTH CHARGES.

THE COURT: ALL RIGHT. NOW IS THAT YOUR OWN DECISION MADE OF YOUR OWN FREE WILL TO WAIVE YOUR ATTORNEY'S RIGHTS -- I MEAN TO INSTRUCT YOUR ATTORNEY NOT TO FILE ANY POST TRIAL MOTIONS?

THE DEFENDANT: YES, SIR.

THE COURT: AND YOU UNDERSTAND THAT THAT WILL BASICALLY DESTROY ANY APPEAL RIGHTS YOU MAY HAVE?

THE DEFENDANT: YES, SIR.

THE COURT: YOU SURE THAT'S WHAT YOU WANT TO DO?

THE DEFENDANT: YES, SIR.

THE COURT: YOU CAN ABANDON AN APPEAL LATER.

THE DEFENDANT: I'M GOOD, YOUR HONOR.

THE COURT: YOU'RE GOOD.

THE DEFENDANT: YES, SIR.

THE COURT: YOUR OWN DECISION MADE OF YOUR OWN FREE WILL.

THE DEFENDANT: YES, SIR.

THE COURT: AND YOU KNOW IF HE'S GONNA FILE AN APPEAL IT HAS TO BE IN WRITIN' AND IT HAS TO BE DONE VERY QUICKLY. SO IF YOU'RE TELLIN' HIM NOT TO DO IT, THAT APPEAL IS KINDA GONNA RUN OUT ON YOU REAL QUICKLY. YOU UNDERSTAND?

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT. HAVE A SEAT, PLEASE.

MR. FALGIONE: YOUR HONOR, WHEN MR. YOUNG COMES BACK IN, I'D STILL LIKE TO PUT A MOTION FOR A NEW TRIAL ON THE RECORD.

THE COURT: THAT'D BE THE SMART THING TO DO. WAIT A SECOND. WAIT FOR HIM. ALL RIGHT. MR. WILES, YOUR LAWYER SAYS HE'S GONNA GO AHEAD AND MAKE A MOTION FOR A NEW TRIAL. AND IT'S UP TO YOU AS TO WHETHER YOU DECIDE TO PURSUE AN APPEAL OR NOT. ALL RIGHT?

THE DEFENDANT: YES, SIR.

THE COURT: MR. FALGIONE?

MR. FALGIONE: YOUR HONOR, I'D MOVE FOR A NEW TRIAL AT THIS TIME ON THE LESSER INCLUDED CHARGE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE AND ALSO AS TO THE FAILURE TO STOP FOR POLICE OFFICER. I BELIEVE THAT THE JURY'S DECISION IS A RESULT OF FAILURE TO CONSIDER THE APPROPRIATE ELEMENTS AND THE CONSIDERATION OF IMPROPER ELEMENTS CONCERNING THE ESCAPE OF THE DEFENDANT.

THE COURT: ALL RIGHT. MOTION DENIED.

MR. YOUNG: THERE IS AN ABHAN IN ADDITION TO THE OTHERS. YOUR HONOR, THERE IS ANOTHER CHARGE THAT IS PENDING WHICH HAS TO DO WITH MALICIOUS INJURY TO PROPERTY, THAT BEING THE BUILDING THAT WAS STRUCK. HOWEVER THE CASE LAW INDICATES AND I'LL GIVE THE GENERIC ANSWER TO THIS. THERE'S NO TRANSFERRED INTENT POSSIBLE UNDER THE LAW OF SOUTH CAROLINA AND THE CASE INVOLVES A HIGHWAY PATROLMAN INVOLVED IN A FIST FIGHT AND RESISTING ARREST SCENARIO BESIDE HIS TROOPER'S VEHICLE. DURING THE COURSE OF THAT RESISTING ARREST EVENT THE MAN SWUNG AT THE TROOPER HITTING THE GLASS OF THE WINDOW,

BURST THE WINDOW APART. HE WAS CHARGED WITH MALICIOUS INJURY TO PROPERTY IN CONNECTION WITH HIS ATTEMPT TO STRIKE THE POLICE OFFICER. BY ANALOGY WE DO NOT BELIEVE THAT MALICIOUS INJURY TO REAL PROPERTY IN THIS CASE LIES BECAUSE THERE IS NO BASIS UPON WHICH TRANSFERRED INTENT MIGHT EXIST. SO WE WILL DISMISS THAT CHARGE.

THE COURT: ALL RIGHT. WHAT DO Y'ALL WANT TO TELL ME ABOUT SENTENCING?

MR. YOUNG: YOUR HONOR, IN TERMS OF HIS RAP SHEET, TO REITERATE, THE MAY '96 CONVICTION IN ADDITION TO THOSE YOU'VE PREVIOUSLY HEARD, YOUR HONOR, IT DID INCLUDE A ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, BURGLARY SECOND AND GRAND LARCENY. THAT WAS A Y.O.A. SENTENCE UP TO 6 YEARS. I BELIEVE IN CONNECTION WITH THAT, THERE WAS A SUBSEQUENT -- NOW HERE WE HAVE IT. HERE'S A MAY '98 POSSESSION OF MARIJUANA. THEN THERE IS A FAILURE TO STOP AND A DRIVING WITHOUT A LICENSE IN JANUARY OF 2001. THERE'S A SEPTEMBER OF 90 -- I DON'T KNOW WHY THESE ARE ALL JUMBLED AS THEY ARE. BUT THERE'S A SEPTEMBER '98 POSSESSION OF MARIJUANA ALSO TREATED AS A FIRST OFFENSE. A DRIVING UNDER SUSPENSION IS MAY -- MARCH 11TH '99. AND OPERATING UNINSURED VEHICLE. AND THAT -- AND FALSE INFORMATION TO POLICE AND POSSESSION OF DRUG PARAPHERNALIA. THEN THERE'S POSSESSION OF A STOLEN VEHICLE IN DECEMBER OF '99. DRIVING UNDER SUSPENSION HE SERVED -- IT WAS 3 YEARS SUSPENDED ON $100 CONCURRENT TO 2 YEARS PROBATION CONSECUTIVE TO HIS Y.O.A. THAT HE WAS IN I BELIEVE REVOKED ON. HE WAS REVOKED ON HIS Y.O.A. PAROLE IN OCTOBER OF '99 SUBSEQUENTLY. FAILURE TO STOP FOR BLUE LIGHT NO INJURIES SECOND OFFENSE. THIS WAS A CONVICTION IN -- THIS IS A CONVICTION IN MAY 30TH 2002 ALONG WITH POSSESSION AND DISTRI -- OR DISPOSAL OF STOLEN

VEHICLE. 2 COUNTS. HE RECEIVED 10 YEARS PROVIDED UPON THE SERVICE OF 3 YEARS SUSPENDED WITH PROBATION FOR 4 YEARS. THAT'S IN MAY OF 2002. THAT WOULD MEAN HE'S CURRENTLY STILL ON PROBATION.

