

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
D. Garrison Hill, Circuit Court Judge

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S.C. Supreme Court

RAFAEL ESCALANTE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

A P P E N D I X

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	Case No(s) : 05-GS-23-5305, 5307
State of South Carolina	)	
Plaintiff,	)	
-VS-	)	TRANSCRIPT OF RECORD
Rafael Mendoza Escalante	)	
Defendant.	)	

October 9 - 10, 2006
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. HAYES, Judge.

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

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Assistant Solicitor

RICHARD WARDER, Esquire
Attorney for the Defendant

TERESA B. JOHNSON
OFFICIAL REPORTER

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(WHEREUPON, Aerial photo was marked as State's Exhibit 1 for identification.)

(WHEREUPON, Photograph of Intersection was marked as State's Exhibit 2 for identification.)

(WHEREUPON, Photograph of Defendant's vehicle was marked as State's Exhibit 3 for identification.)

(WHEREUPON, Photograph of tree was marked as State's Exhibit 4 for identification.)

(WHEREUPON, Photograph of fence was marked as State's Exhibit 5 for identification.)

(WHEREUPON, Photograph of Victim's vehicle was marked as State's Exhibit 6 for identification.)

(WHEREUPON, Photograph of Driver's side of Victim's car was marked as State's Exhibit 7 for identification.)

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(WHEREUPON, Photograph of Rear Defendant's vehicle was marked as State's Exhibit 10 for identification.)

(WHEREUPON, Photograph of Driver's side of Defendant's vehicle was marked as State's Exhibit 11 for identification.)

(WHEREUPON, Videotape was marked as State's Exhibit

1 12 for identification.)

2 (WHEREUPON, Videotape was marked as State's Exhibit

3 13 for identification.)

4 **THE COURT:** Mr. Warder, I understand you have
5 some pretrial matters before we get the panel out?

6 **MR. WARDER:** I do, Your Honor.

7 **THE COURT:** All right.

8 **MR. WARDER:** Your Honor, my first motion will
9 be to sequester the witnesses. This is a case that
10 involve a number of State witnesses. There are some
11 small details that are at issue. I have agreed to
12 sequester witnesses from this time until the end of
13 their testimony.

14 **THE COURT:** All right. Madam Solicitor?

15 **MRS. DRAWDY:** Your Honor, there is no
16 indication that there has been some kind undue
17 influence in this case. The State as a matter of
18 course always opposes sequestering witnesses. We
19 don't see that there's any particular reason in this
20 case to do so.

21 **THE COURT:** This judge as a matter of course
22 always grants them. So we will be consistent. The
23 victim -- this is a reckless homicide. The real
24 victim is not here of course. But someone from the
25 victim's family and whoever was the Chief

1 Investigator, they can remain.

2 **MRS. DRAWDY:** Your Honor, that would be --
3 Trooper Edwards would be the Chief Investigator.
4 None of the victim's family are testifying.

5 **THE COURT:** If they are not testifying, then they
6 are not witnesses so they can certainly be present.
7 All right.

8 Next, Mr. Warder, you said you had some --

9 **MR. WARDER:** Your Honor, there is three
10 indictments in this case. The indictment for
11 Vehicular Homicide, Leaving the Scene of an Accident
12 with Death and Escape. Your Honor, we would move to
13 sever the Escape from the other two charges in that
14 it happened in a separate factual incident.

15 Your Honor, the testimony as develops at trial
16 would show that the accident occurred, my client was
17 taken into custody and was taken to the hospital. He
18 was seen by some hospital personnel. After he was
19 seen by the hospital personnel, he was taken out to a
20 patrol car and he was handcuffed and put into the
21 back seat of a patrol car. The patrolmen and one of
22 the officers at least went back into the hospital and
23 left another officer out there to watch the car. And
24 that officer next noticed that the door of that car,
25 patrol car was opened and my client was crossing the

1 parking lot.

2 Your Honor, it has -- all of those facts have no
3 probative value on the charges of Leaving the Scene
4 of an Accident with Death and Vehicular Homicide. So
5 I think they are not admissible. And I would ask to
6 sever that one Escape count from the trial of the
7 death and the Leaving the Scene. The Escape is not
8 related to the Leaving the Scene. They were separate
9 incidents that occurred at separate locations.

10 **THE COURT:** I'm not sure that's entirely correct
11 at least in my mind. Let me hear from the Solicitor.

12 **MRS. DRAWDY:** Your Honor, the State would
13 oppose severance. This is all a very closely
14 connected series of events. The Defendant's conduct
15 during the Escape certainly does bear on his intent
16 at the time to leave the scene of the accident. It's
17 an ongoing course of conduct that is interwoven.

18 The witnesses will essentially be the same
19 witnesses as one involved in the prosecution of the
20 Reckless Homicide and the Leaving the Scene of the
21 Accident. By definition, an escape occurs after
22 someone is in legal custody. And it would be grossly
23 inefficient to the justice system to have to sever an
24 escape every time you have an arrest for a separate
25 crime. By definition, that's always going to be the

1 case.

2 I don't see any prejudice to the Defendant
3 whatsoever in this case that would outweigh judicial
4 economy and the fact that these are so closely
5 interwoven. It's also very important to the State to
6 show the Defendant's state of mind at the time of the
7 reckless homicide. The Defendant did make a
8 statement that he was running from the police because
9 he did not have a drivers license.

10 And this running is something that he had done
11 from the very beginning of the course of the events
12 which put everything in motion that subsequently
13 happens, the death of the victim. In result of the
14 collision, the Defendant jumped out and ran. He was
15 chased down and brought into custody. And then
16 subsequently, he did escape custody. I don't see
17 there is any basis for severance.

18 **THE COURT:** Let me back up one. Is he fleeing
19 the police that found the accident?

20 **MRS. DRAWDY:** There was not an actual chase.
21 He had been noticed by the police and engaged in a
22 conduct that aroused their suspicions. A cruiser had
23 been in behind him. He accelerated. He tried to get
24 out of the area and circled back around to try to
25 evade the gaze of the police. There was not a blue

1 light pursuit. But there had been a BOLO on the
2 radio. Of course the Defendant did not know that.

3 He did know that this cruiser, he had met him on
4 the street. The cruiser had gone around. The
5 Defendant had gone the other way. They met again.
6 The officer had turned in behind him. He began to
7 try to escape the gaze of the officer. A BOLO had
8 gone out and officers were coming to the area to try
9 to make contact with him again. At which time, it
10 was the intent of the police to initiate a stop. But
11 they were not able to do so before he had accelerated
12 and run a stop sign and caused the collision that
13 killed the victim in this case.

14 **THE COURT:** Before I rule, I notice that there's
15 an interpreter. You're an interpreter?

16 **INTERPRETER:** Yes, Your Honor.

17 **THE COURT:** You have been sworn in?

18 **INTERPRETER:** No, Your Honor.

19 **THE COURT:** Let's get the interpreter sworn in.

20 (WHEREUPON, the interpreter was duly sworn.)

21 **THE COURT:** Okay. Does the Court Reporter have
22 your name?

23 **INTERPRETER:** Yeah.

24 **THE COURT:** Madam Solicitor, I'm going to grant
25 the motion. Here are the reasons. In one recent

1 case, it talked about cutoff. There's got to be a
2 point between the cutoff between the arrest in one
3 event -- and that search case is not exactly on
4 point. But once he is arrested, then I think you are
5 moving into a different phase of situation.

6 And for the same reason that you want to get it
7 in to show the continuing pattern of flight, I think
8 that that is, that the prejudicial value of that
9 outweighs the probative value. I think he's entitled
10 to be tried on what happened and the event, that is,
11 the homicide, the reckless homicide and leaving the
12 scene.

13 Obviously, Mr. Warder, your client knows that
14 he can only be tried for escape separately. He's
15 still facing it. He understands that?

16 **MR. WARDER:** Yes, sir.

17 **THE COURT:** All right. Any other motions?

18 **MR. WARDER:** Yes, sir. Your Honor, my client
19 would move to be allowed to withdraw his previously
20 entered plea of not guilty to vehicular homicide to
21 be allowed to plea guilty to that charge and go
22 forward on the trial on the leaving the scene.

23 **THE COURT:** Well, what does the Solicitor say
24 about that?

25 **MRS. DRAWDY:** Your Honor, the State believes

1 that these are -- that obviously they are separate
2 elements. It is my belief that Mr. Warder intends
3 to us that to make his argument that he is pleading
4 guilty because he is guilty of that -- to the jury.
5 And that he is not pleading guilty to leaving the
6 scene because he's not guilty of that. As long as
7 Mr. Warder is prohibited from making that argument,
8 I would have no objection to it. I do think it's
9 being done for that purpose.

10 And leaving the scene carries 25 years. Of
11 course the jury will not know this. It's not proper.
12 But it carries 25 years and regular homicide only
13 carries 10 years. I think the State is entitled to
14 try the entire matter together. We would object to
15 the Defendant being allowed to enter a plea to
16 reckless homicide at this time and not enter a plea
17 to both charges.

18 If the Court is inclined to allow the Defendant
19 to plea guilty to reckless homicide, we would request
20 an instruction that Mr. Warder not be permitted to
21 make that argument. I do not believe it's proper.

22 **THE COURT:** Why would it not be proper? He's
23 entitled to argue 'til the cows come home that he's
24 not guilty.

25 **MRS. DRAWDY:** Unless his client testifies, I

1 don't think it's appropriate for him to make the
2 argument that he pled guilty because he is guilty of
3 that but he did not plea guilty because he's not
4 guilty of the leaving the scene.

5 **THE COURT:** He can't testify to what -- he can't
6 argue to what the testimony would be. That would be
7 on a fine line there. Help me with this though. It's
8 my understanding that the law says that one is not
9 entitled to plea guilty but they are entitled to a
10 trial. They are not entitled to enter a plea of
11 guilt.

12 **MRS. DRAWDY:** Yes, Your Honor, I believe that
13 is the law.

14 **THE COURT:** All right. What's going to happen if
15 he's found not guilty on both and you don't have
16 anything? I mean, I know what's going to happen.
17 It's your decision.

18 **MRS. DRAWDY:** Yes, Your Honor.

19 **THE COURT:** Chief Justice has always said a bird
20 in the hand is worth two in a bush. But if you
21 object, are not willing to state an objection, I'm
22 not going to allow him to withdraw his plea and have
23 him tried on both. That's your strategy.

24 **MRS. DRAWDY:** Yes, Your Honor. It will
25 shorten the trial. I do hate to go against that

1 stated wisdom.

2 **THE COURT:** Well, you can.

3 **MRS. DRAWDY:** I will allow him to plea if he
4 wishes to. Your Honor, at this time, I will get the
5 paperwork ready.

6 **THE COURT:** All right. I'm not going to sentence
7 him until after the trial.

8 **MR. WARDER:** I anticipated that, Your Honor.
9 (WHEREUPON, there was a pause.)

10 **THE CLERK:** Your Honor, this is case number 2005-
11 GS-5306, the State versus Rafael Escalante. He is
12 pleading guilty to reckless homicide and consents to
13 sentencing on this day.

14 **MRS. DRAWDY:** Your Honor, with the agreement
15 of defense counsel, there is a motion to amend the
16 indictment and the body of the indictment. The year
17 is incorrect. It should be 2005 instead of 2004 for
18 the incident date.

19 **THE COURT:** February 2005?

20 **MRS. DRAWDY:** Yes, Your Honor.

21 **THE COURT:** You agree with that, Mr. Warder?

22 **MR. WARDER:** Yes, sir.

23 **THE COURT:** And they had the right date?

24 **MRS. DRAWDY:** Yes, Your Honor.

25 **THE COURT:** All right. Mr. Escalante, how old

1 are you?

2 MR. ESCALANTE: 24.

3 THE COURT: You are represented by Mr. Warder?

4 MR. ESCALANTE: Yes, ma'am.

5 THE COURT: You are satisfied with his services?

6 MR. ESCALANTE: Yes, ma'am.

7 THE COURT: You are charged with Reckless
8 Homicide. It is alleged that in Greenville on the
9 6th day of February 2005, you operated a motor
10 vehicle and disregarded the safety of others. As a
11 proximate result, you caused injury resulting the
12 death of Vicki McCall Fulmer in violation of the laws
13 of this state. This carries a fine of up to \$5,000
14 and imprisonment of up to 10 years. It provides that
15 the Driver's License be revoked for five years. It
16 is a felony. You understand what you are charged
17 with and the potential penalty?

18 MR. ESCALANTE: Yes, ma'am.

19 THE COURT: How do you plead?

20 MR. ESCALANTE: Yes, ma'am. Guilty.

21 THE COURT: Has anyone made any promise or
22 threats to cause you today to enter your plea of
23 guilt for this charge?

24 MR. ESCALANTE: No, ma'am.

25 THE COURT: Are you today under the influence of

1 anything that would cause you to be intoxicated?

2 MR. ESCALANTE: No, sir.

3 THE COURT: Are you entering your plea today
4 freely and voluntarily, Mr. Escalante?

5 MR. ESCALANTE: Yes, ma'am.

6 THE COURT: Mr. Escalante, you have a right to a
7 trial by jury on this charge. You are presumed
8 innocent of this charge until such time as the State
9 can convince the jury of your guilt beyond a
10 reasonable doubt. As to the charge, you have the
11 right to remain silent, the right to confront
12 witnesses against you and the right to have your
13 witnesses come to court to testify for you. You
14 understand you have these rights?

15 MR. ESCALANTE: Yes, ma'am.

16 THE COURT: You have any questions about them?

17 MR. ESCALANTE: No, ma'am.

18 THE COURT: I advise you that when you plea
19 guilty to a charge, you give up these rights and you
20 also give up any defense to the charge. Do you
21 understand that?

22 MR. ESCALANTE: Yes, ma'am.

23 THE COURT: Knowing all those things, I again ask
24 you how do you plea to this charge of reckless
25 homicide on February 6th, 2005?

1 **MR. ESCALANTE:** Guilty, sir.

2 **THE COURT:** All right. Would you tell me -- some
3 of the facts are already on the record but I haven't
4 heard the facts of the actual arrest.

5 **MRS. DRAWDY:** May it please the Court,
6 eyewitnesses will testify that they saw the Defendant
7 run the stop sign West Main Street at a high rate of
8 speed without breaking at all. He collided with
9 Vicki Fulmer's Oldsmobile Sedan. He was driving a
10 Ford SUV at the time.

11 Both vehicles appeared to go airborne. She was
12 knocked approximately 90 feet from the collision
13 after going through a chain linked fence. She was
14 not doing well at the scene at all. The EMS worker
15 who arrived at the scene said she was puppy
16 breathing, maybe four respirations a minute when she
17 arrived.

18 The Defendant had made statements to EMS workers
19 that he, uh -- when they asked him what happened in
20 the collision, he stated that he was trying to get
21 away from the police because he did not have a
22 Driver's License. That would be the testimony at
23 trial for the reckless homicide.

24 **THE COURT:** Mr. Escalante, do you agree with
25 those facts? (Pause.)

1 What did he say?

2 **INTERPRETOR:** Yes.

3 **THE COURT:** Okay. Mr. Escalante, I accept your
4 plea. I find that it is freely, voluntarily
5 knowingly and intelligently entered with the advice
6 of competent counsel with whom you are satisfied. I
7 find the facts do support your plea and you signed
8 the plea of guilt. Now we will wait to hear anything
9 in mitigation and impose sentence after the trial.

10 **MR. WARDER:** Yes, sir.

11 **THE COURT:** All right. Mr. Drawdy, anything
12 else before we get the jury?

13 **MRS. DRAWDY:** Nothing from the State, Your
14 Honor.

15 **THE COURT:** Mr. Warder?

16 **MR. WARDER:** I think that's everything I have
17 pretrial.

18 **THE COURT:** How about voir dire from the State?
19 I've got the witness list. Any voir dire from the
20 State?

21 **MRS. DRAWDY:** No, Your Honor.

22 **THE COURT:** Any particular voir dire, Mr.
23 Warder?

24 **MR. WARDER:** Yes, Your Honor. I didn't
25 prepare a written but I would ask you to inquire

1 about the immigration issue. That if the testimony
2 shows that a man was from Mexico, would they still be
3 able to give him a fair trial. I would tell the
4 Court that my client's status is illegal but I would
5 move that that would have no probative value.

6 **THE COURT:** Well, the only probative value it
7 might have would be with SLED. What does the State
8 say? But I think that if somebody is here illegal
9 and they left the scene of the accident and he says
10 he left because he didn't have a driver's license, I
11 don't think it's outweighed by the prejudicial value.
12 That's the whole essence of this trial is any motive
13 for fleeing.

14 **MR. WARDER:** I then would ask Your Honor that
15 you inquire if they had any prejudice against people
16 that are immigrated from Mexico.

17 **THE COURT:** Well, I'm going to ask a question
18 about that, yes. I'm just telling you in advance
19 because you had two motions. One to not let them --

20 **MR. WARDER:** Yes, sir.

21 **THE COURT:** I'm overruling that one. But I am
22 going to ask a question about this little hot topic.

23 **MR. WARDER:** Yes, sir.

24 **THE COURT:** But let me ask you this. I did not
25 ask Mr. Escalante, have you talked to him about what

1 the ramifications of his plea may have regarding the
2 immigration with INS?

3 MR. WARDER: Yes, sir.

4 THE COURT: He understands he will be deported?

5 MR. WARDER: Yes, sir.

6 THE COURT: You understand that, Mr. Escalante,
7 with regard to that plea you just entered?

8 MR. ESCALANTE: Yes, ma'am.

9 THE COURT: I did not realize. I should have
10 asked that. All right. Let's bring in the panel.
11 (WHEREUPON, the jury panel entered at approximately
12 11:28 a.m.)

13 THE COURT: Sorry. You're going to have to
14 excuse the accommodations. These courtrooms are very
15 functional for trying cases. I'm John Hayes. I'm
16 from Rock Hill. I'm assigned this week to hold a
17 term of General Sessions court. I spent a good bit
18 of time here in Greenville. Just in the last few
19 months, I been here a good bit. I always enjoy
20 working with the staff and the people here.

21 We are starting the first trial here this week
22 in this court. That is the case of the State versus
23 Rafael Mendoza Escalante.

24 Mr. Escalante, could you please stand.

25 He is represented by Richard "Dick" Warder.

1 You may be seated.

2 The State will be represented by Sara Lee
3 Drawdy. Mr. Escalante is charged with leaving the
4 scene of an accident. In this indictment, the
5 charging paper, that here in Greenville County on or
6 about the 6th day of February of 2005 while operating
7 a vehicle on Woodside Avenue and East Main struck a
8 vehicle driven by Vickie McCall Fulmer which
9 inflicted bodily injury ultimately causing her death.
10 The indictment alleges that thereafter he fled the
11 scene without properly identifying himself or
12 providing any assistance to the victim in violation
13 of the laws of this state.

14 If any of you are related by blood or marriage
15 to Mrs. Drawdy, Mr. Warder or Mr. Escalante, if
16 so, please stand.

17 (WHEREUPON, there was no response.)

18 No one is standing. Any of you been represented
19 by the Solicitor's office here in Greenville or by
20 Mr. Warder? If so, please stand.

21 (WHEREUPON, there was no response.)

22 No one is standing. Any of you know anything
23 about this case? Any of you heard about it from any
24 source whatsoever? Or if any of you formed or
25 expressed any opinion about any matter or issue which

1 would be involved in this case? If so, please stand.

2 (WHEREUPON, there was no response.)

3 No one is standing. Were any of you members of
4 the Grand Jury which passed on this indictment? If
5 so, please stand.

6 (WHEREUPON, there was no response.)

7 No one is standing. Any of you have any bias or
8 prejudice towards the State, Mr. Escalante or his
9 counsel or the subject matter of this case? If so,
10 please stand.

11 (WHEREUPON, there was no response.)

12 No one is standing. Any of you or members of
13 your immediate family contributed to or are members
14 of organizations such as Students against Drunk
15 Drivers, Mothers Against Drunk Drivers, Citizens
16 Against Violence sometimes called CAV, Troopers
17 Association, Sheriff's Association? Any of you
18 members of or contributors to any of those types of
19 organizations? If so, please stand.

20 (WHEREUPON, there was no response.)

21 No one stands. Are any of you or a member of
22 your immediate family involved in law enforcement at
23 any level? Anything from military police to local
24 sheriff or municipal officer or in the prosecution of
25 criminal cases? Anybody in your family involved in

1 the prosecution of criminal cases at any level?
2 Anything from General to U.S. Attorney, anything like
3 that. If so, please stand.

4 All right. Yes, sir. Your name and number.

5 **POTENTIAL JUROR:** Matt Foster. My number is 56.
6 I have a brother that's an attorney.

7 **THE COURT:** Okay. Just remain standing.

8 **POTENTIAL JUROR:** Steven Owens, 139. My father
9 is a retired trooper. My father in law is a retired
10 trooper.

11 **THE COURT:** All right. Just remain standing.
12 Yes, sir.

13 **POTENTIAL JUROR:** Daniel Pence, number 143. My
14 brother is on the police force.

15 **THE COURT:** Remain standing.
16 Yes, sir.

17 **POTENTIAL JUROR:** Sandy Wiygul, 198. My
18 daughter-in-law is a criminal attorney here in
19 Greenville.

20 **THE COURT:** Okay. Yes, sir.

21 **POTENTIAL JUROR:** George Howard. My brother is
22 an attorney.

23 **THE COURT:** Okay. Would the fact that you have
24 these situations that there is involvement with law
25 enforcement, would this prevent any of you from being

1 fair and impartial? If so, please raise your hand.

2 (WHEREUPON, there was no response.)

3 Would any of you not be able to make your
4 verdict on the law and the evidence in the trial? If
5 so, please raise your hand.

6 (WHEREUPON, there was no response.)

7 No one raises there hand. All right. You may
8 be seated. Thank you.

9 Mr. Escalante is a native of Mexico. And he
10 was here in the United States of course when this
11 happened. Would the fact that he is not a U.S.
12 citizen but rather a Mexican citizen affect any of
13 your ability to be fair and impartial? If so please
14 stand.

15 (WHEREUPON, there was no response.)

16 No one is standing.

17 Anything further from the State?

18 **MRS. DRAWDY:** Nothing from the State, Your
19 Honor.

20 **THE COURT:** Mr. Warder?

21 **MR. WARDER:** No, Your Honor.

22 **THE COURT:** All right. Any of you know any
23 reason whatsoever why you should not or could not
24 serve as a fair and impartial juror in the trial of
25 this particular case? If you do, please stand.

1 (Pause.) No one is standing.

2 Yes, ma'am. Your name and number?

3 **POTENTIAL JUROR:** My name is Veronica Chen. I'm
4 number 25. It just happens last Friday someone hit
5 my car from behind.

6 **THE COURT:** All right. Would that affect your
7 ability to be fair and impartial?

8 **POTENTIAL JUROR:** Well, it's something to do
9 with --

10 **THE COURT:** You think it might affect your
11 ability in this trial?

12 **POTENTIAL JUROR:** I don't feel comfortable.

13 **THE COURT:** All right. I'm not going to make you
14 feel uncomfortable. If you're uncomfortable, I'm
15 uncomfortable. Don't leave but we will pull you out
16 of the draw. So just stay with us. Thank you.

17 The way we draw juries, your names will be drawn
18 at random.

19 And both sides consent to the clerk drawing the
20 jury?

21 (WHEREUPON, there was no response.)

22 Both sides consent to the clerk drawing the
23 jury?

24 **MRS. DRAWDY:** Yes, Your Honor.

25 **MR. WARDER:** Yes, Your Honor.

1 **THE COURT:** Okay. If you hear your name called,
2 please come forward and stand in front of this podium
3 and turn around and face first the table where Mrs.
4 Drawdy is seated. And she will say either present
5 the juror or excuse the juror. If she says present
6 the juror, turn and face the table where Mr. Warder
7 is seated. And he will say either swear the juror or
8 excuse the juror.

9 If either of them say excuse the juror, simply
10 return to your seat. This does not mean you get to
11 leave at this point. But it does mean that you won't
12 be serving on this particular panel. If you hear the
13 words swear the juror, have a seat in the jury box.
14 Each side has an opportunity to strike and excused up
15 to five individuals. We will draw one alternate.
16 The State will have one strike and the defense two on
17 that.

18 So please come forward. And when you do come
19 forward, please bring with you any personal
20 belongings that you may have, anything like a
21 pocketbook or umbrella. I don't think you need that
22 today. But if you have anything. By the way, this
23 is Robbie Ferguson, a law graduate who is my law
24 clerk right now. He will be assisting me up here.

25 Madam Clerk.

1 I do need one more thing. The following are
2 possible witnesses. I had this in my hand and never
3 looked at it. If any of you are related by blood or
4 marriage or are a close personal friend or
5 acquaintance of any of these individuals -- it's a
6 fairly long list. I don't know that all of them are
7 going to testify. But if any of you are related by
8 blood or marriage or a close personal friend or
9 acquaintance of any of these individuals, please
10 stand.

11 With the South Carolina Highway Patrol, Captain
12 W.H. McCauley. Unaffiliated with any organization
13 such as EMS or police, Linda Evett, Jonathan Adkins,
14 Courtney Adkins, William Brush, William Raymond.
15 Then with the Greenville County Emergency Medical
16 Services, EMS, Shayna Ferguson, Scott Ramsey,
17 Jennifer Cooper, Gail Glymph.

18 With the Highway Patrol, Trooper C.E. Edwards,
19 Trooper R.F. Seawright, Trooper C.M. Burgess,
20 Sergeant Dale Smith, Corporal Steve Breland and
21 Corporal Bruce Brock. With the South Carolina
22 Department of Public Safety Drivers Records, Marie
23 Waring. With the Greenville City Police Department,
24 Detective M.B. Estes, Officer C.M. Blair, Officer
25 S.C. Smith, Officer C.A. Rimer or Rimer, R-i-m-e-r,

1 Donna Allen, Sergeant Dean Elliott, Sergeant Joe
2 Browning.

3 From the Coroners Office here in Greenville
4 County, Karie Cain, Mike Ellis. And Greenville
5 County Medical Examiner Erik Christensen. Any of you
6 friends or related by blood or marriage to any of
7 those individuals? If so, please stand.

8 (WHEREUPON, there was no response.)

9 All right. No one stands. All right. Come
10 forward if you hear your name called.

11 **THE CLERK:** 67, Cynthia Gilliland.

12 What says the State?

13 **MRS. DRAWDY:** Please present Mrs. Gilliland.

14 **THE CLERK:** What says the Defendant?

15 **MR. WARDER:** Please excuse the juror from the
16 trial in this matter.

17 **THE CLERK:** You are excused from this case.

18 202, George Howard, Jr.

19 What says the State?

20 **MRS. DRAWDY:** Please present Mr. Howard.

21 **THE CLERK:** What says the Defendant?

22 **MR. WARDER:** Please swear the juror.

23 **THE CLERK:** You may have a seat in the juror's
24 box.

25 111, Jay Mabry.

1 What says the State?

2 **MRS. DRAWDY:** Please present Mr. Mabry.

3 **THE CLERK:** What says the Defendant?

4 **MR. WARDER:** Please seat the juror.

5 **THE CLERK:** You may have a seat in the juror's
6 box.

7 176, Janice Taylor.

8 What says the State?

9 **MRS. DRAWDY:** Please present Mrs. Taylor.

10 **THE CLERK:** What says the Defendant?

11 **MR. WARDER:** Please swear the juror.

12 **THE CLERK:** You may have a seat in the juror's
13 box.

14 108, Nancy Link.

15 What says the State?

16 **MRS. DRAWDY:** Please present Mrs. Link.

17 **THE CLERK:** What says the Defendant?

18 **MR. WARDER:** Please swear the juror.

19 **THE CLERK:** You may have a seat in the juror's
20 box.

21 112, Mary Madeline.

22 What says the State?

23 **MRS. DRAWDY:** Please present Mrs. Madeline.

24 **THE CLERK:** What says the Defendant?

25 **MR. WARDER:** Please excuse her from the trial

1 in this matter.

2 **THE CLERK:** You are excused from this case.

3 98, Verta Koelsch.

4 What says the State?

5 **MRS. DRAWDY:** Please present Mrs. Koelsch.

6 **THE CLERK:** What says the Defendant?

7 **MR. WARDER:** Please excuse the juror from the
8 trial in this matter.

9 **THE CLERK:** You are excused from this case.

10 36, Elizabeth Davis.

11 What says the State?

12 **MRS. DRAWDY:** Please present Mrs. Davis.

13 **THE CLERK:** What says the Defendant?

14 **MR. WARDER:** Please swear the juror.

15 **THE CLERK:** You may have a seat in the juror's
16 box.

17 129, Terea Monroe.

18 What says the State?

19 **MRS. DRAWDY:** Please present Mrs. Monroe.

20 **THE CLERK:** What says the Defendant?

21 **MR. WARDER:** Please swear the juror.

22 **THE CLERK:** You may have a seat in the juror's
23 box.

24 204, Lisa Pitts.

25 What says the State?

1 **MRS. DRAWDY:** Please present Mrs. Pitts.
2 **THE CLERK:** What says the Defendant?
3 **MR. WARDER:** Please swear the juror.
4 **THE CLERK:** You may have a seat in the juror's
5 box.
6 Number 14, Alisa Bridger.
7 What says the State?
8 **MRS. DRAWDY:** Please present Mrs. Bridger.
9 **THE CLERK:** What says the Defendant?
10 **MR. WARDER:** Please excuse the juror from the
11 trial in this matter.
12 **THE CLERK:** You are excused from this case.
13 15, Martha Bridges.
14 What says the State?
15 **MRS. DRAWDY:** Please present Mrs. Bridges.
16 **THE CLERK:** What says the Defendant?
17 **MR. WARDER:** Please swear Mrs. Bridges.
18 **THE CLERK:** You may have a seat in the juror's
19 box.
20 117, Pauline McClure.
21 What says the State?
22 **MRS. DRAWDY:** Please present Mrs. McClure.
23 **THE CLERK:** What says the Defendant?
24 **MR. WARDER:** Please swear the juror.
25 **THE CLERK:** You may have a seat in the juror's

1 box.

2 64, Christine Gibbs.

3 What says the State?

4 **MRS. DRAWDY:** Please present Mrs. Gibbs.

5 **THE CLERK:** What says the Defendant?

6 **MR. WARDER:** Please excuse the juror from the
7 trial in this matter..

8 **THE CLERK:** You are excused from this case.

9 82, Ronnie Hill.

10 What says the State?

11 **MRS. DRAWDY:** Please present Mr. Hill.

12 **THE CLERK:** What says the Defendant?

13 **MR. WARDER:** Please swear the juror.

14 **THE CLERK:** You may have a seat in the juror's
15 box.

16 163, Christy Shelton.

17 What says the State?

18 **MRS. DRAWDY:** Please present Mrs. Shelton.

19 **THE CLERK:** What says the Defendant?

20 **MR. WARDER:** Please swear the juror.

21 **THE CLERK:** You may have a seat in the juror's
22 box.

23 56, Matthias Foster.

24 What says the State?

25 **MRS. DRAWDY:** Please present Mr. Foster.

1 **THE CLERK:** What says the Defendant?

2 **MR. WARDER:** Please swear the juror.

3 **THE CLERK:** You can have a seat in the juror's
4 box.

5 **THE COURT:** The strikes on the alternate will be
6 one and two.

7 **THE CLERK:** 86, Eric Hoover.

8 What says the State?

9 **MRS. DRAWDY:** Please present Mr. Hoover.

10 **THE CLERK:** What says the Defendant?

11 **MR. WARDER:** Please swear the juror.

12 **THE CLERK:** Come and have a seat in the juror's
13 box.

14 **THE COURT:** All right. Anything from the State
15 regarding striking the panel?

16 **MRS. DRAWDY:** Nothing from the State, Your
17 Honor.

18 **THE COURT:** Anything from the defense?

19 **MR. WARDER:** No, Your Honor.

20 **THE COURT:** All right. Those of you who were not
21 chosen, I'm going to allow you to go back downstairs
22 and somebody in the jury assembly room will give you
23 instructions about what next to do. I'm going to ask
24 you to leave quietly so we can start talking with
25 this set of jurors.

1 (WHEREUPON, the jury panel exit at approximately
2 11:44 a.m.)

3 **THE COURT:** Mr. Foster, I'm going to ask that
4 you be the foreman. If you would, move to this one
5 seat there. You will sit there. The alternate will
6 sit in that seat.

7 The rest of you, there's no assigned seating.
8 Just sit kind of wherever you land. If all of you
9 will stand now, the clerk will administer the oath.

10 **THE CLERK:** Please raise your right hand. You
11 shall well and truly try the case 2005-GS-5305, the
12 State versus Rafael Escalante. He is indicted for
13 Leaving the Scene of an Accident with Death. 2005-
14 GS-5307, he's indicted for Escape and a true verdict
15 render according to the laws and the evidence so help
16 you God. I will?

17 (WHEREUPON, the jury respond affirmatively.)

18 **THE CLERK:** All right. You may be seated.

19 **THE COURT:** The only indictment that is before
20 the Court for your disposition is one of Leaving the
21 Scene of an Accident. And that's what Mr. Escalante
22 is on trial for. That is what the issue is before
23 you that you will be determining. He has entered a
24 plea of not guilty. And to this plea of not guilty,
25 the State must respond by presenting evidence to

1 prove his guilt beyond a reasonable doubt before you
2 convict him. Anyone including Mr. Escalante who is
3 charged with any offense in our system is presumed
4 innocent of any charge until such time as the State
5 is able to prove to a jury that person's guilt beyond
6 a reasonable doubt.

7 I have three primary jobs in this trial. One is
8 I am sort of the organizer and make sure that we take
9 breaks, only one person is talking at a time, so that
10 you can see and hear. The mechanical part of the
11 trial. I have another job on ruling on the question
12 of admissibility of evidence. If one party thinks
13 certain evidence should be admissible and the other
14 thinks he should not, it is up to me to rule on that.
15 And once I have ruled on the question of
16 admissibility of evidence, it is controlling on both
17 the witness, the attorneys and on the jury.

18 My third job is that I am the sole judge of the
19 law in this case. You must take, accept and apply
20 the law as I charge it. This is true even if you
21 think I charge the law in error or even if you think
22 the law should be different. Your oath requires you
23 to apply the law as I charge it.

24 Do not infer from anything I say or do at any
25 time during the trial as being indicative or an

1 opinion of mine on the facts. I'm not allowed as the
2 trial judge to formulate or express an opinion on the
3 facts. So if you make any inference from anything I
4 say or do as to my thoughts on the facts, you would
5 be incorrect.

6 You are the sole judge of the facts in this
7 case. It is solely up to you to examine the evidence
8 and to give to the evidence the affect, value, the
9 weight and the truth you believe the evidence should
10 have. In doing this, you may believe one witness as
11 opposed to several, several witnesses as opposed to
12 one. You may believe all, part or none of a witness'
13 testimony.

14 Use your common sense, your sense of logic, your
15 sense of reasoning, your experiences in life as you
16 analyze the evidence. As judges of the facts, you
17 will access and judge the credibility, that is the
18 believability of the witnesses who testify. In
19 assessing believability, you can use those things I
20 just discussed.

21 And you can use such things as the witness'
22 demeanor, how they act on the stand, are they
23 hesitant or straightforward in responding to
24 questions. Is their testimony consistent or
25 inconsistent? Do they have any bias or prejudice?

1 That is, whether they would wish to help or hurt one
2 side or the other. You can consider the opportunity
3 a witness had to actually know those things about
4 which the witness testified. All these things you
5 can consider to determine the true facts, apply the
6 law and you will be able to return a verdict that
7 speaks the truth.

8 Do not discuss the case among yourselves or try
9 to make up your own mind until we have reached the
10 point in the trial where I instruct you to deliberate
11 and return a unanimous verdict. Prior to that time,
12 you are not equipped with all the tools you need to
13 make a fair and reasonable decision. Don't discuss
14 the case and try and make up your own mind.

15 And when we break for lunch or overnight, do not
16 let anyone discuss this case with you. Anyone tries
17 to discuss the case with you, tell them you can not
18 because you are serving as a juror and report back to
19 me hopefully with the person's identity if anyone
20 tries to discuss the case with you.

21 Do not let yourself be exposed to any news
22 coverage if there is any. Don't read about it,
23 listen to anything or watch anything that may
24 remotely deal with this trial. Anything catches your
25 eye or ear that could remotely be at this trial,

1 don't let yourself be exposed to it. You must base
2 your verdict solely on the law and the evidence
3 that's developed in the trial. You don't need to
4 take notes.

5 Mr. Foreman, you will be the liaison between
6 the jury and myself, preside over the jury
7 deliberations and ultimately sign the unanimous
8 verdict.

9 If you can't see or you can't hear, let me know.
10 Touch your ear or give me a voice raising gesture if
11 someone needs to speak louder including myself. If
12 someone or something is blocking your view, give me a
13 nudging gesture and I will correct that. It's not
14 fair to ask you to resolve this matter and then not
15 give you a full opportunity to see and hear those
16 things you need to see and hear.