THE COURT: HE'S GOT A PRIOR BLUE LIGHT CONVICTION?

MR. YOUNG: APPARENTLY, JUDGE, THERE'S TWO.

THE COURT: BUT YOU ALL DIDN'T INDICT HIM UNDER THE SECTION FOR GREAT BODILY HARM.

MR. YOUNG: NO, SIR. WE DIDN'T HAVE GREAT BODILY HARM WHERE WE COULD DEMONSTRATE ACCORDING TO WHAT I SAW. MR. -- MR. FRANK THE ONLY THING HE HAD WAS HE LOST HIS MEMORY AND THE GOOD LORD PROTECTED HIM FROM THAT POINT FORWARD. HE DOES HAVE SOME PAIN IN HIS SHOULDERS BUT THAT'S ABOUT IT HE LOST HIS MEMORY FOR THAT JUST BRIEF PERIOD OF TIME.

THE COURT: ALL RIGHT.

MR. YOUNG: AND THERE'S SOME RECKLESS DRIVING IN HERE AND THAT LAST OFFENSE I DON'T HAVE A DATE ON THAT BUT APPARENTLY IT WAS AFTER THAT POINT I'M SORRY. I DO HAVE IT. IT'S MAY -- APRIL 2002 ALONG WITH THE D.U.S. THIRD.

THE COURT: SO THE CODE SECTION CITED IN THE INDICTMENT ON FAILURE TO STOP IS FOR FIRST OFFENSE.

MR. YOUNG: THAT'S WHAT I UNDERSTAND, YOUR HONOR.

MR. FALGIONE: MY UNDERSTANDING AS WELL.

THE COURT: ALL RIGHT. MR. DANIEL, YOU WANT TO BE HEARD?

MR. DANIEL: NO, SIR.

THE COURT: ALL RIGHT. ANYTHING ELSE ON SENTENCING FROM THE STATE?

MR. YOUNG: YOUR HONOR, IN THE CONTEXT OF WHERE WE ARE RIGHT NOW THIS GENTLEMAN -- AND I UNDERSTAND THE DECISION OF THE JURY. THE STAT

RESPECTS ANY DECISION THE JURY REACHES. YOUR HONOR, IF THIS IS AN ABHAN, IT'S EXTREMELY AGGRAVATED. THE STATE ASKS THE COURT TO TAKE THAT INTO ACCOUNT BASED UPON ALL THE CIRCUMSTANCES YOU'VE HEARD AND THE DECISIONS REACHED BY THE JURY WHICH I BELIEVE IN ALL REGARDS OTHER THAN THE INTENT TO KILL SUBSTANTIATES EXTREMELY RECKLESS BEHAVIOR. THIS MAN WAS WITHOUT REGARD FOR THE SAFETY OF OTHERS.

THE COURT: ALL RIGHT. MR. FALGIONE, YOU HAVE ANYTHING ON SENTENCING?

MR. FALGIONE: MAY IT PLEASE THE COURT, YOUR HONOR?

THE COURT: YES, SIR.

MR. FALGIONE: MR. WILES WOULD LIKE TO HAVE THE OPPORTUNITY TO APOLOGIZE TO MR. DANIELS, YOUR HONOR.

THE COURT: CERTAINLY.

THE DEFENDANT: YOUR HONOR, I WOULD LIKE TO SAY A COUPLE THINGS.

THE COURT: SURE.

THE DEFENDANT: FIRST OF ALL, I'D LIKE TO APOLOGIZE TO MR. DANIELS. I DON'T KNOW IF YOU ARE FAMILIAR WITH THE CIRCUMSTANCES OF THE REASON WHY I ESCAPED OR ANYTHING.

THE COURT: COME OVER HERE, MR. DANIELS, SO HE'S FACING THE COURT REPORTER. JUST COME ON THIS SIDE. THAT'S GOOD.

THE DEFENDANT: I DON'T KNOW IF YOU ARE FAMILIAR WITH THE CIRCUMSTANCES OF THE REASON WHY I ESCAPED OR ANYTHING, BUT I WAS HAVIN' PROBLEMS WITH THE INSTITUTION. OKAY? AND I WANT YOU TO KNOW THAT THIS IS NOT A EXCUSE; IT'S JUST A EXPLANATION OF WHAT I DID. AND I JUST WANT TO STATE THAT I WAS HAVING PROBLEMS AT THE INSTITUTION I WAS AT AS FAR AS GANG MEMBERS THREATENIN' ME AND EVERYTHING, AND THAT I ESCAPED, THEN THEY

BROUGHT ME BACK UP TO THE SAME INSTITUTION WHICH IS AGAINST THEIR OWN POLICY. I TRIED TO AVOID THE ESCAPE BY GOIN' TO THE OFFICERS AND LETTIN' THEM KNOW THAT I WAS HAVIN' PROBLEMS PLEASE PLACE ME IN LOCK UP SO I WOULDN'T BE IN THERE AND THEY REFUSED TO DO THAT. I NEVER INTENDED TO HARM ANYONE AND I'M SORRY.

THE COURT: YOU GOT ANYTHING YOU WANT TO TELL ME? THANK YOU, MR. DANIEL.

THE DEFENDANT: YES, SIR. I WOULD JUST LIKE -- LIKE I SAID, I WOULD JUST LIKE FOR THE COURT TO TAKE INTO CONSIDERATION THE CIRCUMSTANCES BEFORE THE FAILURE TO STOP, SIR. I JUST PANICKED. AND LIKE I SAID, IT'S NOT AN EXCUSE; IT'S AN EXPLANATION.

THE COURT: WHAT ARE YOU IN PRISON FOR NOW?

THE DEFENDANT: POSSESSION OF A STOLEN VEHICLE. FOR RIGHT NOW? IT'S FOR 2 ESCAPES. I GOT 2 ONE YEARS. THE ONLY REASON I DIDN'T APPLY DISTRESS DEFENSE NECESSITY. I MEAN THAT'S ABOUT IT.

THE COURT: IS THERE ANY EVIDENCE YOU TRIED TO TURN YOURSELF IN TO ANOTHER LAW ENFORCEMENT AGENCY ONCE YOU---

THE DEFENDANT: THAT'S THE REASON WHY -- I DIDN'T -- I MEAN I DIDN'T KNOW THE LAW AT THE TIME. I JUST -- I WAS JUST SCARED THEY WOULD BRING ME BACK TO THAT SAME INSTITUTION.

MR. FALGIONE: YOUR HONOR, MR. WILES---

THE COURT: HOW DID THAT PLAN WORK OUT?

THE DEFENDANT: IT DIDN'T WORK OUT TOO GOOD.

THE COURT: MR. FALGIONE?

MR. FALGIONE: YOUR HONOR, MR. WILES, SINCE HE'S OBVIOUSLY BEEN IN AN ESCAPED SITUATION WITH THOSE TWO ESCAPES, HE'S A CAR THIEF. HE'S NOT A MURDERER. BUT HE HAS HAD ESCAPE HISTORY AND ACCORDINGLY HE'S BEEN IN SUPER MAX FOR 2 YEARS NOW I THINK IN A CELL 24 HOURS A DAY. MONITORED. HIS CELL HAS A LIGHT ON SO HE IS TOTALLY MONITORED. IF EVER THERE WAS ANYTHING THAT WOULD MAKE AN IMPRESSION ON A PERSON TO CHANGE AND NOT BE A CAR THIEF AND NOT HAVE PROBLEMS WITH THE LAW, I WOULD THINK THERE ISN'T A BETTER LESSON THAN THAT IN THE WHOLE WORLD. AND I BELIEVE THAT MR. WILES HAS LEARNED FROM THAT. I'VE SEEN HIM INTERACT WITH OFFICIALS THAT CONDUCT HIS DAILY ACTIVITY AND HE APPEARS TO BE RESPECTFUL AND NOT CAUSE PROBLEMS. I'D OFFER THAT ON BEHALF OF MR. WILES.

THE DEFENDANT: CAN I SAY ONE MORE THING, YOUR HONOR?

THE COURT: SURE.

THE DEFENDANT: I ONLY HAD ONE YEAR AT THE TIME OF THE ESCAPE LEFT TO SERVE ON THE SENTENCE.

THE COURT: YES, SIR.

THE DEFENDANT: THANK YOU.

THE COURT: THANK YOU. DO Y'ALL HAVE ANY RESTITUTION REQUEST?

MR. YOUNG: MR. DANIELS INFORMS ME HE WOUND UP PAYING ABOUT $400 AFTER EVERYTHING ELSE WAS TAKEN CARE OF. THE STATE WOULD SEEK THAT AMOUNT IN RESTITUTION TO BE PAID IF THERE IS PROBATION OR BE PAID DURING THE TIME OF PAROLE.

THE COURT: ALL RIGHT. IF THERE'S NOTHING FURTHER, THE COURT HAS TAKEN INTO CONSIDERATION EVERYTHING THAT'S BEEN PRESENTED. AND, MR. FALGIONE, I WANT TO COMMEND YOU. YOU DID AN OUTSTANDING JOB ON BEHALF OF YOUR CLIENT.

AND THE SOLICITOR DID AN OUTSTANDING JOB ON BEHALF OF THE STATE. THE JURY WAS WELL WITHIN ITS PROVINCE TO DECIDE IT WAS AN AGGRAVATED ASSAULT AND BATTERY. UNDER THE CIRCUMSTANCES I THINK THAT THE DEFENSE ATTORNEY DID AN EXEMPLARY JOB TO GET THAT VERDICT. MR. WILES, I'M NOT GONNA PREACH TO YOU. I HOPE YOU HAVE LEARNED YOUR LESSON, BUT I CAN'T THINK OF ANYTHING MORE DISRESPECTFUL AND JUST DOWNRIGHT DANGEROUS THAN WHAT YOU DID. THE SOLICITOR USED THE TERM SELFISH IN HIS CLOSING AND I THINK THAT'S A VERY GOOD SUMMATION. BECAUSE YOU WERE CONCERNED FOR YOUR OWN SKIN, YOU PUT EVERYBODY ELSE'S SKIN IN DANGER OF BEIN' IN A COFFIN WITH NO LIGHT ON. THERE'S NO EXCUSE FOR WHAT YOU DID. YOU CAN TRY TO JUSTIFY IT ALL YOU WANT TO. I'M NOT SAYING THAT YOU CAN'T LEARN FROM IT AND GO ON AND NEVER MAKE THE SAME OR SIMILAR OR EVEN ANY MISTAKES CRIMINAL IN NATURE IN THE FUTURE. YOU CAN DO THAT. BUT THIS WAS JUST BEYOND THE PALE.

SENTENCE OF THE COURT ON FAILURE TO STOP FOR A BLUE LIGHT IS THAT YOU BE COMMITTED TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 3 YEARS PLUS COST AND ASSESSMENTS. THE SENTENCE ON ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE IS THAT YOU BE COMMITTED TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR 10 YEARS PLUS COST AND ASSESSMENTS. ON THE ABHAN CHARGE RESTITUTION OF $400 IS ORDERED PLUS A 20 PERCENT HANDLING FEE TO BE PAID WITHIN 6 MONTHS OF YOUR RELEASE FROM ACTUAL CONFINEMENT IN PRISON. THE SENTENCES ARE CONSECUTIVE TO EACH OTHER AND TO ALL OTHER SENTENCES. YOU PAY YOUR SURCHARGES ON THE CASE ON THE ABHAN CASE WITHIN ONE YEAR FROM BEING RELEASED FROM ACTUAL INCARCERATION IN PRISON AND ON THE BLUE LIGHT CHARGE WITHIN 18 MONTHS FROM BEING RELEASED FROM ACTUAL INCARCERATION IN PRISON. GOOD LUCK TO YOU, SIR.

CERTIFICATE

I, THE UNDERSIGNED, SMOKEY PERRY, OFFICIAL AND CERTIFIED COURT REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT TO THE BEST OF MY ABILITY AND SKILL.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

Smokey Perry

4-29-06

RECEIVE

NOV 05 2009

Referred to PCR

Answered

FILED

2009 NOV - 3 P 3:13

CLERK
SALUDA S.C.