17 We take breaks about every hour and a half. We
18 break for lunch around 12:30 or 1:00. We usually
19 take an hour and fifteen minutes or an hour and a
20 half. We try to work no later than 5:30 or 6:00.
21 That's our general schedule. Now even though we try
22 to break about every hour and a half, if any of you
23 at any time need a break, simply raise your right
24 hand and with no questions asked, we'll take a break.
25 If I feel like I need a break, I'm going to take one.

1 So I'm going to give you the same.

2 We're not in such a hurry -- we want to move the
3 case along. But we're not in such a hurry that we
4 won't take a break if anyone needs one. And I extend
5 that to counsel and Mr. Escalante. If anybody needs
6 a break at anytime, simply raise your right hand.
7 Again, with no questions asked, we'll take a break.

8 At this time, I'm going to turn it over to the
9 attorneys. They have a right but no obligation to
10 make opening statements. These opening statements
11 are simply blueprints or outlines of the trial. They
12 are not witnesses. So they are not giving you
13 testimony. And they are not arguing to try to
14 convince you of anything at this point. That will
15 occur at the end of the trial after you have received
16 the evidence. Right now, they are simply fleshing
17 out what this trial concerns. So please give them
18 your attention.

19 **MRS. DRAWDY:** May it please the Court.

20 Ladies and Gentlemen, Super Bowl Sunday,
21 February the 6th, 2005 in the middle of the day Vicki
22 Fulmer lost her life in a horrible traffic collision
23 at the intersection of Woodside Avenue and North Main
24 Street in the Woodside Community here in Greenville
25 County. The crime that was committed at that time

1 was committed by Rafael Escalante who was driving a
2 large Ford SUV at the time and ran a stop sign at a
3 very high rate of speed knocking her almost 100 feet
4 through a chain-linked fence. She died within
5 several hours at the hospital.

6 Mr. Escalante did not offer to help her. He
7 did not do what our law requires that every citizen
8 who is involved in any type of traffic collision to
9 remain at the scene, to make sure that anyone injured
10 in the collision receives medical attention and to
11 provide information about himself, the vehicle he's
12 driving.

13 He chose to get out of his overturned vehicle
14 and run. And that is what constitutes the crime of
15 Leaving the Scene an Accident resulting in death.
16 It's a basic requirement. Not only a moral
17 requirement. But a requirement that the law places
18 on everyone who drives an automobile in our state.

19 You will hear testimony from eyewitnesses to the
20 collision, from EMS personnel who responded to the
21 scene and from law enforcement officers who were
22 involved in this incident and who made the charges
23 after the investigation. I don't expect this to be a
24 terribly lengthy trial. But I would appreciate very
25 much your focusing on the issues at hand. There will

1 be several stipulations of fact in this trial that
2 you don't need to worry about.

3 But basically the issue in this case is whether
4 he left the scene in the common sense form of it and
5 in the legal sense of it. And there is no question
6 that he ran from the scene. The only reason he's here
7 today is because someone chased him and brought him
8 back. That would be the evidence that the State will
9 present to you. Thank you.

10 **THE COURT:** Mr. Warder.

11 **MR. WARDER:** Ladies and Gentlemen of the
12 jury, most things in this case have already been
13 stipulated to or in agreement. There is no question
14 there was an accident. There's no question that
15 someone died as a result of it. There's no question
16 that initially my client when he got out of his car
17 went and looked at the victim and took off and ran.

18 The issue we are deciding is whether he left the
19 scene. The scene would be something that we'll talk
20 about after you have heard the testimony. My client
21 never left the scene. He was apprehended at the
22 scene. The crime would take the actual departure
23 from that area. And you will hear the law as His
24 Honor will charge it at the end of this case.

25 We ask that you listen carefully to this

1 testimony. The testimony is not going to be greatly
2 different. But one of the issues that we're focusing
3 on is where was Rafael when he was apprehended. All
4 the other issues have been disposed of. My client
5 has accepted responsibility for the accident and his
6 conduct in the accident. The only question is this
7 one little piece, this one little charge that's
8 outstanding. That's what you will be determining. I
9 thank you very much.

10 **THE COURT:** Call your first witness.

11 **MRS. DRAWDY:** The State calls Corporal W.H.
12 McCauley.

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 **THE COURT:** All right. I'm told a couple of
16 things. One, it's going to take a minute to get
17 things set up so it might be good to take a short
18 break. The other, we usually have quiet in the
19 audience when witnesses and all of us are doing our
20 work up here.

21 You may hear a little murmur. One of the
22 gentlemen in the front row is translating for the
23 other individuals. And I'm permitting him to do
24 that. I'm assured through Mr. Warder that it be
25 done as low key as possible. But I don't want you to

1 be distracted by that. He's not being disruptive.
2 He's got my permission to do it. I just want you to
3 be aware of that. So we'll take a short, just real
4 quick refresher break. As soon as they get this set
5 up, they'll let me know and we'll send for you.

6 (WHEREUPON, the jury exit at approximately
7 11:58 a.m.)

8 **THE COURT:** Before we take our break, let me just
9 ask Mr. Warder. The clerk read out the Escape
10 charge. I don't know if you caught that or not. I
11 kind of glossed over it. I'm comfortable where we
12 are but I want to make sure.

13 **MR. WARDER:** Your Honor, I would ask for no
14 jury instruction or anything.

15 **THE COURT:** I'm giving you a chance. That's why
16 I low-keyed it. I wanted you to have the
17 opportunity.

18 **MR. WARDER:** No, sir. I would ask that it
19 not be --

20 **THE COURT:** All right. I won't touch it any
21 more. Thank you. All right. We'll take a short
22 break.

23 (WHEREUPON, a short recess was taken at approximately
24 12:07 p.m.)

25 (WHEREUPON, the Court resumed at approximately

1 12:17 p.m.)

2 **THE COURT:** All right. Bring in the jury.

3 (WHEREUPON, the jury enter at approximately

4 12:18 p.m.)

5 **THE COURT:** All right. First witness.

6 **MRS. DRAWDY:** The State calls W.H. McCauley.

7 **WILLIAM MCCAULEY**

8 having first being duly sworn testified as follows:

9 **THE CLERK:** State your name for the record
10 please.

11 **THE WITNESS:** Corporal William H. McCauley, Jr.

12 **THE CLERK:** Thank you.

13 **DIRECT EXAMINATION**

14 **BY MRS. DRAWDY:**

15 **Q** Corporal McCauley, are you employed with the
16 South Carolina Highway Patrol?

17 **A** That's correct.

18 **Q** And do you live here in Greenville County?

19 **A** Yes, ma'am.

20 **Q** How long have you been with the Patrol?

21 **A** 21 years and a few months.

22 **Q** Could you briefly describe the things that you
23 do as a Highway Patrolman and a little bit about your
24 experience.

25 **A** Yes, ma'am. I started my career September 2nd

1 of 1985 upon completion of the Highway Patrol basic
2 training academy which was conducted at the South Carolina
3 Criminal Justice Academy in Columbia. That training also
4 consisted of not only learning the laws of this state but
5 traffic accident investigation. Upon completion of that,
6 a few years later, I did go back through some more
7 training in reference to advance accident investigation.

8 Q Were you the shift supervisor on February the
9 6th, 2005?

10 A Yes, ma'am.

11 Q Around the middle of the day?

12 A Somewhere 12:15, I believe is when this
13 collision took place, yes, ma'am.

14 Q And were you on scene during the aftermath of
15 this collision?

16 A Yes, ma'am.

17 Q You didn't actually witness the collision
18 itself?

19 A That's correct.

20 Q Let me show you State's Exhibit 1. Can you
21 identify what this is?

22 A It's an aerial photograph of the intersection of
23 Woodside Avenue and East and West Main Street which is in
24 the Greenville County area in the city view community.

25 Q Can you tell me if this accurately represents

1 the roadways as they existed at the time of the collision?

2 A Yes, ma'am.

3 Q Would this assist you in explaining your
4 testimony to the jury?

5 A Yes, ma'am.

6 MRS. DRAWDY: Your Honor, we would like to
7 admit this into evidence as State's Exhibit 1.

8 THE COURT: Any objection?

9 MR. WARDER: No, Your Honor.

10 THE COURT: Without objection.

11 (WHEREUPON, State's Exhibit 1 was admitted into the
12 record.)

13 MRS. DRAWDY: Your Honor, I would like to ask
14 that the witness be allowed to step down.

15 THE COURT: Certainly.

16 BY MRS. DRAWDY:

17 Q Could you point out on State's Exhibit 1 exactly
18 where this collision occurred?

19 A Yes, ma'am.

20 THE COURT: Do you have a pointer or laser
21 pointer?

22 MRS. DRAWDY: Your Honor, it's not working.

23 THE COURT: Old fashion pointer.

24 THE WITNESS: Yes, ma'am. The collision took
25 place at the intersection. This would be Woodside

1 Avenue. And East and West Main Street running in this
2 direction here.

3 **BY MRS. DRAWDY:**

4 **Q** Are there any traffic control signs posted at
5 that intersection?

6 **A** Yes, ma'am. This intersection is controlled by
7 traffic control devices which are stop signs in that
8 particular area.

9 **Q** And from which direction of travel are the stop
10 signs affected?

11 **A** East Main Street, the stop sign would be here to
12 the right of the corner here which is Woodside Mill. And
13 of course on the West Main Street, this is where Moon and
14 Freeman Heating and Air Conditioning system is and the
15 stop sign would be to the right here of the intersection.

16 **Q** Let me show you State's Exhibits 2 through 11.
17 I'll give Mr. Warder an opportunity to look through them.
18 (Pause.)

19 Will you look through those quickly and tell me if
20 you seen those photographs before?

21 **A** Yes, ma'am.

22 **Q** Were those photographs taken at the scene that
23 day?

24 **A** That's correct.

25 **Q** Under your supervision?

1 **A** Yes, ma'am.

2 **Q** Did they accurately depict the position of the
3 vehicles and the condition of the intersection immediately
4 following the collision?

5 **A** Yes, ma'am.

6 **Q** Would they assist you in explaining your
7 testimony to the jury?

8 **A** Yes, ma'am.

9 **MRS. DRAWDY:** Your Honor, we'd like to admit
10 State's Exhibit 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 at
11 this time.

12 **THE COURT:** Any objection?

13 **MR. WARDER:** No, Your Honor.

14 (WHEREUPON, State's Exhibits 2 through 11 were
15 admitted into the record.)

16 **BY MRS. DRAWDY:**

17 **Q** I'd like to show you State's Exhibit 2 and ask
18 you if that shows one of the stop signs.

19 **A** Yes, ma'am. This is the stop sign that would be
20 shown for the East Main Street area of Woodside Mill.

21 **Q** If you would publish that to the jury. Trooper
22 McCauley, would you describe what you saw when you came on
23 the scene? And if you would, utilize the exhibits so you
24 can explain what you saw.

25 **A** Yes, ma'am. When I arrived on the scene, I saw

1 two vehicles that were on the scene that appeared to be
2 involved in a collision. Very severely damaged. One of
3 them appeared to be a black Ford Expedition with severe
4 damage to the front end of the vehicle and also onto the
5 roof where the vehicle was lying on top of its roof. The
6 other vehicle was a black Oldsmobile that had severe
7 damage to the left drivers side door area of the vehicle
8 with heavy intrusions.

9 Q Could you show -- use the exhibits to show this
10 to the jury.

11 A Yes, ma'am. This vehicle here is the Expedition
12 in the manner that we found it. This would be State's
13 Exhibit 3 in reference to where it came to rest after
14 impact on its roof over on the West Main Street side of
15 the intersection.

16 This one is State's Exhibit 4 which is a large, it
17 appears to be an Oak tree that the vehicles struck, the
18 Expedition struck after the impact with the white
19 Oldsmobile which is on the corner where the stop sign
20 would have been for the area here on the West Main Street
21 side.

22 Of course, this is State's Exhibit number 5 which
23 shows the damage again to the same tree is where the white
24 Oldsmobile came to the fence area after impact. State's
25 Exhibit number 6 is the area from where the tree would

1 have been that shows the damage to the fence as well as
2 the severe damage done to the left side of the white
3 Oldsmobile at the point of impact.

4 State's Exhibit number 7 is a closer view of the
5 impact of the white Oldsmobile. State's Exhibit number 8
6 shows again the white Oldsmobile from the front portion of
7 the vehicle with severe damage done to the front as well
8 as the left side of the vehicle. And it shows the depth
9 of the intrusion. State's Exhibit number 9 shows the
10 driver's side of the white Oldsmobile of the impact
11 damage.

12 State's Exhibit number 10 show the Ford Explorer
13 where it came to rest upside down. This would be looking
14 back towards the intersection where the impact took place
15 of the East Main Street side. This is actually sitting on
16 West Main Street. And State's Exhibit number 11 is taken
17 from the parking lot of the Moon and Freeman area behind
18 where this photo was taken and where the White Oldsmobile
19 was. This is a side shot showing the Explorer, Expedition
20 upside down.

21 Q Corporal, when you arrived at the scene, were
22 the drivers of the vehicles still there?

23 A The driver of the white vehicle had already been
24 transported. And the driver of the Ford Expedition was in
25 the back of the EMS unit waiting to be transported. And I

1 never had contact with him.

2 Q And were you the primary investigating officer?

3 A We work as a team with my guys. And Trooper
4 Chad Edwards is the primary investigator. I was there to
5 oversee the investigation and assist him in any way
6 possible in reference to the investigation in this matter.

7 Q Did you at some point direct him to go to the
8 hospital?

9 A At that time, yes, ma'am.

10 Q And why did you do that?

11 THE COURT: If you want, he can take a seat.

12 MRS. DRAWDY: Okay.

13 BY MRS. DRAWDY:

14 Q Was Highway Patrol the first law enforcement
15 officers on the scene?

16 A No, ma'am.

17 Q Who was on the scene before Highway Patrol
18 arrived?

19 A Greenville City Police Department.

20 Q I do also want to ask you if you took a video of
21 the scene.

22 A Yes, ma'am.

23 Q State's Exhibit 12.

24 A Yes, ma'am.

25 Q Is this a copy of the video that you made that

1 day?

2 A Yes, ma'am.

3 Q And, uh, how did you make that video?

4 A It's the Highway Patrol policy that when we do
5 an in-depth investigation to make a video of the traffic
6 collision. All of our cars are equipped with video
7 cameras for traffic stops and so forth. A lot of times it
8 does not capture the information or the evidence that I
9 feel that we need to do our job properly. So I took it
10 upon myself and just happened to find an old video camera
11 out of my closet, my personal one that still uses these
12 types of tapes and got it up and running and used that to
13 video the scene.

14 Q And does this accurately depict the scene
15 immediately following the collision?

16 A Yes, ma'am.

17 MRS. DRAWDY: We'd like to introduce this as
18 State's Exhibit 12.

19 MR. WARDER: Your Honor, we'd like an
20 opportunity to --

21 THE COURT: Let me let the jury go to the jury
22 room while I take up a matter of law.

23 (WHEREUPON, the jury exit at approximately
24 12:32 p.m.)

25 MR. WARDER: Your Honor, please the Court,

1 the issue before the jury, this is a case of leaving
2 the scene. We're not trying the traffic accident.
3 We put in 11 photos showing the accident so the scene
4 would be out. But the issue is whether this
5 Defendant left that scene, not whether or not the
6 accident was a bad accident or a collision.

7 Simply offering all the cumulative evidence in
8 of the force of the collision is I think why the
9 video is now being offered. It's nothing that isn't
10 in with the map, the still photographs and has
11 nothing to do with the issue the jury has got to
12 ultimately decide. It's cumulative on testimony
13 that's already in. Whatever prejudice is not offset
14 from any probative value.

15 **THE COURT:** Anything to say?

16 **MRS. DRAWDY:** Yes, Your Honor, the purpose of
17 the video and the showing examine demonstrates the
18 speed in which the Defendant approached the
19 intersection which is indicative of his intent to get
20 away from the police. This all seeks to show the
21 speed at which he was traveling through a stop sign.
22 And the damage and the viewpoints of the road, we can
23 see where the Defendant ran in this video and you can
24 see the direction in which he came. It does show
25 viewpoints that are not shown in the photographs.

1 And it also, I think it is fair game for the
2 State to show the speed at which the Defendant was
3 traveling at the time to demonstrate his intent. He
4 had an intent to escape the police which we would
5 contend carried over to leaving the scene of the
6 accident because he did not want to be apprehended by
7 the police.

8 **MR. WARDER:** The State, their position is
9 that we were attempting to get away from the police
10 and thereby speeding which is specifically in
11 conflict with a statement made in an investigation by
12 Internal Affairs where they all denied they were
13 chasing anybody and anybody was fleeing and which is
14 in contradiction to the statements they made to the
15 press.

16 And I don't think it actually portrays anything.
17 And I don't think that, if the State could show
18 speed, if the tape could show the speed at which my
19 client was driving from, it wouldn't have any
20 relevance. It all goes to prejudice. There is no
21 presumption that someone who's grossly negligent has
22 an intent to want to flee the scene. They can't make
23 that leap from what was my client's intention from
24 the prior.

25 **THE COURT:** I'm going to allow it in. I think it

1 is relevant in showing the scene. I presume this is
2 the last evidence in this regard?

3 **MRS. DRAWDY:** Yes, Your Honor. It is.

4 **THE COURT:** I will allow it in.

5 Bring in the jury.

6 (WHEREUPON, the jury enter at approximately
7 12:37 p.m.)

8 **MRS. DRAWDY:** Your Honor, at this time, the
9 State would offer State's Exhibit 12 into evidence.

10 **THE COURT:** Over objection, it's allowed in.

11 (WHEREUPON, State's Exhibit 12 was admitted into the
12 record.)

13 **MRS. DRAWDY:** We'd like to publish it to the
14 jury at this time.

15 **THE COURT:** All right.

16 **BY MRS. DRAWDY:**

17 **Q** I'll be asking Mr. McCauley some questions.
18 Mr. McCauley, would it be more comfortable for you to
19 stand down?

20 **A** Yes, ma'am.

21 **THE COURT:** That will be fine.

22 **BY MRS. DRAWDY:**

23 **Q** Keep your voice up for the court reporter. All
24 right. What are we seeing here, Mr. McCauley?

25 **A** We're looking at the point of impact which

1 direction the Expedition would have been traveling prior
2 to impact. To my right would be where the Woodside Mill
3 is. And to the left across the street is the Moon and
4 Freeman Heating and Air Conditioning building.

5 Q Approximately how long was this video taken from
6 the time of the collision?

7 A Probably a good -- I was late getting there from
8 a previous case. So at least an hour to an hour and
9 twenty minutes. This is the area, the view of the Mill.

10 Q What is this?

11 A As you approach the intersection, it's showing
12 that to the right is where it previously shown distance in
13 reference to oncoming traffic from the direction of the
14 Expedition.