STATE OF SOUTH CAROLINA

County of Saluda

In the Court of Common Pleas

2009-CP-41-172

Shaun Wayne Wiles, #284696
Full name and prison number (if any) of Applicant,

vs.

The State of South Carolina
Name of Respondent.

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, **the original** shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Kirkland Correctional Institution.

2. Name and location of Court which imposed sentence Saluda County General Sessions Court, 100 E. Church Street, Saluda, South Carolina 29138

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

   (a) 2004-GS-41-091, Assault and Battery of a High and Aggravated Nature (ABHAN).

   (b) 2006-GS-41-78, Failure to Stop for a Blue Light (Failure to Stop).

   (c)

4. The date upon which sentence was imposed and the terms of the sentence:

   (a) March 8, 2006, ABHAN, Committed to S.C.D.C. for 10 years, plus costs and assessments, and ordered to pay restitution of $400 plus a 20 percent handling fee, both to be paid within 6 months of release. Note: No probation was given.

   (b) March 8, 2006, Failure to Stop, Committed to S.C.D.C. for 3 years plus costs and assessments.

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. The South Carolina Court of Appeals

ii. The South Carolina Supreme Court

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed Conviction and Sentence

ii. Affirmed as Modified

iii. _____

(c) the date of each such result:

i. June 14, 2007

ii. June 22, 2009

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. State v. Wiles, Op. No. 2007-UP-318 (S.C. Ct. App. 6-14-07)

ii. State v. Wiles, Op. No. 26674 (6-22-09)

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

(a) Ineffective Assistance of Appellant Counsel

(b) Denied My 6th Amendment Right to a Fair Trial (Trial by an impartial jury).

(c) Denied My 14th Amendment Right to Due Process (The Presumption of innocence).

See attached page.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Did not challenge the procedures used to sentence me to restitution and the conditions under which the restitution is to be paid (including no probation).

(b) Trial judge allowed into evidence a "Report of Interview" done by a SCDC investigator, effectively informing the jury of prior bad acts as well as my continued custody in SCDC.

(c) Same as 10(b) above.

(d) I was not given any notice of a restitution hearing or that the prosecution

continued on attached page.

34

11. Prior to this application have you filed with respect to this conviction

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

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

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No.

(d) any other petitions, motions or applications in this or any other Court?

No.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

... answered yes (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Appellant Counsel, No other proper Court.

(b) Denial of 6th Amendment Right, Appellant Counsel did not present it.

(c) Denial of 14th Amendment Right, Appellant Counsel did not present it.

see attached page.

16. 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? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Adrian L. Falgione, P.O. Box 277, Lexington, South Carolina, 29071.

ii. Aileen P. Clare, South Carolina Commission on Indigent Defense, P.O. Box 11589, Columbia, South Carolina, 29211-1589

iii. M. Celia Robinson, South Carolina Commission on Indigent Defense, P.O. Box 11589, Columbia, South Carolina, 29211-1589

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing

ii. Appeal to Court of Appeals

iii. Appeal to Court of Appeals and Supreme Court

18. State clearly the relief you seek in filing this application.

New Trial and/or Sentencing Hearing

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

No.

36

STATE OF SOUTH CAROLINA

County of Saluda

VERIFICATION

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

Shaun Wiles

SWORN to and subscribed before me this 28

day of October, 2009

[redacted] (L.S.)
Notary Public

My Commission Expires: Nov. 8, 2017

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Shaun Wayne Wiles, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Shaun Wiles
Applicant

SWORN or affirmed to and subscribed before me this

28 day of October, 2009

[redacted]
Notary Public

My Commission Expires Nov. 8, 2017.

Number 9 Continued:
(d) Denied My 14th Amendment to Due Process at Sentencing.
(e) I was given an illegal sentence.

Number 10 Continued:
(d) Continued: was even going to seek restitution. Nor was I (or defense counsel) give an opportunity to cross-examine the witness at sentencing.
(e) South Carolina Code of Laws, Sections 17-552 and 17-553 does not allow the maximum sentence of 10 years and restitution without the suspension of all or part of the sentence and given probation.

338

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF SALUDA	)	
	)	2009-CP-41-0172
	)	
Shaun Wayne Wiles, #284696,	)	
Applicant,	)	
	)	
v.	)	**RETURN**
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 2, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Saluda County Clerk of Court. The Applicant was charged with Assault and Battery with Intent to Kill (2004-GS-41-0091), and Failure to Stop For a Blue Light (2006-GS-41-0078). Applicant was represented by Adrian Falgione, Esquire. On the week of March 8, 2006, the Applicant underwent trial, pursuant to which he was found guilty. The Applicant was sentenced by the Honorable William P. Keesley to confinement for a period of ten (10) years on the assault charge and a consecutive period of three (3) years on the failure to stop for a blue light charge.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequently affirmed the Applicant's conviction and sentence by order filed June 14, 2007. (State v. Wiles, Op. No. 2007-UP-318). The Applicant subsequently petitioned the court for

rehearing by petition dated June 24, 2007. The Court of Appeals issued an order denying the petition for rehearing August 24, 2007.

The Applicant issued a Petition for Writ of Certiorari on November 26, 2007. The Respondent made its Return on January 25, 2008. The South Carolina Supreme Court subsequently affirmed the Applicant's conviction as modified by order filed June 22, 2009. (State v. Wiles, Op. No. 26674). Remittitur was issued July 8, 2009.

Attached herewith and incorporated herein are the records of the Saluda County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Appellant Counsel"
   a. "Did not challenge the procedures used to sentence me to restitution and the conditions under which the restitution is to be paid (including no probation)"
2. "Denied my 6th Amendment right to a fair trial (Trial by an Impartial Jury)"
   a. "Trial judge allowed into evidence a "report of interview" done by a SCDC investigator, effectively informing the jury of prior bad acts as well as my continued custody in SCDC."
3. "Denied my 14th Amendment right to due process (the presumption of innocence)"
   a. "Same as above"
4. "Denied my 14th Amendment to due process at sentencing"
   a. "I was not given any notice of a restitution hearing or that the prosecution was even going to seek

restitution. Nor was I (or defense counsel) given an opportunity to cross-examine the witness at sentencing."