15 Q Is your camera positioned in what way?

16 A The position is on my shoulder. I'm standing on
17 East Main Street looking towards West Main Street. That
18 photo there shows Woodside Avenue back towards the
19 direction of SC-183. This direction here will put you
20 looking back towards SC-124 back towards the city of
21 Greenville.

22 Q Do you know what the speed limit sign is there?

23 A The posted speed limit which is originated by
24 the Department of Transportation is 35 miles an hour on
25 Woodside and 25 miles per hour on East Main Street.

1 Q What is this showing?

2 A This is showing scuff marks. It's not really a
3 skid mark. It's more of a scuff mark of after impact
4 showing the scraping of the vehicles and the sliding of
5 the tires after the impact.

6 Q Do you see any skid marks that would indicate
7 braking?

8 A No, ma'am.

9 Q Did you look for any?

10 A Yes, ma'am. There was no evidence of braking by
11 sliding or skid marks prior to impact of this scene. Now
12 I'm showing 360 degree view of the intake where I'm
13 standing in front of the road. (Pause.)

14 Q What road are you walking up now?

15 A West Main Street across from the impact.
16 (Pause.)

17 Q Approximately how far apart are the vehicles at
18 rest. Do you know?

19 A No, ma'am. I do not. (Pause.)

20 Q What day of the week did this collision occur?

21 A This occurred on a Sunday. The reason I could
22 remember that particular day was because it was Super Bowl
23 Sunday. (Pause.)

24 Q What are we seeing here?

25 A This is the intrusion to the vehicles from

1 impact to the driver's side area. The door was still in
2 tact after impact. It was removed by the medical
3 treatment persons to the survivor of that vehicle. This
4 is the passenger side of the vehicle. There you see my
5 finger. That's the AM/FM radio that was to the right of
6 the door plate, to the left of the right door plate, how
7 far it had been pushed over.

8 Q What are we seeing that?

9 A That view is looking back at the point of impact
10 showing where he would have been coming from the opposite
11 direction, apparently from the impact and the view of the
12 vehicle where they came to rest.

13 Q And what's happening here?

14 A This is some time later. When we decided to
15 move the vehicles, we had our towing services there. And
16 that is the Expedition being turned back over. And it
17 shows the extent of damage to the front with it being on
18 its wheels as well as to the root area after the damage
19 occurred from impact. (Pause.)

20 Q Did this collision occur inside or outside the
21 city limits of Greenville?

22 A It occurred within the county of Greenville
23 outside the city limits.

24 Q So is that, does that make it Highway Patrol's
25 duty to investigate?

1 **A** Yes, ma'am. It is.

2 **Q** And to make the appropriate charges?

3 **A** That's correct.

4 **Q** You said earlier that Trooper C.E. Edwards was
5 the investigating trooper who had been assigned?

6 **A** That's correct.

7 **Q** Why did you send him to the hospital?

8 **A** Several reasons.

9 **MR. WARDER:** Your Honor, I would object on
10 relevancy.

11 **THE COURT:** I overrule that.

12 **THE WITNESS:** Several reasons. Number one, I
13 wanted to check on the status of the people who were
14 injured in this collision in reference to the driver
15 of both vehicles to see if there was a possibility if
16 someone had been drinking alcohol or also --

17 **BY MRS. DRAWDY:**

18 **Q** Well, let's get that clear right here. Was
19 alcohol involved in this at all?

20 **A** No, ma'am.

21 **Q** Please continue.

22 **A** Also to watch over the individual to make sure
23 that no one got away from us.

24 **Q** Were you considering charges on either of the
25 drivers at that time?

1 A Yes, ma'am.

2 Q What and why?

3 A Against the black Expedition which is the
4 Defendant and due to the excessive amount of damage that
5 was created here to the impact of both vehicles that there
6 was clearly a problem with excessive speed. And we were
7 looking at a charge of reckless homicide.

8 Q Were there eyewitnesses that you were able to
9 locate at the scene?

10 A Yes, ma'am.

11 Q And they were interviewed by South Carolina
12 Highway Department personnel?

13 A Yes, ma'am.

14 Q And based on those interviews, were there other
15 charges that you were considering at the time?

16 A Yes, ma'am.

17 Q What were the other charges?

18 A At the time, leaving the scene resulting in
19 death. By this time, we had found out that the driver of
20 the white Oldsmobile had passed on.

21 Q Please answer any questions that Mr. Warder
22 might have.

23 A Yes, ma'am.

24 **CROSS-EXAMINATION**

25 **BY MR. WARDER:**

1 Q Officer, with regard to the charges of vehicular
2 homicide or death from a traffic accident, you were here.
3 My client has pled guilty to that charge.

4 A Yes, sir. He's pled guilty to Reckless
5 Homicide.

6 Q And this trial here today is about the other
7 charge, about leaving the scene?

8 A Resulting in death, yes, sir.

9 Q And you didn't see either person at the scene?

10 A No, sir.

11 Q You arrived after one had left and one was in
12 the ambulance?

13 A Yes, sir.

14 Q And you arrived at that time?

15 A I would have to speculate at this time just an
16 estimate, some 40 minutes later. I was tied up on another
17 severe accident that we were working on all morning prior
18 to this.

19 Q About 40 minutes would be your best guess of the
20 time that had lapsed between the accident and your
21 arrival?

22 A That's correct.

23 Q And there had been numerous other people who had
24 been to the scene and law enforcement before you got
25 there?

1 **A** Yes, sir.

2 **Q** And we saw a car turning over. How much later
3 was that part of the vehicle from the first part of the
4 vehicle you made?

5 **A** We stayed on the scene some two and a half to
6 three hours collecting evidence, shooting photographs,
7 shooting the video. And then went back and shot more
8 photographs because we had to, what we call, mark the
9 scene, paint the scene so we could bring our
10 reconstructionist in later, at a later time to map that
11 particular area.

12 **Q** I appreciate that additional information. But
13 the question I had asked you was how much later was the
14 rolling over the vehicle portion of that vehicle shot than
15 the first?

16 **A** Like I said, we were out there some two and a
17 half to three hours.

18 **Q** You don't know when that was but it occurred
19 some time during that two and a half to three hours?

20 **A** The entire time that I was there, yes, sir.

21 **Q** But you didn't video the entire time you were
22 there, did you?

23 **A** No, sir. That's a waste of tape.

24 **Q** Okay. So I take it you would have stopped at
25 some point and let the camera down and pick it up again

1 and took the last clip?

2 A I secured it in the trunk of my vehicle because
3 that's where the battery charger is.

4 Q Weather conditions. That's just a typical
5 February day?

6 A Yes, sir. For being February, it was kind of
7 pleasant outside.

8 Q It was cool but sunny?

9 A I wouldn't even say it was cool. It was
10 comfortable.

11 Q Thank you.

12 THE COURT: Redirect?

13 MRS. DRAWDY: No redirect.

14 THE COURT: If you would, please step down. We
15 appreciate your time.

16 Members of the jury panel, we'll break for lunch
17 until 2:15. That's about an hour, a little over an
18 hour and fifteen minutes. When you report, don't
19 report to the jury room downstairs and don't come
20 into the courtroom. Report back to this room. The
21 bailiff will tell you how to get in and out while you
22 are serving on the jury. Have a pleasant lunch.

23 Everyone else, remain seated while the jury
24 exit.

25 (WHEREUPON, the jury exit at approximately

1 12:57 p.m.)

2 **THE COURT:** Anything? Hearing nothing, we'll
3 break for lunch until 2:15.

4 **MRS. DRAWDY:** Thank you, Your Honor.

5 (WHEREUPON, a lunch recess was taken.)

6 (WHEREUPON, the Court resumed at approximately
7 2:22 p.m.)

8 (WHEREUPON, the jury enter at approximately
9 2:22 p.m.)

10 **THE COURT:** Call your next witness.

11 **MRS. DRAWDY:** The State calls Linda Evett.

12 **LINDA EVETT**

13 having first being duly sworn testified as follows:

14 **THE CLERK:** State your full name for the record.

15 **THE WITNESS:** Linda Evett.

16 **DIRECT EXAMINATION**

17 **BY MRS. DRAWDY:**

18 **Q** Good afternoon, Mrs. Evett.

19 **A** Good afternoon.

20 **Q** Would you speak up just a little bit so we can
21 hear you.

22 **A** Yeah. Good afternoon.

23 **Q** Good afternoon. Mrs. Evett, do you live here
24 in Greenville?

25 **A** I do.

1 Q How long have you lived in Greenville?

2 A Most of my life.

3 Q What part of town do you live in?

4 A San Souci.

5 Q Uh, I want to take your attention back to Super
6 Bowl Sunday, February the 6th, 2005 and ask you if you
7 remember witnessing a collision.

8 A I do.

9 Q Where was that collision?

10 A It was on, next to the Mill there on, uh, I
11 can't think of the name of the road now. Uh, Woodside
12 Avenue.

13 Q All right. It was on Woodside Avenue?

14 A Woodside Avenue, yeah.

15 Q Approximately what time of day was it?

16 A Uh, I just got out of church. It was probably
17 around 12:15.

18 Q Do you remember what road, were you driving?

19 A I was.

20 Q What kind of vehicle were you driving?

21 A '98 Toyota Camry.

22 Q And what -- where were you driving when you saw
23 the collision? What road were you driving on?

24 A I was on Woodside Avenue. And I was coming up
25 on East or North Main.

1 Q I'm going to ask you -- I hate to ask you to get
2 down. But if you would, step down next to the poster
3 board here. Have you seen this exhibit before?

4 A I have.

5 Q This is State's Exhibit 1. Can you show me on
6 the Exhibit where you driving when you saw the collision.

7 A I was coming in this direction. The collision
8 happened right over hrere.

9 Q All right. Is that at the intersection of Main
10 and Woodside Avenue?

11 A Yes, ma'am.

12 Q All right. The vehicles that were involved in
13 this, were you traveling behind one of them or meeting one
14 of them?

15 A I was facing the oncoming traffic. They were
16 coming toward me.

17 Q When you say "they", who are you talking about?

18 A There was a white car and another car behind it.

19 Q Now when you say the "white car", is that the
20 car involved in the collision or was the car behind it
21 involved in the collision?

22 A The white car, the first one.

23 Q And what other type of vehicle was in the
24 collision?

25 A The black SUV.

1 Q What was that -- show where the white car was
2 traveling.

3 A It was coming this way. And the SUV came down
4 this way and hit it.

5 Q Can you describe exactly what you observed.

6 A As I drove down, I seen just a big impact. The
7 black SUV hit the white car on the driver's side. And the
8 white car went spinning and went over into the parking
9 lot. And the SUV flipped over on its top.

10 Q And exactly where did you see the SUV come out?

11 A It came out of this road right there.

12 Q How fast was the SUV going?

13 A It had to be flying. I got a glimpse of it and
14 then the impact and a big boom.

15 Q Uh, I'm going to have to ask you to stand there.
16 There's a lot of things that may help.

17 A That's fine.

18 Q What did you do immediately after the impact?

19 A Well, first thing, I put my foot on the brake.
20 It scared me so bad. Then I just rolled. And I rolled up
21 until they settled, the automobile settled. Then I drove
22 around and come in this side of the church parking lot and
23 parked right over in here.

24 Q Did you see the driver of either of the
25 vehicles?

1 A I saw the driver of the SUV. As I was pulling
2 up, he got out of the SUV and ran over to the white car or
3 went over to the white car.

4 Q Can you describe what he looked like?

5 A He was Hispanic, dark skin, dark hair.

6 Q Do you remember how tall he was?

7 A Probably maybe 5'1, 5'2.

8 Q You say you saw him get out of the SUV?

9 A Yes, ma'am. Well, I didn't see him get out. I
10 saw him come around the SUV. I was on the other side.
11 But I did see him get -- I was over here. And he got out
12 over here. He come up to the car. Then he came next to
13 the SUV and he run up this way. And that's when the
14 officer caught him.

15 Q You say the officer caught him.

16 A Uh-huh (affirmative response).

17 Q Did officers arrive at the scene?

18 A Yes, ma'am.

19 Q How many officers?

20 A I remember three. I just remember two to start
21 with. I think there might have been two that picked him
22 up.

23 Q All right. How long after the driver of the SUV
24 got out was it before you saw the police?

25 A I think I had already parked. I was beginning

1 to park when I seen him go over to the car. When I come
2 back and parked, then they pulled up.

3 Q Did you see what direction they come from?

4 A No, ma'am. All I know is they come out this
5 road.

6 Q And how many patrol vehicles did you see? Were
7 they in patrol vehicles, the officers?

8 A I think there was patrol and city.

9 Q Okay. City. When I said patrol, I meant a
10 police car.

11 A Yeah. I think there were one or -- I know there
12 were -- I think there were two.

13 Q Two city?

14 A I seen one. The one I believe is the one that
15 went up here. A little bit later, another one came.

16 Q Were there other people who witnessed the scene?

17 A Yes, ma'am.

18 Q Witnessed the collision?

19 A Uh-huh (affirmative response).

20 Q What were they doing at the time the policemen
21 arrived?

22 A They got out. Some were on cell phones. And
23 some were walking over to the van looking in and stuff.

24 Q And when the police got on the scene, what did
25 he do?

1 A Like I said, one went up, one car went up, on up
2 here where he had run.

3 Q When you say he had run, who was running?

4 A The man that got out of the SUV.

5 Q What did the policeman do?

6 A They put him in the back seat of the car.

7 Q Did the Defendant cooperate with him?

8 A As far as I know.

9 Q Did you really see what was happening out there?
10 How far away was it?

11 A Uh, it was probably maybe 150, 200 feet or more
12 up the road. It was kind of over a hill.

13 Q Did the officer run after him?

14 A No.

15 Q Did he go in his patrol car after that?

16 A Yeah.

17 Q After the officer caught the Defendant, what did
18 he do with him?

19 A He put him in the patrol car and brought him back
20 down here.

21 Q Could you see whether or not he handcuffed him?

22 A I couldn't tell.

23 Q You weren't close enough to tell?

24 A Well, I probably was. I was so nervous. There
25 was so much going on.

1 Q Did you remain at the scene for a while?

2 A Yes, ma'am. A couple of hours that I know if
3 not more.

4 Q Why did you stay at the scene?

5 A Officers asked me to stay so that I could fill
6 out a report.

7 Q And were you interviewed by officers at the
8 scene about what had happened?

9 A Yes, ma'am.

10 Q If you would like to, have a seat. Please
11 answer any questions Mr. Warder might have.

12 **CROSS-EXAMINATION**

13 **BY MR. WARDER:**

14 Q Mrs. McCauley --

15 **THE COURT:** This is not McCauley. This is Evett.

16 **BY MR. WARDER:**

17 Q I'm sorry. Mrs. Evett. Mrs. Evett, you said
18 that you saw the man look into the SUV?

19 A No.

20 Q The white car?

21 A The white car, yeah.

22 Q And he crawled out of the SUV and he was upside
23 down?

24 A Uh-huh (affirmative response).

25 Q And you were on the parking lot side, the church

1 side of the SUV?

2 A Right.

3 Q And he actually got out of the Moon and Freeman
4 side of the SUV?

5 A That's right.

6 Q And when he got out of the Moon and Freeman, he
7 went around the back of the SUV?

8 A I recall, seemed like he walked around to the
9 back and then went out to her car.

10 Q Did he run out to her car?

11 A I'm thinking he walked. It's been a while yet.
12 But I remember him going to her car.

13 Q Okay. And how long did he stay at the car when
14 he went around?

15 A Not very long.

16 Q Okay. And when he came back, did he come back
17 to the SUV?

18 A Yes, sir. He came to the back of the SUV and
19 stood there just for a second or two and took off running
20 up the hill.

21 Q And you told us that the police arrived. Was he
22 standing at the back of the SUV when the police got there?

23 A No.

24 Q Okay. He then started to run. And how long was
25 it before the police arrived?

1 **A** He had run from the SUV to almost the top of the
2 hill there when they got there. And as soon as they got
3 there, they chased after him.

4 **Q** And you said he got about 150 feet?

5 **A** I'm not good at those things. But I would
6 assume it's 150 or more feet.

7 **Q** And they come back to the scene?

8 **A** Yes, sir.

9 **Q** And it didn't take the police very long to drive
10 up there?

11 **A** Not very long. They weren't losing any time.

12 **Q** How about coming back? Did it take much time
13 for them to come back?

14 **A** No.

15 **Q** Did he stay in the car and the police then go
16 ahead and investigate?

17 **A** No. I think they called the EMS there for him.

18 **Q** Did he sit in the car or lay in the car?

19 **A** He did to start with.

20 **Q** Then when EMS got there, he went with EMS?

21 **A** Yes, sir.

22 **Q** And you stayed a couple of hours there?

23 **A** Uh-huh (affirmative response).

24 **Q** And you gave a couple of statements?

25 **A** Yes, sir.

1 Q And that took about two hours?

2 A Well, as far as I know.

3 Q You didn't have any conversations with the
4 Defendant, did you?

5 A No, sir.

6 Q And you didn't hear any conversations?

7 A No, sir.

8 Q Thank you very much.

9 MRS. DRAWDY: Very brief redirect.

10 **REDIRECT EXAMINATION**

11 BY MRS. DRAWDY:

12 Q Mrs. Evett, you said you aren't too good at
13 estimating distance?

14 A Yes.

15 Q Could you step down and come to the map. I just
16 want to ask you to point out some things, two things. Can
17 you point on the map where the SUV was, where it came to
18 rest?

19 A It was right in here.

20 Q And where was the driver of the SUV when the
21 policeman caught up with him?

22 A Down in here.

23 Q All right. Thank you.

24 THE COURT: Would you please stand right there.

25 Recross?

1 **MR. WARDER:** Yes, Your Honor.

2 **RECROSS-EXAMINATION**

3 **BY MR. WARDER:**

4 **Q** So that I have a -- you pointed to an area right
5 across from this light spot here?

6 **A** I'm not exactly sure. But I know it's pass this
7 building here. Somewhere up in here somewhere.

8 **Q** The building you said is pass the building pass
9 the Moon and Freeman building?

10 **A** Uh-huh (affirmative response). Yeah. It was on
11 up the hill. The hill, he was toward the top of the hill.

12 **Q** Thank you.

13 **THE COURT:** You can be excused. We appreciate
14 your time. Thank you.

15 **MRS. DRAWDY:** Could she be excused?

16 **THE COURT:** Yes.

17 **MRS. DRAWDY:** The State calls Jonathan Adkins.

18 **JONATHAN ADKINS**

19 having first being duly sworn testified as follows:

20 **THE CLERK:** State your full name for the record
21 please.

22 **THE WITNESS:** Jonathan Adkins.

23 **THE CLERK:** Thank you.