5. "I was given an illegal sentence"
   a. "South Carolina Code of Laws, Sections 17-552 and 17-553 does not allow the maximum sentence of 10 years and restitution without the suspension of all or part of the sentence and given probation."

Respondent interprets Applicant's basic claims to be ones of Ineffective Assistance of Counsel and Ineffective Assistance of Appellate Counsel. Respondent notes that either Applicant or Applicant's counsel should amend the Application to add specificity to these claims in advance of any evidentiary hearing, as amendments made without prior notice will be objected to by the State.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney=s performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of

counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

Respondent submits that several of the Applicant's allegations raises direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss these allegations.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A.WEST LEE
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

March 2, 2010.

ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF SALUDA)

Shaun Wiles,
PLAINTIFF,
-VS-
State of South Carolina,
DEFENDANT.

PCR HEARING
2008-CP-41-00172

BEFORE THE HONORABLE R. LAWTON McINTOSH, JUDGE

FEBRUARY 4, 2011

LEXINGTON, SOUTH CAROLINA

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

Nick Riley, Esq.
For the Applicant

A. West Lee, Esq.
For the State

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

I N D E X

PAGE NO.

Exhibit List. 3

Opening Remarks. 4

Testimony of witnesses

Shaun Wiles

Direct 6

Cross. 11

Adrian L. Falgione

Direct 13

Cross. 14

Ruling of the Court. 18

Court Reporter's Certification 19

E X H I B I T S

THERE WERE NO EXHIBITS MARKED TO THIS HEARING.

(The defendant, together with counsel, was personally present in the courtroom.)

MR. LEE: May it please the Court?

THE COURT: Yes, sir.

MR. LEE: This is Shaun Wiles versus the State of South Carolina. It's docket number 2009-CP-41-0172, and it comes to the Court by way of application for post-conviction relief filed November 2, 2009.

The applicant was charged with assault and battery with intent to kill and failure to stop for a blue light. He was represented by Mr. Adrian Falgione, and on the week of March 8, 2006, the applicant underwent trial, pursuant to which he was found guilty.

The applicant was sentenced by the Honorable William Keesley to confinement for a period of ten years on the assault charge and a consecutive period of three years on the failure to stop for a blue light charge.

Timely notice of appeal was filed on the applicant's behalf. The South Carolina Court of Appeals subsequently affirmed the applicant's conviction by order filed June 14, 2007.

The applicant subsequently petitioned

the Court for a new hearing by petition dated June 24, 2007, and the Court of Appeals issued an order denying that petition on August 24, 2007. The applicant issued a petition for a writ certiorari on November 26, 2007, which finally made its return on January 25, 2008.

The Supreme Court subsequently affirmed the conviction as modified by the order on June 22, 2009, and a remittitur was issued on July 8, 2009. In his current application, the applicant alleges that he is being held in custody unlawfully for ineffective assistance counsel and denial of -- these are direct quotes -- "denial of my Sixth Amendment right to a fair trial, trial by impartial jury, denial of my Fourteenth Amendment right to due process, the presumption of innocence, denied by Fourteenth right to due process at sentencing, and I was given an illegal sentence."

I believe the applicant's attorney, Mr. Nick Riley, does have some amendments to make before this Court to the application this morning. So at this time, I'll turn it over to Mr. Riley.

THE COURT: Mr. Riley?

MR. RILEY: Thank you, Your Honor. We'd just like to clarify that the two points we're

moving forward on would be ineffective assistance of counsel and ineffective assistance of appellate counsel.

With regard to the Fourteenth Amendment and Sixth Amendment arguments, they would be under the ineffective assistance of counsel in that he failed to object at his time of trial when his rights were violated then.

And at this time, I will call Shaun Wiles to the stand.

THE COURT: Come around, please, sir.

(The witness was sworn.)

CLERK OF COURT: Have a seat and state your name for the record, please.

SHAUN WILES, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RILEY:

Q Please state your full name for the record.

A Shaun Wiles.

Q And, Mr. Wiles, why are we here today?

A I feel like I was given an illegal sentence. I was denied my due process right to restitution.

Q Okay, let me back up. Did you file a PCR application?

A Yes, sir.

Q Okay. And in that application, did you allege that you were denied a restitution hearing at trial?

A Yes, sir.

Q Why do you feel as though you were denied a restitution hearing?

A I wasn't given a restitution hearing as far as I wasn't informed I was able to even seek a restitution until Judge Keesley passed sentence at the trial or the sentencing proceeding.

Q Was there any type of restitution hearing?

A No, sir.

Q Were you given notice of any type of restitution hearing?

A No, sir.

Q Did you agree to any amount of restitution in open court on that date of the trial?

A No, sir.

Q Okay. Did you believe the restitution that you were sentenced to pay by Judge Keesley was proper?

A No, sir.

Q Okay. Let's also talk about some evidence that came in at your trial. What type of evidence came in at your trial that you believe violated your Sixth and Fourteenth Amendment?

A It was an investigative report by the Department of Corrections, and he testified as to my continuing custody as well as my prior criminal record.

THE COURT: As well as what?

MR. WILES: My prior criminal record, escape. I was on escape at the time.

Q And were you charged with running from a blue light in this particular case?

A Yes, sir, failure to stop.

Q Okay. And I think what you're saying is they allowed evidence of prior escapes to come in at your trial, is that correct?

A Yes, sir.

Q Do you know if your attorney did anything to prevent that?

A Yes, he objected many times.

Q He objected many times?

A Yes, sir.

Q Do you feel as though your attorney could have done anything else?

A No, sir.
Q Okay. Do you know if your appellate attorney raised those issues at your appeal?
A As far as the --
Q The Fourteenth and Six Amendment violations.
A For the evidence --
Q Yes.
A -- based on the evidence?
Q Yes.
A Yes, sir.
Q She did file this?
A Yes, sir, she raised it under 403 and 404 of the South Carolina criminal procedures.
Q Okay. Why do you feel as though you had ineffective assistance of appellate counsel?
A Because she didn't bring up -- I requested that she challenge the restitution.
Q The fact that you didn't get a restitution hearing?
A Yes, sir.
Q And she didn't raise those issues?
A No, sir.
Q Do you know why she didn't raise those issues?