24 **DIRECT EXAMINATION**

25 **BY MRS. DRAWDY:**

1 Q Mr. Adkins, what part of South Carolina do you
2 live in?

3 A West Columbia.

4 Q Did you have a reason to be in Greenville on
5 February 6th, 2005?

6 A Yes, ma'am. We were visiting my father-in-law.

7 Q When you say "we", who are you refering to?

8 A Me and my wife.

9 Q Does he live here in Greenville?

10 A Yes, ma'am.

11 Q Did you witness a collision while you were
12 visiting that day here in Greenville?

13 A Yes, ma'am.

14 Q Do you recall when that collision was?

15 A I don't know the name of the streets around
16 here.

17 Q Have you been shown -- you can step down a
18 minute --

19 A Okay.

20 Q -- State's Exhibit number 1?

21 A Yes, ma'am.

22 Q Do you recognize that photo?

23 A Yes, ma'am.

24 Q What does it show?

25 A This is the road I was on right here. I was

1 coming down this way. The incident happened right here.

2 Q At that intersection that you're pointing to?

3 A Right here. Right there.

4 Q Right there. Are you sure about that?

5 A Yes, ma'am.

6 Q Can you describe what you witnessed?

7 A I was coming down right behind the one that got
8 him. I was probably three or four car lengths behind it.

9 Q Were there any cars in-between you and her?

10 A No, ma'am.

11 Q We were coming down. I happened to notice a
12 black SUV going fairly fast. The next thing I know, she
13 goes to the intersection and he plows into her SUV. I
14 believe she went into this parking lot. She stopped and
15 he stopped right here upside down.

16 Q What did you do after you witnessed the
17 collision?

18 A First, shocked. My wife was trying to call 911.
19 We got out and we saw him.

20 Q When you say him?

21 A The Defendant.

22 Q What did he look?

23 A Fairly short, small build. Kind of darker skin,
24 short hair. He went over to the car.

25 Q Where did you first see him?

1 A Where did I first see him?

2 Q Yes.

3 A Coming out of the SUV.

4 Q You saw him get out of the SUV?

5 A Coming away from it. I don't know exactly which
6 window him came out of. I saw him get out.

7 Q You saw him crawl out of a window?

8 A Not crawl. I saw him out.

9 Q Okay.

10 A He had gone into the car, looked in the car
11 briefly and went down, I believe this road right here.
12 The cop showed up. I'm not sure which direction it came
13 from. It all happened so fast. The cop showed up.

14 Q When you said he went up the road, how did he go
15 up the road? Was he walking?

16 A Running.

17 Q He was running?

18 A Yes, ma'am.

19 Q And did you observe what happened between him
20 and the police?

21 A I don't know if he tackled him but he grabbed
22 him and he walked him back to the car and put him in the
23 back of the police car.

24 Q Do you recall how far up the road it was where
25 he apprehended the Defendant?

1 **A** I would say in this area. Not positive. It's
2 very far up. Somewhere in this area.

3 **Q** Did you yourself go and check on the lady in the
4 car?

5 **A** I did not.

6 **Q** Why not?

7 **A** I didn't want to get in the way of the cops
8 showing up.

9 **Q** Were the policemen checking on her?

10 **A** Don't want to say. Not positive. I just
11 remember the cars around there. It was best I stay away.
12 They told us to stand in this area right here and they
13 were getting our statements and everything.

14 **Q** They told you to stay away?

15 **A** Yes, just stay over here.

16 **Q** Did you tell policemen on the scene what you
17 observed?

18 **A** Yes, ma'am.

19 **Q** Please answer any questions that Mr. Warder
20 might have.

21 **MR. WARDER:** Your Honor, if it pleases the
22 Court, I have no questions for this witness.

23 **THE COURT:** All right. Thank you. We appreciate
24 your testimony.

25 **THE WITNESS:** All right. Thank you.

1 **THE COURT:** Call your next witness.

2 **MRS. DRAWDY:** The State calls Shayna Ferguson.

3 **SHAYNA FERGUSON**

4 having first being duly sworn testified as follows:

5 **THE CLERK:** State your full name for the record
6 please.

7 **THE WITNESS:** Shayna Ann Ferguson.

8 **THE CLERK:** Thank you.

9 **DIRECT EXAMINATION**

10 **BY MRS. DRAWDY:**

11 **Q** Mrs. Ferguson, are you an EMT?

12 **A** Yes, I am.

13 **Q** How long have you been in the emergency medicine
14 business?

15 **A** As an EMT about since 1999.

16 **Q** Where are you currently employed?

17 **A** I'm employed with Palmetto Ambulance Service.

18 **Q** And prior to that, did you work with Greenville
19 County EMS?

20 **A** Yes, ma'am. I do.

21 **Q** Were you with Greenville County EMS on February
22 the 6th, 2005?

23 **A** Yes, ma'am.

24 **Q** What type of emergency vehicle were you driving
25 in that day?

1 A An ambulance.

2 Q And were you dispatched to a collision at the
3 intersection of Woodside Avenue and Main Street?

4 A Yes, ma'am.

5 Q Can you describe approximately what time did you
6 arrive on the scene.

7 A 12:15, 12:20.

8 Q And what did you see when you arrived?

9 A The first thing I saw was a black SUV type
10 vehicle that appeared to have a lot of damage to it. Then
11 the incident commander on the scene came up and explained
12 that we had a patient in the other vehicle which I didn't
13 see initially.

14 Q What type of vehicle was that?

15 A It was a sedan type car, white car, older
16 looking car.

17 Q And were you directed to give primary care to
18 the occupants of that vehicle?

19 A Yes, ma'am. I was.

20 Q How many occupants did you find in that vehicle?

21 A Just one.

22 Q And describe the patient please.

23 A When we arrived, I had to make entry through the
24 passenger's side because the driver's side was completely
25 caved in and we were unable to access the patient because

1 the door was, she was pinned underneath the door of the
2 car. I thought she was probably 50ish -- 40ish, 50ish
3 year old female. In the driver's seat, kind of leaning
4 back.

5 Q Was she conscious?

6 A No.

7 Q What was her medical condition?

8 A She was unconscious and unresponsive. She had
9 agonal respirations at the time.

10 Q What do you mean by that?

11 A The best way that we describe it is guppy
12 breathing. She was breathing about four times a minute.
13 It's easier to show than it is to describe with words.
14 But it's not very good condition.

15 Q Was she in obvious medical danger?

16 A Absolutely.

17 Q Can you just briefly describe what you did for
18 her when you arrived until the time you took her to the
19 hospital.

20 A Initially, we put a C-collar on her to protect
21 her C-spine, her neck. Then I immediately knew her airway
22 needed to be secured. So we put a nasal tube in through
23 her nose into her trachea and inflated it so we were able
24 to regulate her respirations to the rate that they needed
25 to be.

1 Q Prior to that, how many respirations was she
2 making per minute?

3 A About four. Very labored.

4 Q Can you describe her injuries as you observed
5 them?

6 A As I observed them, she had a huge laceration on
7 her forehead above her left eye. Her left pupil was
8 dilated. Her right pupil was not. But neither pupil was
9 reactive. She had one of her lower legs had a severe
10 fracture, open compound. She had a laceration on her
11 chin. She was bleeding from her nose and her mouth and
12 her ears which again is not a good sign.

13 Q Approximately how long were you on the scene
14 with her before you transported her to the hospital?

15 A About 20 minutes with extrication time.

16 Q And did you ride with her in the ambulance?

17 A Yes, ma'am.

18 Q Did she ever regain consciousness?

19 A Never.

20 Q Did you see any improvement on the ride back to
21 the hospital?

22 A Never.

23 Q Approximately what time did you arrive at the
24 hospital with her?

25 A About ten 'til 1:00.

1 **Q** Please answer any questions Mr. Warder might
2 have.

3 **A** Yes, ma'am.

4 **MR. WARDER:** Your Honor, please the Court, I
5 have no questions.

6 **THE COURT:** All right. Step down and be excused.
7 We appreciate your time.

8 **THE WITNESS:** Thank you.

9 **MRS. DRAWDY:** Thank you. The State calls
10 Officer Steve Smith.

11 **STEVE SMITH**

12 having first being duly sworn testified as follows:

13 **THE CLERK:** Thank you. You may be seated. State
14 your full name for the record please.

15 **THE WITNESS:** Steven Craig Smith.

16 **THE CLERK:** Thank you.

17 **DIRECT EXAMINATION**

18 **BY MRS. DRAWDY:**

19 **Q** Officer Smith, who are you employed with?

20 **A** The Greenville City Police Department.

21 **Q** How long have you been employed there?

22 **A** It will be three years in November.

23 **Q** Can you briefly describe the training that you
24 received to be a law enforcement officer?

25 **A** Nine weeks as the police academy in Columbia,

1 South Carolina. I graduated from there. Eighteen months
2 of training in the program with the Greenville City Police
3 and various other trainings of traffic accidents, drug
4 enforcement, practical law enforcement and problem solving
5 skills throughout the department.

6 Q What is your assignment with the Greenville
7 Police Department?

8 A Uniform patrol division.

9 Q And what are your duties as a uniform patrol?

10 A Detect and deter crime, answer calls for
11 service. If you dial 911, I'll be the officer attending
12 your house. If you dial 911 for a traffic accident, I
13 also would respond and work the accident.

14 (WHEREUPON, Map was marked as State's Exhibit 14 for
15 identification.)

16 BY MRS. DRAWDY:

17 Q Let me show you State's Exhibit 14 and ask if
18 you've seen this Exhibit before.

19 A Yes, ma'am.

20 Q Can you describe what it depicts?

21 A It depicts a portion of West Greenville where
22 the accident occurred at West Main, East Main and Woodside
23 Avenue.

24 Q Does it show the surrounding area?

25 A Yes, ma'am. It does.

1 Q Does it accurately show the streets in that
2 area?

3 A Yes, ma'am. It does.

4 Q Would this assist you in explaining your
5 testimony to the jury.

6 A Yes, ma'am. It will.

7 **MRS. DRAWDY:** Your Honor, we would like to
8 submit this at this time as State's Exhibit 14.

9 **MR. WARDER:** Your Honor, if it please, I
10 don't think it is proper to enter into evidence.

11 **THE COURT:** I would allow it in.

12 (WHEREUPON, State's Exhibit 14 was admitted into the
13 record.)

14 **BY MRS. DRAWDY:**

15 Q Officer Smith, would you step down so you can
16 review the exhibit?

17 A Yes, ma'am.

18 Q You referred to the collision. Did you cover
19 the collision that's subject to this trial?

20 A Yes, ma'am. I did.

21 Q Can you locate where it is on this map?

22 A Yes, ma'am. Here is Woodside Avenue. The
23 traffic accident occurred right here at East Main and
24 Woodside Avenue.

25 Q On that particular Sunday, were you officially

1 at work?

2 **A** No, ma'am. I was working what we call a side
3 job. I was moonlighting for the circus train that was in
4 the city. I was paid by the circus to guard their train
5 that afternoon. I was in my uniform.

6 **Q** Were you in your patrol vehicle?

7 **A** Yes, ma'am.

8 **Q** Let's say around 11:30 or so that day, where
9 were you? Can you show your location on this map?

10 **A** Yes, ma'am. I can. Here is Woodside Avenue.
11 This stretch right here is where the circus was parked at.
12 I would be right through here, parked right there.

13 **Q** All right. And were you listening to your
14 radio?

15 **A** Yes, ma'am. I was.

16 **Q** Would this had been the shift that you would
17 normally had been working?

18 **A** Yes, ma'am. It would have.

19 **Q** Okay. Would you take leave to do this?

20 **A** Yes, ma'am.

21 **Q** This side job. So the officers who were on
22 duty, are these officers that you normally work with?

23 **A** Yes, ma'am.

24 **Q** When you were listening to the radio, did you
25 receive any kind of calls for help from an officer?

1 **A** Yes, ma'am. Officer Blair who was my beat
2 partner at the time stated --

3 **MR. WARDER:** Objection. Anything the officer
4 stated is clearly hearsay, Your Honor. I would
5 object.

6 **THE COURT:** I sustain the objection.

7 **BY MRS. DRAWDY:**

8 **Q** Was there a BOLO for a particular vehicle?

9 **A** Yes, ma'am.

10 **Q** Did you attempt to find that vehicle?

11 **A** Yes, ma'am.

12 **Q** What was the description of the vehicle?

13 **MR. WARDER:** Again --

14 **THE COURT:** I sustain the objection.

15 **MRS. DRAWDY:** Your Honor, may we approach?

16 (WHEREUPON, a bench conference was held off the
17 record.)

18 **BY MRS. DRAWDY:**

19 **Q** Officer Smith, as a result of what you heard on
20 radio traffic, did you leave your position?

21 **A** Yes, ma'am.

22 **Q** Where did you proceed to drive?

23 **A** To the area of Woodside Avenue.

24 **Q** And what was your purpose in leaving your
25 position?

1 **A** To try to locate a vehicle.

2 **Q** What type of vehicle were you looking for?

3 **A** A black Excursion.

4 **MR. WARDER:** I object to this line of
5 testimony.

6 **THE COURT:** I overrule the objection.

7 **BY MRS. DRAWDY:**

8 **Q** Where did you look for the black Excursion?
9 Describe how you proceeded in looking for it.

10 **A** I was in patrol mode. That is you are on patrol
11 and you looking for something. You're not going to travel
12 the posted speed limit. You're going to travel less than
13 the posted speed limit. So the things that you observe,
14 you actually collect in your mind and understand what you
15 are observing. I came up through Woodside Avenue. I
16 stopped at Woodside Avenue. I noticed there was a red
17 Expedition parked but it was on Third Street. I asked
18 over the radio was the vehicle that the officer was
19 looking for.

20 **Q** Okay. Was that the vehicle he was looking for?

21 **A** No, ma'am. It was not.

22 **Q** And where did you proceed after that?

23 **A** I continued down Woodside Avenue traveling once
24 again the patrol speed until I approached the intersection
25 here.

1 Q And what did you see when you reached the
2 intersection of Woodside and Main?

3 A A traffic collision involving a black SUV.

4 Q And where was the SUV?

5 A The SUV was a little bit left of the
6 intersection. It appeared to me there's an Oak tree here.
7 The SUV was laying on its top sitting right there.

8 Q If you would, lower the exhibit.

9 A Yes, ma'am.

10 Q And look at State's Exhibit 1 and ask you if you
11 recognize that as the collision scene?

12 A Yes, ma'am. It is.

13 Q Can you show where you saw the vehicles involved
14 in the collision?

15 A Yes, ma'am. The black EMS was laying on its top
16 approximately right there.

17 Q Describe all that you saw at the scene when you
18 drove up.

19 A When I drove up approximately about 100 feet
20 from the intersection, I noticed a black SUV was sitting
21 on its top. Right across the road from the intersection,
22 there were people sitting here and they were pointing up
23 the road.

24 Q And were you sitting in your patrol vehicle at
25 the time?

1 A Yes, ma'am.

2 Q Was it fully marked?

3 A Yes, ma'am.

4 Q And what did you see in the direction that they
5 were pointing?

6 A What appeared to be a white male running up the
7 road with a white T-shirt with red stains in the center of
8 his back running in the middle of the road. And I turned
9 up the roadway and I pursued after this man right here
10 that was running in the roadway. He then left the roadway
11 and went up this way. And I exited my vehicle and went
12 approximately right here and fled on foot after him.

13 Q And where did you catch up with him?

14 A Right up through this -- about 15 yards from the
15 house. Right through here.

16 Q Did he willingly go with you at that point?

17 A He fell to the ground. I went to place him in
18 handcuffs. He resisted at that point. I was able to get
19 one handcuff on him and had the other handcuff off. We
20 stood up. He did something with his arm. He came loose
21 from the first handcuff. I then took him back to the
22 ground and secured him once again in the handcuffs.

23 Q When you first arrived at the scene, were any
24 other law enforcement officers at the scene?

25 A No, ma'am.

1 Q So you were the first law enforcement to arrive?

2 A Yes, ma'am.

3 Q Did anyone else from the Greenville City Police
4 Department arrive at the scene?

5 A Yes, ma'am.

6 Q Who else arrived?

7 A Officer Blair, Corporal Estes and Officer Rob
8 Jones.

9 Q Okay. And who was the first to arrive after
10 you?

11 A Officer Blair.

12 Q All right. Did he assist you in any way?

13 A Yes, ma'am. He did.

14 Q What did he do?

15 A He met me right about through here to help me
16 secure the subject and place him in Officer Blair's
17 vehicle.

18 Q And was he handcuffed at that time?

19 A Yes, ma'am.

20 Q And when you say secure him in Officer Blair's
21 vehicle, what did you mean?

22 A Double up the handcuffs so they were tight on
23 his wrist and make sure they are secured behind his back.
24 Make sure he didn't have any weapons or anything in his
25 pocket and place him in the vehicle where he could not

1 exit the vehicle.

2 Q What did you then do with him?

3 A At that point in time, I began to look down,
4 looking back at the accident. Just gathering my thoughts
5 on what just happened. At that point in time I heard
6 another officer say there's another vehicle involved.

7 Q What did you do with that?

8 A I got in Officer Blair's car with him and
9 proceeded back to the scene to help set up the area.

10 Q Was there in fact another vehicle involved?

11 A Yes, ma'am.

12 Q What type of vehicle?

13 A It was a creme in color Olds.

14 Q And where was that vehicle?

15 A That vehicle was in this Moon and Freeman
16 parking area over through here.

17 Q Was there anyone still in that vehicle?

18 A Yes, ma'am.

19 Q Who?

20 A Mrs. Fulmer.

21 Q And can you describe her condition?

22 A When I walked up to her vehicle, the driver's
23 was all caked in. She was laying back.

24 MR. WARDER: Your Honor, I would object to
25 the relevancy of this.

1 **THE COURT:** I will overrule. Continue on.

2 **BY MRS. DRAWDY:**

3 **Q** Did she appear to need any medical attention?

4 **A** Yes, ma'am.

5 **Q** And who called for medical attention?

6 **A** I called for medical attention for the fellow I
7 placed in custody up here because of the damage that
8 appeared.

9 **Q** So a call for EMS has already gone out before
10 you even saw the white vehicle?

11 **A** Yes, ma'am. I called EMS for him.

12 **Q** And did EMS eventually arrive?

13 **A** Yes.

14 **Q** How many units?

15 **A** I believe two units.

16 **Q** Did one of the units attend to the individual
17 that you had taken into custody?

18 **A** Yes, ma'am.

19 **Q** What was done with the Defendant when EMS
20 arrived?

21 **A** They began speaking with him. And as I recall,
22 they placed him on to the backboard and on to the
23 stretcher and transported to Greenville Memorial. I'm
24 uncertain what his injuries were.

25 **Q** Was he turned over to EMS from the back of the

1 patrol car?