A No, sir. She didn't inform me why.
Q Okay. Sitting here today, is there anything or any other reason you'd like to tell the Court for why you filed your PCR application?
A I feel that I was given over the maximum of the statute for ABHAN.
Q For ABHAN?
A Yes, sir.
Q And how many years were you given?
A I was given ten, but plus restitution. I was under the impression that they had to suspend it, the sentence. If they gave me the max, they had to suspend the sentence plus restitution.
Q Okay. I think what you're trying to say is if you were given the max sentence, then they should have suspended the restitution amount that you would have to pay?
A No, sir. They should have suspended a portion of the sentence.
Q A portion of the sentence, I've got you. So it's your contention that if they give you the maximum sentence, they can't give you restitution; or if they do give you restitution, they can't give you the maximum sentence?
A Yes, sir. And that's why I should have

had the sentence be suspended -- say, ten years suspended upon service of nine years plus restitution.

Q Okay. Any other reason that you filed your application here today?

A No, sir.

Q Is there anything else you'd like to tell the Court?

A No, sir.

Q Thank you.

MR. RILEY: I have no further questions, Your Honor.

THE COURT: Hold on, please.

Mr. Lee, do you have any questions?

MR. LEE: Yes, sir.

CROSS-EXAMINATION

BY MR. LEE:

Q Mr. Wiles, you said that your attorney -- with regard to the investigative report and the evidence of the prior escapes, you said your attorney objected many times to that?

A Yes, sir.

Q And your appellate defender also raised that issue on appeal?

A Yes, sir, under the Rules 403 and 404.

She didn't challenge I guess the constitutionality of it. She just challenged it as an error under the rules.

Q And you were given ten years, is that correct?

A Yes, sir.

Q And you're just saying that you don't think that you should be able to get a full sentence and restitution?

A I mean, by reading the statute, they say they may suspend the sentence, but it don't say -- what am I trying to say? It doesn't say that they can give you the maximum plus restitution.

Q But it says that they may suspend the sentence?

A Yes, it says they may suspend the sentence if they give you the max and restitution.

Q I've got you. All right, no further questions. Thank you, Mr. Wiles.

THE COURT: You may step down.

Excuse me, Mr. Riley, did you have any follow-up?

MR. RILEY: No, sir, Your Honor.

THE COURT: All right.

MR. RILEY: I also have no other witness.

THE COURT: Thank you, sir.

MR. LEE: The State would call Mr. Adrian Falgione to the stand.

CLERK OF COURT: Have a seat and state your name for the record, please.

MR. FALGIONE: Adrian L. Falgione.

ADRIAN L. FALGIONE, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEE:

Q Mr. Falgione, you heard one of the complaints raised by Mr. Wiles in his direct testimony being that he was denied a restitution hearing, specifically, that he wasn't given a restitution hearing, he wasn't informed that they were seeking restitution. Do you recall this ever coming up in your conversations with your client?

A I do not.

Q Now, to your knowledge, is restitution a direct consequence of a sentence or a collateral consequence?

A I understand it to be a collateral issue.

Q Now, with regard to the evidence of prior escapes in this investigative report by the Department of Corrections, is it true that you

objected to the entry of those prior escapes?

A Yes, I did. I filed a motion in limine.

MR. LEE: Beg the Court's indulgence for a moment, Your Honor.

THE COURT: Yes, sir.

Q Based on your reading of the statute about -- well, the statute that Mr. Wiles was referring to regarding the length of his sentence and restitution, is it your understanding that you can get a full sentence and restitution?

A I haven't read that particular statute prior to coming over today. But it's my understanding you can, yes.

Q Thank you. That will be all my questions. Please answer any questions for opposing counsel.

CROSS-EXAMINATION

BY MR. RILEY:

Q Mr. Falgione, are you aware that there's a South Carolina statute that says a restitution hearing must be held unless the defendant agrees to the restitution amount in open court?

A I have not reviewed that statute prior to today, and still haven't reviewed it as of today, Mr. Riley.

Q Do you know or can you remember if Mr.

Wiles agreed to any type of restitution amount on the record in open court that day?

A I do not remember. I think the record would really have to speak to that.

Q Okay. Did Mr. Wiles ever tell you that he objected to paying any type of restitution if he was found guilty?

A Not to the best of my recollection.

Q Do you believe that you could have done anything to prevent those prior bad acts from coming in at Mr. Wiles' trial?

A I think we did everything that we could. And once the Judge informed the court along with his curative instruction as to the purpose of admitting those prior escapes, strategically we had no -- I didn't see where we had any other changes other than incorporate it into our presentation to the jury.

Ultimately, I think that paid off for Mr. Wiles and that, even by his accounts, he received I think a pretty good outcome in that trial.

Q Did you inform Mr. Wiles that he could appeal the Judge's decision with regard to letting the prior acts in to his trial?

A I don't recall specific conversations, but I think we had a general conversation as to whether

or not at the end of the trial to file -- to object and to file the appropriate motions.

And I think I was -- I'm pretty sure Mr. Wiles was happy with the outcome of the trial and really didn't want me to do even -- even make any of the post-trial motions. And I did that anyhow, to preserve his rights to appeal.

Q Thank you.

MR. RILEY: Your Honor, I have no further questions for this witness.

THE COURT: Let me ask you something, Mr. Falgione. What was the restitution for?

MR. FALGIONE: There was damage to a police car. In this particular case, Your Honor, it was a -- there was a -- it involved a collision with a police car, a local police car.

The deputy was injured in that particular collision, and that was the -- I think that's where the basis for the initial charge of assault and battery with intent to kill came from. So it's in my memory, Your Honor, and I think restitution was for those type of damages.

Also, there was a building that was injured. When the collision with the police car occurred, the car Mr. Wiles was driving flew into a

building, and there was property damage to that building.

THE COURT: Were valuations on repairs to both those items and the car brought up during the trial as far as the amount? I was just curious how Judge Keesley came up with the amount of restitution.

MR. FALGIONE: I honestly don't recall, Your Honor.

THE COURT: Okay.

MR. FALGIONE: I don't recall. I think there was testimony by the injured police officer as to his treatment. The amount of damage to the police car, I don't recall.

THE COURT: Thank you.

Does anybody have any questions as a result of mine?

MR. LEE: No, Your Honor.

MR. RILEY: No, sir.

MR. LEE: That would be all the State's witnesses, Your Honor.

THE COURT: Any reply?

MR. RILEY: No, sir, Your Honor. I would just add that I do have Statute 17-25-322 -- if you'd like to see it, I'll pass it up -- which

states that a restitution hearing must be held unless he agrees to the amount in open court.