2 A Yes, ma'am.

3 Q Again, approximately what time of day did this
4 occur?

5 A 11:30, around through there.

6 Q Please answer any questions that Mr. Warder
7 might have.

8 **CROSS-EXAMINATION**

9 **BY MR. WARDER:**

10 Q You claim he was fifteen yards from that
11 building --

12 A No, sir.

13 Q -- or that house?

14 A Right here, sir.

15 Q Fifteen yards downhill from --

16 **THE COURT:** I don't think the jury could see what
17 y'all are talking about.

18 **THE WITNESS:** In this area right here, sir.

19 **MR. WARDER:** Thank you.

20 **THE COURT:** You can be excused. Appreciate your
21 time. Thank you. Call your next witness.

22 **MRS. DRAWDY:** The State calls Officer Blair.

23 **CHI MINH BLAIR**

24 having first being duly sworn testified as follows:

25 **THE CLERK:** Thank you. You may be seated. State

1 your full name for the record please.

2 **THE WITNESS:** Chi Minh Blair.

3 **THE CLERK:** Thank you.

4 **DIRECT EXAMINATION**

5 **BY MRS. DRAWDY:**

6 **Q** Officer Blair, are you employed with the
7 Greenville Police Department?

8 **A** I am.

9 **Q** How long have you been with the Greenville
10 Police Department?

11 **A** Little over four years.

12 **Q** And do you have any other law enforcement
13 experience?

14 **A** I do not.

15 **Q** Can you describe the training that you received
16 to become a Greenville County officer, I mean, excuse
17 Greenville Police Department officer.

18 **A** Did nine weeks at the academy. Graduated from
19 the academy. Came to the Greenville City Police
20 Department. Did 26 weeks training there. Graduated that
21 and went on my own.

22 **Q** And what exactly is your position with the
23 Greenville Police Department?

24 **A** Uniform patrol.

25 **Q** And is that what you are assigned to?

1 A Yes, ma'am.

2 Q As uniform patrol, you ride a marked, totally
3 marked police car?

4 A I do.

5 Q What exactly is your responsibilities as a
6 uniform patrol man?

7 A We have call response. We answer the daily
8 routine calls throughout the city, 911 disconnects,
9 domestic disputes, traffic collisions.

10 Q Were you on duty on February the 6th, 2005?

11 A I was.

12 Q What area of Greenville were you patrolling at
13 that time?

14 A I patrolled the west side of Greenville which
15 was considered anything from the west side of Main Street
16 from Rutherford out to Pendleton.

17 Q Were you drawn into a series of events that
18 resulted in a collision on that day?

19 A I was.

20 Q Can you tell me where you were shortly before
21 the collision?

22 A Can I use your map?

23 Q Yes, please. This is State's Exhibit number 14.

24 A Before the collision, I was patrolling the area
25 north of Vance and Linton and came to this intersection at

1 East Main.

2 Q Did you observe anything that aroused your
3 interest?

4 A I did. I observed Mr. Escalante. He was in a
5 black SUV parked in the middle of the roadway. And he had
6 a black male speaking with him at his truck.

7 Q What did you do at that point?

8 A At that point, I just observed him for a few
9 more seconds. The gentleman at the window walked away
10 from the window when he noticed my presence. Mr.
11 Escalante pulled away. At which point, I decided to
12 follow him to see where he was headed. He pulled down
13 into the first house on the left on first street, parked
14 in the driveway there. I continued pass him at that
15 point.

16 Q Would you describe exactly what these streets
17 are like in this area?

18 A Yeah. This whole area is basically mill houses.
19 You've got the large mill here. They are basically mill
20 houses. We have a lot of illegal narcotic activity.

21 MR. WARDER: Objection.

22 THE COURT: Let's don't go into that.

23 MR. WARDER: Move for a mistrial.

24 MRS. DRAWDY: No.

25 THE COURT: No, I over -- disregard --

1 **MRS. DRAWDY:** I asked you --

2 **THE COURT:** Let me finish. I want the jury to
3 just disregard that testimony about what may be going
4 on in the area.

5 **BY MRS. DRAWDY:**

6 **Q** I was asking you about the character of the
7 roadway.

8 **A** These roads, they are made for two vehicles to
9 go back and forth. But they are basically very narrow.
10 You can basically get one car through at a time. If you
11 have two vehicles, one's going to have to stop on the side
12 of the road and let the other pass.

13 **Q** What did you observe the Defendant do as he
14 drove away from where you initially saw him?

15 **A** Once he pulled onto First Street or continued
16 down First Street, I followed him. He pulled into the
17 first residence on the left point into the driveway. He
18 stopped, parked his vehicle. He exited his vehicle, went
19 to the rear, opened the hatch, grabbed some type of box,
20 took it out, closed the hatch.

21 At that time, I was perpendicular to him. He was
22 still at the back of the vehicle. I was in the roadway
23 passing him. Took the box up to the front door, sat it
24 down at the door, opened up the screen door and appeared
25 to be putting a key in the door.

1 Q What did you do at that point?

2 A I continued pass Mr. Escalante down First
3 Street, came back around to Second Street. Came back down
4 Second to East Main.

5 Q When you reached the intersection of, is that
6 Second Street that you went on?

7 A Yes, ma'am. It was the stop sign of second and
8 East Main.

9 Q When you reached East Main, what did you
10 observe?

11 A When I came to the stop sign of East Main, the
12 SUV was coming in front of me. At which point, Mr.
13 Escalante and I made eye contact.

14 Q Where did Mr. Escalante go then?

15 A He continued down East Main. I then fell in
16 behind him. He came down to Woodside Avenue, stopped at
17 the stop sign, took a right on Woodside. By the time I
18 got down to the stop sign, I could no longer see his
19 vehicle.

20 Q You could no longer see his vehicle?

21 A No, ma'am.

22 Q What did you then do?

23 A I took a right on Woodside Avenue in an effort
24 to see if I could locate him once again. Came down
25 Woodside, took a right back on East Fifth. Once I came

1 onto East Fifth, I did locate his vehicle. He was midway
2 in the road in this area close to the North Vance area.
3 Once I came up here and I could make contact with his
4 vehicle. I could see what he was doing. His vehicle
5 appeared to speed off at a high rate of speed.

6 Q Did you at that point make any kind of
7 transmission on your police radio?

8 A I did. I asked if there were any other units in
9 the area. Several officers responded. I asked them if
10 they could assist me in the area in located what I believe
11 I called an Excursion at the time, black SUV being driving
12 by a white male. We were going in circles in the East
13 Main area. And I believe he was trying to evade me.

14 MR. WARDER: Objection.

15 THE COURT: I overrule the objection.

16 BY MRS. DRAWDY:

17 Q Did other officers indicate that they were going
18 to help you?

19 A They did. Officer Smith said he was --

20 Q Don't say what he said. Just who indicated they
21 would help?

22 A Okay. Officer Smith, Corporal Estes.

23 Q What did you then do?

24 A I continued down East Fifth. I turned I believe
25 it was North Vance or Linton. I don't recall. But it's

1 one of the short streets here. I want to say it was
2 Linton. You can pretty much see all of North Vance. I
3 don't believe I saw the vehicle there. I continued down.
4 Took a right on Linton. Came back on East Main, just
5 basically making a big loop, big circle.

6 Once I got back on East Main, Officer Smith asked me
7 again I believe what color vehicle I was looking for. I
8 told him it was black. Shortly after that, he came back on
9 the radio and told me that he had a black SUV overturned
10 at the intersection of Woodside Avenue and East Main.

11 Q And did you proceed to that location?

12 A I did. I continued down East Main. After his
13 transmission that he had seen the vehicle, he got back on
14 the radio and stated that he was --

15 MR. WARDER: Objection to what he stated,
16 Your Honor.

17 THE COURT: I sustain the objection.

18 BY MRS. DRAWDY:

19 Q Did you hear radio traffic from Officer Smith?

20 A I did.

21 Q In response to that, what did you do?

22 A In response to his radio traffic --

23 Q Yeah.

24 A -- that he saw the accident?

25 Q And the subsequent radio traffic that you heard

1 from him.

2 A After he said he had seen the collision, --

3 THE COURT: Go ahead. Just ask another question.

4 BY MRS. DRAWDY:

5 Q Just describe what you did and what you saw.

6 A Officer Smith stated he saw the collision --

7 THE COURT: Let's state away from what Officer
8 Smith said. She's asking what you did. Not why but
9 what.

10 THE WITNESS: Okay. I continued down East Main.
11 I got almost to the intersection of Woodside Avenue.
12 At which point, I initiated my blue lights, continued
13 up across Woodside Avenue up West Main where I
14 observed Officer Smith struggling with Mr.
15 Escalante.

16 BY MRS. DRAWDY:

17 Q I want to show State's Exhibit 1. Can you show
18 me where you saw the SUV when you arrived at that
19 intersection.

20 A The SUV was over turned here.

21 Q And where did you see Officer Smith?

22 A Officer Smith and Mr. Escalante were here in
23 the field.

24 Q Approximately how far is that from the
25 intersection?

1 **A** My approximation would be a football field and a
2 half.

3 **Q** So about how many yards?

4 **A** 150, 200 yards.

5 **Q** Did you then assist Officer Smith?

6 **A** I did. I observed him struggling with the
7 Defendant, Mr. Escalante in the field. At which point, I
8 drove up to their position, exited my vehicle and assisted
9 in detaining Mr. Escalante.

10 **Q** And is the individual that you saw Officer Smith
11 struggling with in the courtroom today?

12 **A** Yes, ma'am.

13 **Q** Where is he seated?

14 **A** It's the Defendant.

15 **Q** What was done with Mr. Escalante after you took
16 him into custody?

17 **A** Once he was detained, he was placed back into
18 the back seat of my patrol vehicle. At which point, I
19 drove back to the collision site.

20 **Q** Just for a little bit of clarity here, I'd like
21 to put in State's Exhibit 12 and have you look at a frozen
22 frame from that.

23 **THE COURT:** You want him to stand or sit? You
24 want him to remain standing or have a seat?

25 **MRS. DRAWDY:** It is probably best that he

1 stood in front of witness chair.

2 **BY MRS. DRAWDY:**

3 **Q** All right. This is a freeze frame. Can you
4 tell me what we are looking at here.

5 **A** A video of the collision scene.

6 **Q** And what part of the collision scene does this
7 show?

8 **A** That is West Main. It appears he's standing on
9 the West Main Side.

10 **Q** Can you show in this video where Officer Smith
11 caught up with the Defendant?

12 **A** I can show you where I observed him.

13 **Q** Okay. Here you go.

14 **A** They were in the field in this area past the
15 pole is a grassy area here before this house. They were
16 up in this area.

17 **Q** And again, how far would you say that is from
18 the intersection?

19 **A** I would approximate 150 to 200 yards.

20 **Q** Thank you.

21 **A** Uh-huh (affirmative response).

22 **Q** Officer Blair, after Mr. Escalante was taken
23 into custody, where was he placed?

24 **A** When he was detained by myself and Officer
25 Smith, he was placed in the rear of my patrol vehicle.

1 **Q** And how long did he remain there?

2 **A** I would approximate maybe ten minutes until EMS
3 arrived.

4 **Q** And when EMS arrived, what was done with the
5 Defendant?

6 **A** He complained of injuries. At which point, EMS
7 placed him on a backboard and did their pre-check list,
8 whatever they do and then placed him inside the ambulance.

9 **Q** After he was placed in the ambulance, where was
10 he taken?

11 **A** Greenville Memorial Hospital.

12 **Q** Was he at that time handcuffed?

13 **A** He was.

14 **Q** Do you know who followed the, if anyone from
15 your agency followed the ambulance to Greenville Memorial?

16 **A** I did.

17 **Q** For what purpose?

18 **A** He had already shown that he would fled from the
19 scene.

20 **MR. WARDER:** Objection to the conclusions.

21 **THE COURT:** That's not objectionable.

22 **BY MRS. DRAWDY:**

23 **Q** Please proceed.

24 **A** He had already shown that he would flee the
25 scene of an accident. We knew that we had a person that

1 had been seriously injured. I did not want him to flee
2 from Greenville Memorial again.

3 Q And was your agency the agency investigating
4 this accident?

5 A No, ma'am.

6 Q At some point, did you retrieve your handcuffs?

7 A I did.

8 Q Where?

9 A Greenville Memorial Hospital.

10 Q And was another agency taking control of the
11 situation at that time?

12 A They were, Highway Patrol.

13 Q Do you remember what officer was at the
14 hospital?

15 A Trooper Edwards.

16 Q Please answer any questions Mr. Warder might
17 have.

18 A Yes, ma'am.

19 **CROSS-EXAMINATION**

20 **BY MR. WARDER:**

21 Q Officer, can you see that?

22 A Yes, sir.

23 Q On two previous occasions, you pointed out for
24 the Solicitor an area right in here?

25 A Yes, sir.

1 Q Across from this driveway?

2 A Uh, I don't recall that driveway.

3 Q Okay.

4 A My attention wasn't drawn to that.

5 Q Okay. But on this photograph, it's across from
6 a white spot. It looks like the house right here?

7 A Yeah. I would agree to that.

8 Q How far off the road was it?

9 A I would say they were approximately 30 yards off
10 the roadway.

11 Q Okay.

12 A That aerial view of that tree there that you're
13 showing --

14 Q Uh-huh (affirmative response).

15 A -- on the driveway kind of blocks the area in
16 which they were struggling.

17 Q So it would be kind of under the tree?

18 A I would say up further pass the tree towards the
19 house.

20 Q Towards these houses?

21 A No.

22 Q Towards this house?

23 A Yes. Up in this area here.

24 Q Not down in this area that you pointed to the
25 first two times.

1 **A** Well, earlier I said this area here.

2 **Q** You were not chasing this SUV, were you?

3 **A** I was not.

4 **Q** You had given statements that say I was not
5 chasing him?

6 **A** I have.

7 **Q** So you were no way in pursuit of him?

8 **A** I was not.

9 **Q** Thank you.

10 **THE COURT:** Redirect.

11 **REDIRECT EXAMINATION**

12 **BY MRS. DRAWDY:**

13 **Q** Officer Blair when you say "chasing", what do
14 you mean?

15 **A** Our chase policy or pursuit policy states that
16 you have to have your emergency equipment operating which
17 is the blue lights, the siren. And I never initiated a
18 traffic stop. I was not chasing the subject.

19 **Q** Were you following him?

20 **A** I was following the subject. Yes, ma'am.

21 **Q** Thank you.

22 **MR. WARDER:** No further questions.

23 **THE COURT:** You can step down and be excused. We
24 appreciate your time.

25 **THE WITNESS:** Yes, sir.

1 **THE COURT:** Call your next witness.

2 **MRS. DRAWDY:** The State calls Scott Ramsey.

3 **SCOTT RAMSEY**

4 having first being duly sworn testified as follows:

5 **THE CLERK:** Thank you. You may be seated. State
6 your full name for the record.

7 **THE WITNESS:** Scott Ramsey.

8 **DIRECT EXAMINATION**

9 **BY MRS. DRAWDY:**

10 **Q** Mr. Ramsey, you are an employee with Greenville
11 County EMS?

12 **A** That's correct.

13 **Q** How long have you been with EMS?

14 **A** Two years.

15 **Q** What type of training did you receive to work
16 with them?

17 **A** I received training with Greenville Tech, about
18 two years training.

19 **Q** What type of training and what is your
20 designation?

21 **A** I'm an EMT. I went through a state certified
22 course to be certified as an EMT.

23 **Q** What type of vehicle do you drive in when you
24 are working?

25 **A** I'm in a transport ambulance.

1 Q And how many people physically are in a
2 transport ambulance?

3 A Two.

4 Q Were you called to the scene of an accident on
5 February the 6th, 2005?

6 A Yes.

7 Q And where was that accident?

8 A That was on Woodside Avenue of Main Street.

9 Q I'm going to direct your attention to State's
10 Exhibit 1 and ask you to step down and describe using that
11 exhibit what you saw when you arrived at the scene.

12 A When we arrived, we came in from this direction
13 here. And we were facing here. And the first thing we
14 noticed was a vehicle sitting here in this parking lot
15 against the fence with significant damage to it.

16 Q What type of vehicle?

17 A It was a white car.

18 Q A sedan?

19 A A small four-door type of car.

20 Q And who did you, did you provide patient care to
21 that patient?

22 A I assisted once they had the patient removed
23 from the car. When we arrived, they had already had the
24 patient partially out of the car. I assisted in getting
25 the patient, finished securing the patient on to a spine

1 board and then on to the stretcher.

2 Q And is it EMS primarily who check out the
3 drivers and occupants of vehicles involved in a collision?

4 A Yes, it is.

5 Q Did you have occasion to check out an individual
6 named Rafael Escalante?

7 A Yes, I did.

8 Q Where did you first see Mr. Escalante?

9 A He was restrained and in the rear seat of the
10 city patrol car.

11 Q Can you describe what your initial contact with
12 him entailed?

13 A Yes, I approached Mr. Escalante. Actually an
14 officer approached me and said that he was in a rear seat.
15 So I approached him and asked him if he wanted us to check
16 him out. Initially, he said --

17 Q Who are you asking? The officer or Mr.
18 Escalante?

19 A Mr. Escalante. Asked him if he would like for
20 us to check him out. His initial response was no.

21 Q What did you do at that point?

22 A I informed him that if that was the case that I
23 would need to have documentation signature from him
24 stating that he was refusing treatment.

25 Q Did he in fact continue to refuse treatment?

1 **A** I informed him that I was going to get the
2 paperwork, I would be right back. Before I could get too
3 far away, he decided that he wanted to be treated.

4 **Q** What did you then do?

5 **A** I began to ask him questions concerning where he
6 hurt, if there were any injuries, pain, that sort of thing
7 and began to ask him questions to determine his level of
8 consciousness, what he remembered from the accident.

9 **Q** What did he tell you his injuries were?

10 **A** He complained of pain to his neck.

11 **Q** Any other injuries?

12 **A** Uh, he did not complain of anything else but
13 there were some minor abrasions noted to his arms.

14 **Q** And did you need a translator to talk with him?

15 **A** No, I did not.

16 **Q** What language did you converse with him in?

17 **A** English.

18 **Q** Did you have any difficulty understanding him?

19 **A** None.

20 **Q** Did he have any difficulty understanding you?

21 **A** Did not appear to have any difficulty
22 whatsoever.

23 **Q** What did you do after your initial assessment?

24 **A** I had someone help assist me to getting him
25 prepared to do the same thing we did with the other

1 patient to get him onto a spine board, C-collar and that
2 sort of thing to protect his spine. We got him into our
3 vehicle. At that time, I did a complete assessment of his
4 neuro-muscular.