I reviewed the transcript of his trial. The restitution topic sort of came up on the last page, in the last paragraph, Your Honor. They just basically state the amount, and nothing else is spoken to with regard to that restitution.

THE COURT: Let me just say this. I'm going to look at the restitution issue. I don't think you're correct, but I'm going to look at it anyway and give you my decision. I'm going to deny his petition on the remaining grounds.

There's no evidence that either trial counsel or appellate counsel acted below the reasonably objective standard. Even though he might have been prejudiced by the admission of that evidence, that's a question of law that could be taken up. So I'm going to deny it on that.

And the sentence certainly is not illegal. It's within the discretion of Judge Keesley. I'm going to deny it on that. The restitution issue, I'll look up and give you my decision. Thank you.

MR. LEE: Thank you, Your Honor.

MR. RILEY: Thank you, Your Honor.

THE COURT: Mr. Lee, I want you to be ready to draft that order on that part, and I'll let you know on the restitution.

MR. LEE: Yes, sir.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON FEBRUARY 4, 2011, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE FIRST DAY OF AUGUST, 2011.

REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA COUNTY OF SALUDA	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
	2009-CP-41-0172
Shaun Wayne Wiles, # 284696, Applicant, v. State of South Carolina, Respondent.	**ORDER OF DISMISSAL**

2012 JAN -3 PM 12:30
CLERK OF COURT
SALUDA CO. S.C.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 2, 2009. The Respondent made its Return on March 2, 2010. An evidentiary hearing into the matter was convened on February 4, 2011, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Nick Riley, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Saulda County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Saluda County Clerk of Court. The Applicant was true bill indicted at the January 2004 term of the Saluda County Grand Jury for Assault and Battery with Intent to Kill (2004-GS-41-0091) and at the January 2006 term for Failure to Stop for a Blue Light (2006-GS-41-0078). He was represented by Adrian Falgione, Esquire, on the charges. On March 8, 2006, Applicant

proceeded to trial before the Honorable William P. Keesley, where he was found guilty of Failure to Stop for a Blue Light and the lesser included Assault and Battery of a High and Aggravated Nature. Applicant was sentenced to ten (10) years imprisonment for ABHAN and a consecutive three (3) year term of imprisonment for Failure to Stop for a Blue Light.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence by order filed June 14, 2007. State v. Wiles, Op. No. 2007-UP-318). Applicant subsequently filed a petition for rehearing on June 24, 2007, which was subsequently denied by the court on August 24, 2007. Thereafter, Applicant issued a Petition for Writ of Certiorari on November 26, 2007. The Respondent made its Return on January 25, 2008. The South Carolina Supreme Court affirmed Applicant's conviction as modified by order filed June 22, 2009. State v. Wiles, Op. No. 26674. The Remittitur was issued July 8, 2009.

In his current Application, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
   i. "Did not challenge the procedures used to sentence me to restitution and the conditions under which the restitution is to be paid (including no probation)."
2. Denied my 6th amendment right to a fair trial (trial by impartial jury).
   i. "Trial judge allowed into evidence a report of interview done by a SCDC investigator, effectively informing the jury of prior bad acts as well as my continued custody in SCDC."
3. Denied my 14th amendment to due process (the presumption of innocence).
   i. "Same as above."
4. Denied my 14th amendment right to due process at sentencing.
   i. "I was not given any notice of a restitution hearing or that the prosecution was even going to seek

restitution. Nor was I (or defense counsel) given an opportunity to cross-examine the witness at sentencing."

5. I was given an illegal sentence.
   i. "South Carolina Code of Laws, Sections 17-552 and 17-553 does not allow the maximum sentence of 10 years and restitution with the suspension of all or part of the sentence and given probation."

At the PCR hearing, Applicant amended his application through the presentation of his testimony to set forth exclusively the following allegations:

1. Ineffective Assistance of Trial Counsel.
   a. Failure to suppress the introduction of a Department of Corrections investigative report detailing Applicant's prior bad acts including a prison escape.
   b. Failure to have a restitution hearing.
2. Ineffective Assistance of Appellate Counsel.
   a. Failure to raise issue of introduction of investigative report on appeal.
3. Illegal sentence imposed by judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Ineffective Assistance of Counsel

Failure to Object to Introduction of Department of Corrections Report

Applicant alleges trial counsel was ineffective in failing to suppress the introduction of a Department of Corrections report at trial that contained information regarding Applicant's prior bad acts, specifically a prison escape. Applicant testified that counsel objected to the introduction of the document "many times" during the course of the trial, and went on to say he did not believe there was anything else counsel could have done to stop the report from being brought in.

Counsel, likewise, testified that he objected vehemently to the report, even filing a motion in limine to stop its introduction, but that the trial court allowed it in over his opposition. Counsel went on to say he believed he did everything he could to stop the report from being seen by the jury, but was ultimately overruled by the trial judge's decision.

Based on the testimony presented at the hearing and a thorough review of the trial transcript, I find counsel's representation was not deficient in this regard. Counsel made the proper contemporaneous objections and motions to stop the introduction of the report, but was ultimately overruled by the trial judge. Further, counsel properly preserved the issue for direct appeal allowing the matter to be decided by a higher court. I find counsel acted reasonably under professional norms in his attempts to stop the introduction of the report and, therefore, Applicant has failed to prove counsel's performance was deficient. Accordingly, I find counsel was not ineffective in this regard, and this allegation must be denied and dismissed.

Failure to Move the Court to Convene a Restitution Hearing

Applicant contends counsel was ineffective in failing to move the court for, or otherwise secure, a restitution hearing prior to Applicant's sentencing. Specifically, Applicant alleges that because restitution was ordered as a portion of his criminal sentence, the court was required to convene a restitution hearing, and counsel's failure to ensure such a hearing was convened rendered his representation ineffective.

At the PCR hearing, Applicant testified he was never given notice of the state's intention to seek restitution as part of the criminal sentence. He further alleges that where he did not agree in open court to the amount sought in restitution, the court was required to convene a hearing to determine such. According to Applicant, counsel's failure to request such a hearing, or otherwise

object where such a hearing was not convened, rendered his representation ineffective. Applicant pointed this Court's attention to S.C. Code § 17-25-322 in reliance of this allegation.