5 Q During the time that you were dealing with him,
6 was he restrained in any way?

7 A He was.

8 Q How?

9 A Initially, he was restrained behind his back and
10 we had them move the cuffs to the front so that we can do
11 everything we needed to do.

12 Q Did you at some point take him to the back of
13 the ambulance?

14 A Yes, we did.

15 Q At that point, did you continue your assessment
16 of him?

17 A Yes, I did.

18 Q Did that include conversations about the
19 accident?

20 A Yes, it did.

21 Q What did you ask him?

22 A Uh, the questions pertaining to the accident
23 were does he remember what happened. His reply to me was
24 yes he did remember. He said he was running from law
25 enforcement because he did not have a Driver's License and

1 the vehicle belonged to his dad.

2 Q Did you have any further conversation with him?

3 A The only other conversations I had with him were
4 pertaining to here again, his level of consciousness. He
5 was able to answer all my questions appropriately. What
6 day of the week it was, that kind of thing.

7 Q Did you transport him to the hospital in your
8 ambulance?

9 A He was transported in my ambulance.

10 Q And was he restrained when he did that?

11 A Yes.

12 Q Where did you take him?

13 A We took him to Greenville Memorial.

14 Q Did you ask him what his name was?

15 A My partner did those questions, got that
16 information from him.

17 Q Was that included in your report?

18 A Yes.

19 Q And what was the name that he gave you?

20 MR. WARDER: Objection.

21 THE COURT: I sustain the objection.

22 MRS. DRAWDY: Please answer any questions Mr.
23 Warder might have.

24 THE WITNESS: Sure.

25 MR. WARDER: I have no questions of this

1 witness.

2 **THE COURT:** You may be excused.

3 **THE WITNESS:** Thank you.

4 **THE COURT:** Thank you. Appreciate your time.

5 Call your next witness.

6 **MRS. DRAWDY:** The State calls Chad Edwards.

7 (WHEREUPON, **CHAD EDWARDS** was first duly sworn.)

8 **MR. WARDER:** Your Honor, I have a matter to
9 take up.

10 **THE COURT:** All right. It's probably a good time
11 to take our afternoon break anyway. So if you will,
12 just follow the bailiff to the jury room.

13 (WHEREUPON, the jury exit at approximately 3:28 p.m.)

14 **MR. WARDER:** Your Honor, I can't remember who
15 she said her Chief Investigating Officer was but this
16 witness has been sitting in here and the sequester
17 situation. If this witness is not the witness that
18 Your Honor said that they could keep in here, then
19 they violated the rule on sequestration of witnesses.

20 **THE COURT:** I thought he was.

21 **MRS. DRAWDY:** He is the Chief Investigating
22 Officer.

23 **THE COURT:** Mr. McCauley said he was the scene
24 man, he was sequestered but he made very clear that
25 this other officer was in charge. All right. We'll

1 take about a ten minute break.

2 (WHEREUPON, a short recess was taken at approximately
3 3:29 p.m.)

4 (WHEREUPON, the Court resumed at approximately
5 3:47 p.m.)

6 **THE COURT:** The State's ready?

7 **MRS. DRAWDY:** The State's ready, Your Honor.

8 **THE COURT:** Bring in the jury.

9 (WHEREUPON, the jury enter at approximately
10 3:47 p.m.)

11 **THE COURT:** You may proceed.

12 **CHAD EDWARDS**

13 having previously been sworn testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MRS. DRAWDY:**

16 **Q** Mr. Edwards, you are employed with the South
17 Carolina Highway Patrol?

18 **A** Yes, ma'am.

19 **Q** How long have you been with that agency?

20 **A** It will be four years in January.

21 **Q** Could you describe the training your received to
22 become a Highway Patrol and any additional training that
23 you received in the last four years briefly?

24 **A** When I came on with patrol, patrol school was 22
25 weeks at the South Carolina Criminal Justice Academy in

1 Columbia. Your first nine weeks is your basic patrol that
2 everyone has to go through. The second 13 weeks are you
3 the Highway Patrol courses. After I concluded those 22
4 weeks, you go to FDO training where another officer shows
5 you some investigative skills that he's learned. Then you
6 come back to the academy and go through a two-week
7 accident investigation course.

8 Q As a South Carolina Highway Patrolman, what are
9 your duties?

10 A The duties of Highway Patrol is to know the laws
11 in the state of South Carolina. You have to know how to
12 enforce those laws and mostly do the accident
13 investigations.

14 Q Is accident investigation a big part of what you
15 do?

16 A Yes, ma'am.

17 Q You been in the courtroom today?

18 A Yes, ma'am.

19 Q Were you the primary investigating officer with
20 Highway Patrol on this accident?

21 A I was.

22 Q Approximately what time did you arrive on the
23 scene?

24 A I arrived at about 12:54.

25 Q Who else was at the scene when you arrived in an

1 official capacity?

2 A EMS, some Greenville City police officers.

3 Q And when you arrived at the scene, were you
4 bought up to speed as to what had transpired by the people
5 at the scene?

6 A Yes, ma'am.

7 Q What did you do after you spoke with them?

8 A First, when I arrived on the scene, I spoke with
9 a sergeant from the city who basically briefed me of what
10 had happened. Then after that, I started going on
11 information of the vehicles, stuff that we just have to
12 do.

13 Q What type of vehicles were involved in this
14 collision?

15 A There was a black Ford Expedition and a white
16 Oldsmobile.

17 Q Who was the Oldsmobile registered to?

18 A Vicki McCall Fulmer.

19 Q How did you get that information? Do you
20 recall?

21 A Yes, thorough our dispatch.

22 Q What did you use to get that information?

23 A The South Carolina Tag Registration.

24 Q The tag on the vehicle --

25 A Yes, ma'am.

1 Q -- is how you got that?

2 A Yes, ma'am.

3 Q Who was the black SUV registered to?

4 A Letitia Escalante.

5 Q How did you obtain that information?

6 A Through the same, our dispatchers by using the
7 tag that was on the vehicle.

8 Q What address is that registered to? Do you have
9 an address?

10 A The SUV?

11 Q Yes.

12 A 7 Topple Lane in Greenville.

13 Q After you obtained that information, did one of
14 your supervisors arrive at the scene?

15 A Yes, ma'am.

16 Q Who is that?

17 A Corporal Bill McCauley.

18 Q Okay. At some point, were you directed to go to
19 the hospital?

20 A I was.

21 Q For what purpose?

22 A He wanted me to check on the condition of Mrs.
23 Fulmer. As you heard, she wasn't doing well. Also had to
24 check on the condition of the other patient. I only got
25 to speak with him for just a brief second.

1 Q What was that patient's name?

2 A Rapheal Escalante.

3 Q Did you in fact go to the hospital?

4 A I did.

5 Q Did you make contact with Mr. Escalante at the
6 hospital?

7 A Yes, ma'am. I did.

8 Q Can you describe your interaction with him and
9 what transpired at the hospital.

10 A When I first made contact with him, all he asked
11 me was had the lady died. At that time, I did not know.
12 So I didn't have an answer for him. Thereafter, I spoke
13 with him, I went to check on Mrs. Fulmer.

14 Q And where was Mr. Escalante when you were
15 checking on Mrs. Fulmer?

16 A He was on the intermediate side of the hospital.

17 Q Did he receive treatment at the hospital?

18 A I believe he received x-rays.

19 Q How long were you at the hospital with him?

20 A I was at the hospital probably two and a half to
21 three hours.

22 Q Did you have conversations with him at that
23 time?

24 A I did not initiate any conversation at that
25 time. He just kept asking me how Mrs. Fulmer was doing.

1 Q What language did you converse with him?

2 A English.

3 Q Did you have any difficulty understanding him?

4 A No, ma'am.

5 Q Did he have any difficulty understanding you?

6 A He didn't appear to.

7 Q At some point, did you learn that Mrs. Fulmer
8 had passed away?

9 A I did.

10 Q And did you communicate with your supervisor who
11 was back at the scene of the collision?

12 A I did. I called him on the phone.

13 Q Did he convey information to you from interviews
14 of witnesses?

15 A Yes, ma'am.

16 Q And based on the information that you had
17 collected in your investigation, had you determine that
18 charges would be made against Mr. Escalante?

19 A I did.

20 Q And what charges did you make?

21 A I decided to charge reckless homicide, leaving a
22 scene with death and also no South Carolina Driver's
23 License.

24 Q And the No South Carolina Driver's License,
25 where is that charge?

1 **A** That's in magistrate court.

2 **Q** Has that been resolved as of this day?

3 **A** No, ma'am.

4 **Q** Did you in fact check to see if he had a
5 Driver's License before you made that charge?

6 **A** Yes, ma'am.

7 **Q** How did you do that?

8 **A** I did it through our dispatch. You have to give
9 the name and date of birth of you don't have a Driver's
10 License. They could check the State to see if he has an
11 in-state Driver's License.

12 **Q** And did he in fact have a South Carolina
13 Driver's License?

14 **A** No, ma'am.

15 **Q** At some point, was he released from the
16 hospital?

17 **A** Yes, ma'am.

18 **Q** What did you do at that time?

19 **A** At that time, Mr. Escalante, I placed him under
20 arrest. I read him his Miranda rights. I told him he was
21 being charged with Leaving the Scene with Death, Reckless
22 Homicide and No State Driver's License.

23 **Q** And at some point did you book him into the
24 jail?

25 **A** Yes, ma'am.

1 Q Under what name?

2 A Rapheal Escalante.

3 Q Please answer any questions Mr. Warder might
4 have.

5 **CROSS-EXAMINATION**

6 **BY MR. WARDER:**

7 Q You do accident reconstructions?

8 A Me personally?

9 Q Yes, sir.

10 A No, sir.

11 **MR. WARDER:** Thank you.

12 **THE COURT:** Thank you. Call your next witness.

13 **MRS. DRAWDY:** Your Honor, at this time, there
14 are two stipulations that defense counsel and the
15 State would enter that we would request the Court
16 reading into the record at this time.

17 **THE COURT:** Members of the jury panel, I told you
18 earlier that you are the judges of the facts in this
19 case and all disputes facts unless determined.
20 However, when the parties agree and they stipulate to
21 facts, it's for your purposes, however you wish to
22 factor it in as true facts.

23 But the parties have stipulated first that
24 Vickie McCall Fulmer was the driver and sole occupant
25 of a white 1994 Oldsmobile Cutlass Ciera 4-door

1 automobile which was involved in a collision at
2 approximately 12:15 p.m. on 2/16/2005 at the
3 intersection of Secondary 20, that's Woodside Avenue
4 and Secondary 845 which is Main Street, Woodside
5 Community within Greenville County.

6 Two, Vicki McCall Fulmer died at 2:20 p.m. on
7 2/6/2005 as a result of injuries that she received in
8 the above referenced collision. Three, the
9 Defendant, Rafael Mendoza Escalante, did not have a
10 valid South Carolina Driver's License on February
11 6th, 2005. He has never been licensed to drive in
12 the State of South Carolina. Those facts are agreed
13 upon by the parties.

14 All right. Call your next witness.

15 **MRS. DRAWDY:** Your Honor, that would be the
16 State's case.

17 **THE COURT:** All right. Members of the jury
18 panel, you have heard the State's presentation.
19 Under certain circumstances, the State would have a
20 right to present other testimony. But you have heard
21 all that, for all intents and purposes, you have
22 heard the case at this stage. We have to take a
23 break at this point. We have to take up legal
24 matters. Then I will call you back in here.

25 (WHEREUPON, the jury exit at approximately 3:58 p.m.)

1 **MR. WARDER:** Your Honor, we would like to ask
2 for a directed verdict at this time on Leaving the
3 Scene of an Accident. I would submit that the scene
4 was as testimony by the two officers was the area
5 that my client was at the time he was apprehended.

6 **THE COURT:** I deny that. I think that is a
7 question for the jury as to whether or not in an
8 automobile accident involving two automobiles at an
9 intersection would include up the hill or 150 yards.
10 I deny the motion.

11 **MR. WARDER:** Yes, sir.

12 **THE COURT:** Mr. Escalante, let me chat with you
13 for just a moment. Can you hear me?

14 **MR. ESCALANTE:** Yes, ma'am.

15 **THE COURT:** All right.

16 **MR. ESCALANTE:** Yes, sir.

17 **THE COURT:** We've reached a point in the trial
18 where you have a right to present defenses but you
19 don't have to. You are presumed by law innocent of
20 the charge against you. And you need not prove your
21 innocence. The State however must prove your guilt
22 beyond a reasonable doubt before this jury could
23 convict you and find you guilty.

24 You have a right to present a defense. You
25 could call witnesses. If you testify, you will be

1 cross-examined, that is asked questions by the State
2 and you will have to answer the questions that they
3 ask.

4 Are there any impeachable offenses?

5 **MRS. DRAWDY:** No, Your Honor.

6 **THE COURT:** Uh, if you choose to exercise your
7 constitutional right to remain silent, I will tell
8 the jury that you have exercised that right. I will
9 tell the jury they could not use that against you in
10 any way whatsoever. I will tell them not to discuss
11 in the jury room that you exercise your
12 constitutional right to remain silent. I will tell
13 them not to factor it into their own deliberation. I
14 will remind them that you are presumed innocent and
15 need no prove your innocence. Do you understand all
16 that?

17 **MR. ESCALANTE:** Yes, sir.

18 **THE COURT:** You have any question about it?

19 **MR. ESCALANTE:** No, sir.

20 **THE COURT:** To exercise your constitutional right
21 to remain silent is yours, it's not your attorney's
22 or the State's or mine. It's up to you. You
23 understand that?

24 **MR. ESCALANTE:** Yes, sir.

25 **THE COURT:** You wish to proceed?

1 **MR. WARDER:** No, sir. We haven't
2 contemplated or made a decision regarding the
3 afternoon. I talked to him yesterday. But now I
4 want to talk to him--

5 **THE COURT:** We'll take a short break.

6 **MR. WARDER:** -- regarding the ramifications.

7 **THE COURT:** We'll take a short break.

8 (WHEREUPON, a short recess was taken.)

9 (WHEREUPON, Stipulation was marked as Court's Exhibit
10 1 for identification.)

11 (WHEREUPON, Stipulation was marked as Court's Exhibit
12 2 for identification.) _

13 **THE COURT:** Mr. Warder, you ready to proceed?

14 **MR. WARDER:** Your Honor, we are. We're going
15 to rest.

16 **THE COURT:** It's twenty after 4:00. I think it's
17 a little late to argue and charge for the day. What
18 we'll do is come back at 9:00.

19 **MRS. DRAWDY:** Your Honor, can we discuss the
20 charge?

21 **THE COURT:** Why don't we let the jury go first so
22 they won't have to be sitting back there?

23 **MRS. DRAWDY:** I'm sorry.

24 **THE COURT:** That's alright. Bring in the jury.

25 (WHEREUPON, the jury enter at approximately

1 4:20 p.m.)

2 **THE COURT:** Members of the jury panel, the
3 Defense has also rested. So you have heard all the
4 evidence, all the testimony and received all the
5 exhibits. The next part of the trial would be the
6 arguments from the attorneys and then I will charge
7 you on the law.

8 We have been instructed by Chief Justice not to
9 start that process after 4:00 because if we do, that
10 means we'll be here at 8:00 or 9:00 at night. And
11 that's not fair to you as jurors. So we're going to
12 stop for the day and start back at 9:00. So you be
13 here at 9:00. We will start at 9:00.

14 You will hear the attorneys, closing arguments
15 of the State and then you will hear last from the
16 defense and then I will charge you the law. I
17 anticipate that all three of those things would take
18 maybe an hour. Then you will have the case in your
19 hands for your resolution.

20 Now, don't try to make up your mind. Don't let
21 yourself be exposed to any news coverage and that
22 might sound a little strange but I had it happen one
23 time. Don't make any examination of the scene.
24 You've got to rely on evidence that is presented in
25 the trial. You've got to base your verdict on

1 evidence presented here. So avoid that intersection.
2 Avoid that area. If you go home that way, find
3 another way. It would not be fair to the parties or
4 you.

5 I'm not saying either one of you would do it but
6 it happened one time. So I started reminding jurors
7 not to go by there or try to figure anything out. So
8 we will see you at 9:00 in the morning. Have a
9 pleasant evening.

10 (WHEREUPON, the jury exit at approximately 4:25 p.m.)

11 **THE COURT:** Requests for charge. What in
12 particular are you interested in. I have my regular
13 charge on credibility, judge of the law, judge of the
14 facts, presumption of innocence, reasonable doubt. I
15 charge the statute and I don't know what other items
16 I have. I haven't looked at it on leaving the scene.
17 Those are things, there's no circumstantial evidence
18 in this. No experts. I don't think there's a lesser
19 included.

20 **MRS. DRAWDY:** No, Your Honor. I'm
21 particularly interested in the fact that 26-5-1230 be
22 incorporated into the charge. It is referred to.
23 The charges, the caption for the charge is somewhat
24 unfortunate in leaving the scene. It's actually
25 failure to perform the duties of a driver. The

1 statute clearly says that you can not leave the
2 scene, 26-5-1210 until you have performed all the
3 duties of 56-5-1230 which include rendering aid,
4 obtaining aid, leaving your name. Things of that
5 nature. I just wanted to make sure that that was
6 going to be incorporated into the charge.

7 **THE COURT:** All right. I haven't looked at that.
8 If one section is first and then another, then it
9 will be charged.

10 **MRS. DRAWDY:** Yes, Your Honor. And do you
11 charge Victor v. Nebraska?

12 **THE COURT:** I will show you mine if I could print
13 it out. Judge Alford several years ago kind of came
14 up with a hybrid and I've kept up with it. I will
15 show it to you in a mine. We've already put it up.
16 It's kind of a hybrid. I do include the hesitate to
17 act or use of attitude firmly convinces you of guilt,
18 then you are to find him guilty. I think I used the
19 word possibility. I'm not sure that's the word I
20 used. I will show it to you.

21 **MRS. DRAWDY:** Thank you, Your Honor.

22 **THE COURT:** Anything else?

23 **MR. WARDER:** No, Your Honor.

24 **THE COURT:** All right. I'll see y'all at 9:00 in
25 the morning.

1 (WHEREUPON, the Court adjourned at approximately
2 4:27 p.m.)

3 (WHEREUPON, the Court resumed on October 10, 2006 at
4 approximately 9:16 a.m.)

5 **THE COURT:** Mr. Warder.

6 **MR. WARDER:** Your Honor, please the Court,
7 the presentment in this case provides for Rafael
8 Mendoza Escalante, then it's followed by two AKA's.
9 There's been no proof in the trial of anything of the
10 AKA's. I certainly think it's prejudicial. I would
11 ask the Court to redact out of the indictment all the
12 AKA's they were going to attribute to him.

13 **THE COURT:** I don't have any problem with that.