Counsel also testified that there in fact was no separate restitution hearing held in this matter, mentioning that he believed restitution to be a collateral consequence secondary to Applicant's actual criminal convictions. Counsel went on to say "to the best of his recollection" that he did not recall Applicant ever objecting to the restitution imposed and said he was "pretty sure" Applicant was "happy with the outcome of the trial". Counsel finished by testifying as to the source of the restitution claims, including damage caused by Applicant to a police cruiser and local building during a vehicle collision.

Under S.C. Code § 17-25-322, "[w]hen a defendant is convicted of a crime which has resulted in pecuniary damages or loss to a victim, the court must hold a hearing to determine the amount of restitution due to the victim or victims of the defendant's criminal acts... At the restitution hearings, the defendant...may object to the imposition, amount or distribution of restitution." Further, the South Carolina Supreme Court has held that "[t]he restitution hearing is part of the sentencing proceeding." State v. Gulledge, 326 S.C. 220, 487 S.E.2d 590 (1997). Based on a review of the record, I find the trial court properly held a brief restitution hearing as part of its sentencing proceeding as required by law at the close of trial, at which time Applicant did not present any objection to the imposed restitution as allowed under the statute. Further, counsel's credible testimony reflects that Applicant did not have any objection to the imposition of restitution, and that Applicant was in fact "happy with the outcome" of his trial. Therefore, I find Applicant has failed to prove counsel was deficient in this regard. However, even if Applicant had been able to show counsel acted improperly in some way regarding the restitution hearing, I find Applicant has further failed to prove prejudice as a result thereof. Applicant failed

to present any evidence at the PCR hearing to show the restitution imposed was improper or incorrect, and that had a separate restitution hearing been held, the amount imposed by the court would have been any different. Therefore, I find Applicant failed to prove both deficiency and resulting prejudice in this regard. Accordingly, this allegation is denied and dismissed.

Ineffective Assistance of Appellate Counsel

Applicant also contends appellate counsel was ineffective in failing to raise the issues of the Department of Corrections report and the failure to convene a restitution hearing on direct appeal, thereby rendering his representation ineffective. Applicant testified that the issue regarding the Department of Corrections report's admissibility was in fact raised by appellate counsel on direct appeal, but the Court of Appeals affirmed the conviction and sentence regardless. Therefore, I find no deficiency in that regard. Additionally, the record reflects no objections were made regarding a restitution hearing, thereby failing to preserve any such issue for direct appeal.

Based on a review of the testimony presented at the hearing and a thorough review of the record, I find appellate counsel was not ineffective in carrying out his duties as Applicant's appellate attorney. Applicant properly and effectively raised the issue of the admissibility of the Department of Corrections report on direct appeal, and was restricted from raising any issues regarding a failure to convene a restitution hearing as that issue was not properly preserved for appeal at the trial level. Applicant has failed to prove any deficiency and/or resulting prejudice on the part of appellate counsel, and therefore these allegations must be denied and dismissed.

Illegal Sentence Imposed

Applicant's final contention raised at the hearing was he was given an illegal sentence at trial where he was sentenced to maximum, consecutive sentences on the two charges in addition

to restitution costs. Namely, Applicant alleges the trial judge improperly sentenced him because he claims it is against the laws of our state to impose both maximum sentences on the underlying charges and restitution costs resulting from those crimes.

To the extent Applicant contends the trial judge erred in imposing such a sentence, I find this allegation raises a direct appeal issue procedurally barred from being raised at this juncture under S.C. Code Ann. § 17-27-20(b) (2003). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on direct appeal, and his failure to do so has waived this allegation as a ground for relief. However, to the extent Applicant raises this issue as one of ineffectiveness on trial counsel's part in failing to object to such a sentence, or under S.C. Code Ann. § 17-27-20(a)(3) as an excessive sentence, I find this allegation to be without merit. Applicant was sentenced on both charges in accordance with the statutory guidelines, which at the time set forth maximum sentences of ten (10) years imprisonment and/or a fine in the discretion of the Court for an ABHAN conviction, and three (3) years imprisonment for failure to stop for a blue light conviction. Applicant received consecutive ten and three year sentences, both the maximum allowed under the statute. The power of a trial judge in General Sessions Court to impose restitution as part of a criminal sentence to reimburse the victims for pecuniary losses is derived from S.C. Code § 17-25-322. Regarding the judge's ability to use his discretion in ordering restitution when a straight sentence is imposed, under S.C. Code § 24-23-110 "[j]udges of the Court of General Sessions may suspend the imposition or the execution of a sentence **and** may impose a fine and a restitution without requiring probation." (emphasis added). Further, the South Carolina Supreme Court has found that "section 16-3-1530(D)(3) complements section 17-25-125 by allowing the trial judge

72

to order restitution when he imposes the maximum sentence." Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992). Although no charges for unlawful taking or receiving of or malicious injury to another property (as listed in section 17-25-125) were presented for the jury's consideration, the statute and South Carolina Supreme Court both plainly state that a trial judge may order non-probationary restitution even when a maximum straight sentence is imposed. Therefore, the trial judge properly used his discretion to impose restitution while sentencing Applicant to a maximum straight prison term. Accordingly, the Applicant was sentenced lawfully and counsel had no grounds upon which to object. Counsel was not ineffective in this regard, nor was the sentence imposed unlawful, and this allegation is therefore without merit.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional

relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27 day of Dec 20 11.

R. Lawton McIntosh
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina.

WITNESSES

Shorter

SCSO

ARREST WARRANT NUMBER

H-399198

ACTION OF GRAND JURY

TRUE BILL

Elaine B. Jurnes

Foreperson of Grand Jury

JAN 20 2004

VERDICT

Foreperson of Petit Jury

Date:

374

DOCKET NO. 2004-GS-41-091

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

JANUARY **TERM 2004**

THE STATE

vs.

SHAWN WAYNE WILES

CDR# 0014

Indictment for

ASSAULT AND BATTERY WITH INTENT TO KILL

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY

Doris B. Dotson

Clerk of Court
Saluda, S. C.

375

WITNESSES

Davis

SCHP

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

TRUE BILL

Norma P. Gibson

Foreperson of Grand Jury

Date: JAN 0 9 2006

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-41- 078

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

JANUARY **TERM 2006**

THE STATE

vs.

SHAWN WAYNE WILES

CDR# 0065

Indictment for

FAILURE TO STOP FOR A BLUE LIGHT

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY

Doris B. Holmes

Clerk of Court
Saluda, S. C.