14 **MRS. DRAWDY:** The State has no problem with
15 that.

16 **THE COURT:** Also you've got him pleading guilty.

17 **MRS. DRAWDY:** Do you have the July term
18 indictment? I'm sorry. Why would it have that stamp
19 on them?

20 **THE COURT:** It had it on all of them. I noticed
21 that yesterday.

22 **MR. WARDER:** Your Honor, I don't have it on
23 my copy.

24 **MRS. DRAWDY:** It's not on my copy neither.
25 Can we redact that? The State certainly agrees that

1 be redacted.

2 THE COURT: I'm going to suggest that you have
3 somebody from your office white-out the AKA's and the
4 plea guilty.

5 MR. WARDER: Your Honor, so that nobody
6 doesn't do the nature human tendency to try to read
7 under the white-out, can we white it out and
8 photocopy it and send the photocopy to the --

9 THE COURT: Sure. You got that?

10 MRS. DRAWDY: Yes, sir.

11 THE COURT: You got somebody to do that.

12 MRS. DRAWDY: Since we are sending them a
13 photocopy anyway, should I just whiteout the
14 photocopy and redo it so we don't alter the original?

15 THE COURT: That doesn't --

16 MR. WARDER: That doesn't solve the problem.

17 THE COURT: You want to keep the original like it
18 is?

19 MRS. DRAWDY: Uh-huh (affirmative response).

20 THE COURT: Run a photocopy, white out on that
21 photocopy, then run a copy of --

22 MRS. DRAWDY: Yes, sir. That's what I was
23 proposing.

24 THE COURT: You have somebody your staff who can
25 do that while we go ahead?

1 Ready for the jury?

2 MRS. DRAWDY: Yes, Your Honor.

3 THE COURT: Ready for the jury?

4 MR. WARDER: Yes, Your Honor.

5 THE COURT: Send in the jury. The State will
6 open. The defense has a right to close.

7 MR. WARDER: I think I did rest on the
8 record. And I certainly would like to note for the
9 record that renewed my motions made.

10 THE COURT: Motions denied. You did rest on the
11 record because I remember talking to the jury about
12 it.

13 (WHEREUPON, the jury enter at approximately
14 9:19 a.m.)

15 THE COURT: Good morning. The State will make
16 its closing argument. The defense will then make
17 their closing argument. Then I will charge you on
18 the law.

19 MRS. DRAWDY: May it please the Court?

20 THE COURT: Yes, ma'am.

21 MRS. DRAWDY: Ladies and Gentlemen, what this
22 case is about and what you have to decide today is
23 what you firmly are convinced happened at this
24 intersection on February 5th -- 6th, 2005. What the
25 Defendant may or may not have done in the courtroom

1 yesterday has nothing to do with that.

2 The plea to reckless homicide simply meant that
3 he accepted responsibility for part of what he did
4 that day. That was, driving recklessly with reckless
5 disregard for the safety of others and as a result
6 causing the death of Vicki Fulmer. But that is not
7 complete story of what he did or failed to do that
8 day. Having done that, he had the obligation to
9 remain at the scene to assist her if he could or to
10 get help for her and to identify himself to the
11 appropriate authorities.

12 After Mr. Warder and I finished discussing the
13 case with you, the Judge will charge you on what the
14 law is and he will tell you that everyone has an
15 obligation under the law to remain at the scene, to
16 provide their name to authorities and to get help for
17 someone who has been injured in that accident whether
18 they are responsibility for the accident or not. If
19 they are in a position to do that, they have to do
20 it.

21 The only time they are allowed to leave the
22 scene is if they are going to get help for the victim
23 or to report the accident to the proper authorities.
24 Then they must return immediately to the scene. By
25 his own admission, Rafael Escalante had no intention

1 whatsoever of doing that. He made the decision to
2 run before the accident ever occurred and he kept
3 running afterwards.

4 He was running because he didn't have a license
5 and then because he had caused the death of someone
6 or injured to someone at that point and he knew in a
7 terrible accident. He was fleeing his
8 responsibilities at that time. And that is what you
9 have to decide is whether or not the State has firmly
10 convinced you that he failed to perform his duties.
11 He did not, he was not seeking authorities. He was
12 running from the authorities that this needed to be
13 reported to. It was very clear what he was doing
14 that day.

15 At the conclusion of the State's case, there
16 were two stipulations that were read to you. Two
17 stipulations of fact by the judge. And those are
18 things that you can accept as fact. One of those
19 stipulations is what happened at the beginning of
20 this case. The Defendant, Rafael Mendoza Escalante
21 did not have a valid South Carolina drivers license
22 on February 6th, 2005 and has never been licensed to
23 drive in the State of South Carolina.

24 The Defendant made the decision to drive that
25 day on the public roads even though he knew he did

1 not have a license. When he realized that law
2 enforcement was watching him and was interested in
3 him, he started speeding up and going in circles to
4 get away from the cruiser. Then he made the decision
5 to speed down this road and not stop for that stop
6 sign. As a result a lady lost her life.

7 Then he made the decision to run, not stay at
8 the scene, not fulfill his obligations but to run.
9 And had the police not arrived when they did, he may
10 never have accepted responsibility for any of this.
11 He may have never been compelled to do that.

12 I simply ask you today to look objectively at
13 the evidence that was presented to you in this
14 courtroom yesterday and make a sound decision about
15 what you believed happened that day and whether you
16 believe he fulfilled his duties of providing his name
17 to law enforcement, by attempting to report this to
18 law enforcement or attempting to get this lady help.
19 I submit to you he did not do that. Thank you.

20 **MR. WARDER:** Please the Court.

21 Mr. Foreman, Ladies and Gentlemen of the jury.
22 You have now heard all the evidence. You have heard
23 arguments of the State. I will speak to you briefly.
24 His Honor will charge you the law. This is a trial
25 like all trials that's bound by procedure and rules.

1 The rules that this trial is ran under, the State
2 must put up evidence that convinces you beyond a
3 reasonable doubt of all, each and every element of
4 the crime.

5 The burden upon the State is to put forth
6 evidence that is so convincing that it extinguishes
7 any real possibility of innocence. And that's what
8 we're called upon to do. The same rules state and
9 require that the Defendant put up no testimony. He
10 doesn't have to put up anything. The burden is
11 always upon the State to prove guilt and is never
12 upon the Defendant to prove innocence.

13 We must now talk about the 800-pound elephant in
14 this case. My client did not take the stand. My
15 client is entitled to not put up any testimony, any
16 evidence or testify. And it's guaranteed by both the
17 State and the federal constitution. That premise is
18 so deeply ingrained that you as a jury will not be
19 allowed to talk about it or consider that.

20 His Honor will charge you on the right of a
21 Defendant not to take the stand. And you, the rules
22 that apply to jurors are that you must follow the law
23 as His Honor gives it. His Honor has told you in
24 opening remarks and will tell you in closing that he
25 is the one that provides the law and will set aside

1 any individual belief that the law or the legislature
2 made a mistake or the law should be different then
3 you should follow the law as he gives it. That is
4 your part of the rules.

5 So I ask you in this case to follow the law, to
6 require the state to do the things they are required
7 to do, to require the State to put forth evidence
8 that's so powerful and so convincing that there can't
9 exist no real possibility of innocence. In other
10 words, a reasonable doubt has been defined as a
11 hesitation to act. In other words, if, after
12 considering all the testimony, you still hesitate to
13 act and decide this case, then I would submit to you
14 that would be a reasonable doubt. It would be a
15 doubt that would go to the persuasiveness and the
16 conclusiveness of the State's evidence.

17 I bring this up first because I think it is
18 important that you understand all the rules that have
19 proceeded in this trial. The judge's job in part was
20 to run the trial according to the law. Because when
21 we made objections, he ruled on the law. He ruled
22 that they be sustained or they be overruled and what
23 should happen. And the judge, unlike the jury, if he
24 makes a mistake in his duties, we can apply the
25 mistakes. We can appeal the rulings of the judge to

1 a higher court.

2 However, the findings of fact by a juror or by a
3 jury totaled together could never be set aside. In
4 all practical consideration, those are forever
5 findings of fact. That's why it's so important why
6 you must follow the law and consider them so
7 carefully.

8 Now, in this particular case, the issue is did
9 my client leave the scene. The issue is not do you
10 believe my client tried to leave the scene. In other
11 words, the crime is not trying to leave the scene but
12 leaving the scene. And you would have to decide, I
13 submit to you, what is the scene of the crime. The
14 State wants you to very narrowly construe that. They
15 want the scene of the crime to be I guess where the
16 glass dropped from the collision.

17 I want to reason with you as to what the scene
18 of the crime was. I think the testimony will show in
19 this case my client ran up a hill. A police car
20 pulled up beside him. An officer got out and stopped
21 him, put him back in the car and back down the hill
22 and he never left the scene. So the important thing
23 is to determine what is the scene.

24 Now, we've had some photographs introduced into
25 evidence. We have some blow-ups. And this was set

1 up for all the witnesses to show where my client was
2 apprehended. It was one witness that put him in this
3 area. I believe the police put him in this area.
4 One of the policemen put it a little more out here.
5 One of them it up under that tree or just pass that
6 tree going to the house.

7 The question becomes was the scene of the crime
8 some small area down here or was the scene of the
9 crime from where it might be observed and what
10 witnesses might have saw things and where certainly
11 the field of debris from a collision of these cars
12 could have flew. And I submit to you that this is a
13 crime scene photo, a photo taken in the
14 investigation. And the crime scene photo shows these
15 houses. I would submit to you that State's Exhibit
16 3, the photo of the crime scene shows just that.

17 I submit to you that if in the search of that
18 case, if the officer had found some piece of debris
19 that he considered particularly relevant over here or
20 over here or even back up here that they would
21 introduce that as evidence that came from the crime
22 scene. They would say when we came out to the scene,
23 we noticed as we drove up that that was part of the
24 crime scene.

25 The scene, I submit to you would be the area

1 where you might find witnesses from or where you
2 might find debris or things relevant that would be
3 investigated or should be considered in determining
4 who the witnesses are. Certainly, as the witnesses
5 testified, this a road that runs uphill. And
6 certainly if there had been a group of workers up
7 here, they would have been interviewed because they
8 would have been possible witnesses.

9 Mr. Escalante didn't leave the scene. He may
10 or may not have intended to when he ran up the hill.
11 And he could have changed his intentions before he
12 got there and still not have left the scene. Leaving
13 the scene is when you're gone. He was there. He was
14 treated at the scene. He was removed by an ambulance
15 at the scene. And regardless of what his intention
16 was, he didn't leave the scene.

17 Now, as you look at these photos, the photos of
18 the tree, the parking lot and the houses in this
19 photo or the houses that are over here, these are
20 looking across the Moon and Freeman parking lot.
21 Surely they were in the crime scene. The cars ended
22 up here to look for debris. It looked like a lot of
23 the momentum was in that direction and for witnesses.

24 There were witnesses that saw the car from
25 behind and certainly they were in the crime scene.

1 They came here, gave their testimony. There was
2 witnesses from behind, I believe there was an officer
3 that was even out of sight that gave you testimony
4 that was relevant or what the State says was relevant
5 to this case. That's because they were there at it.
6 That's why they got to testify. We take testimony
7 from fact witnesses, witnesses that tell about things
8 they observed or perceived with their senses, their
9 vision, their voice, their ears. And these photos
10 show in all of them the foreground and the rear
11 ground of the crime scene.

12 Now, this case is a case that you're going to
13 resolve upon your common sense and the testimony
14 that's been put in. The burden -- if something is
15 not in evidence that you need, it doesn't make any
16 difference whose fault it was that it's not here if
17 there's a question that should have been asked, if
18 there was some thing that should have been brought in
19 here that's not. If there's something gone that you
20 need to decide this case. And a juror, honestly and
21 conscientiously looking for the truth can not decide
22 it without that, then that's a failure of the
23 evidence.

24 His Honor will talk to you about reasonable
25 doubt. He will define reasonable doubt. And in

1 doing so, he will tell you that the evidence must be
2 so powerful that it extinguishes all real possibly of
3 innocence. Those words are important. What's a real
4 possibility? There can be two kinds of possibly, a
5 real possibility and an imaginary possibility.

6 And if there exist just a reasonable
7 possibility, possibility, then you would have to vote
8 not guilty. If it's the type of thing that would
9 cause you to hesitate to act, that's a not guilty
10 verdict. In this case, I submit to you that there is
11 a real possibility that the Defendant didn't leave
12 the crime scene. And certainly, I think you would
13 hesitate to act in deciding that.

14 His Honor will tell you that reasonable doubt
15 can arise from the evidence or the lack thereof. A
16 reasonable doubt from the evidence is when there's
17 conflict, when there is testimony that's not in
18 accord, when one issue has not been proven
19 completely. Reasonable doubt also arises from a lack
20 of evidence. That's what I really want to talk to
21 you about in this case. If there's anything that is
22 not here that you need to decide, that is a
23 reasonable doubt from a lack of evidence.

24 Now, your jury verdict has to be unanimous. All
25 jurors in serving can certainly deliberate and listen

1 to you as their fellow juror. No juror should ever
2 vote just to be in the majority or change their vote
3 unless that vote reflects their belief. In other
4 words, a jury verdict is the sum total of twelve mini
5 verdicts that jurors consciously seeking the truth
6 decided the way they see the evidence.

7 I submit to you in this case, the State's
8 evidence has proven that the crime scene would
9 certainly encumber the things you would see here and
10 here. And I submit to you even witnesses coming up
11 the street and down the street were all part of the
12 scene of that crime. All distances of glass could
13 have flown.

14 I ask you to consider that and use your common
15 sense. Don't let the State say that the point where
16 the glass dropped down here or where the car slid was
17 the scene of the crime. The scene of this crime was
18 every place that you could look or should have looked
19 or that people might have observed it. That's why
20 the photo's showing all of that. Thank you very
21 much.

22 **THE COURT:** Members of the jury panel, I
23 appreciate the attention you've given at this point.
24 I'm going to ask you to give me your attention for a
25 few more minutes while I charge you the law that you

1 are to apply the facts in this case. You will have
2 with you in the jury room the indictment. The
3 indictment is paperwork, a charge. It's not
4 evidence.

5 It's also where -- and I will show you this
6 later, Mr. Foreman, -- you would write the unanimous
7 jury verdict. Even though you will have this in
8 there, do not consider this as evidence.

9 Mr. Escalante, as anyone has a right to do, has
10 pled not guilty to this charge that the State has
11 lodged against him. That is Leaving the Scene of an
12 Accident. This plea of not guilty places on the
13 State the burden of proving his guilt beyond a
14 reasonable doubt. Mr. Escalante, just as anyone in
15 our system, is presumed innocent of this charge.
16 Anyone charged in our legal system with any offense
17 is presumed innocent of that charge.

18 This presumption of innocence is not a mere
19 legal theory or mere legal phrase. It is a
20 substantial right. It is a right which attaches to
21 an individual at the time they are arrested. It
22 remains with them as their case is processed through
23 our court system. The presumption of innocence in
24 one's favor exists even as I talk at this time. The
25 presumption of innocence remains in his favor as you

1 deliberation.

2 The presumption of innocence in favor of Mr.
3 Escalante is removed if and when, only if and when
4 you as the trial jurors in this case determine that
5 the State has proven his guilt beyond a reasonable
6 doubt. The State is not required to prove his guilt
7 beyond all and beyond every doubt but beyond a
8 reasonable doubt. A reasonable doubt has been
9 described by our courts as the kind of doubt that
10 would cause a reasonable person to hesitate to act.
11 Proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of someone's guilt.

13 There are very few things in our world that we
14 can know with absolute certainty. An absolute
15 certainty is not required in cases of this type. If,
16 based on your consideration of the evidence, you are
17 firmly convinced that Mr. Escalante is guilty of
18 leaving the scene of an accident with death
19 resulting, then you must find him guilty.

20 If, on the other hand, you think there is a real
21 possibility that he is not guilty of this offense,
22 then you must give him the benefit of that doubt and
23 find him not guilty. You must give Mr. Escalante
24 the benefit of any reasonable doubt arising on any
25 issue in this case. Reasonable doubt may arise from

1 evidence in the case or from the lack of evidence in
2 the case.

3 I told you earlier that I am the sole judge of
4 the law. You must take, accept and apply the law as
5 I charge it. This is true even if you think I charge
6 the law in error or even if you think the law should
7 be different. The oath require that you take, accept
8 and apply the law as I have charged it. You are not
9 to infer from anything that I have said or now say or
10 do that would give you an indication or opinion of
11 mind on the facts.

12 The trial judge is not allowed to formulate or
13 express to the jury any opinion on the facts. That
14 is solely your job. It is solely up to you to
15 examine the evidence and give to the evidence the
16 effect, the value, the weight and the truth you
17 believe it should have. In doing this, you may
18 believe one witness as opposed to several, several
19 witnesses as opposed to one. You may believe all,
20 part or none of the witness' testimony. Use your
21 common sense, your sense of reason. Use your
22 experience in life as you analyze the evidence.

23 As judges of the facts, you assess and you must
24 judge the believability, that is credibility of the
25 witnesses who testify. In assessing believability,

1 you use the things I just discussed. Use those
2 things that you in your day-to-day life find as being
3 indicative of truthfulness.

4 And you can use certain evaluators, the witness'
5 demeanor, how the witness acts on the stand. Is the
6 witness hesitate or straightforward? Is the witness
7 consistent, is the witness' testimony consistent or
8 inconsistent? You can consider any bias or prejudice
9 that a witness may have, whether a witness help or
10 hurt one side or the other. And you can consider the
11 opportunity the witness had to actually know the
12 things to which the witness testified. All these
13 things you can consider to determine the truth facts
14 by the law and return a verdict that speaks the
15 truth.

16 Mr. Escalante has exercised his constitutional
17 right to remain silent. Another principal of our law
18 as set forth in our constitution is that no one is
19 required to testify against himself. They have an
20 absolute right to remain silent. The exercise of
21 that right by Mr. Escalante can not and must not and
22 not in any fashion be used against him. It must not
23 be considered by you individually in your own
24 thinking, it must not be considered by you as a
25 group.

1 In fact, you are not to discuss or mention in
2 your deliberations the fact that Mr. Escalante
3 exercised his constitutional right to remain silent.
4 He is presumed innocent. He does not have to prove
5 his innocent. The State must prove his guilt beyond
6 a reasonable doubt.

7 Mr. Escalante is charged with leaving the scene
8 of an accident which resulted in the death of a
9 person. The State must prove beyond a reasonable
10 doubt this offense. This is a statutory offense.
11 It's an offense which has been enacted and made a law
12 by our legislature. The State must prove beyond a
13 reasonable doubt that Mr. Escalante was driving a
14 vehicle, that the vehicle was involved in an
15 accident, that the accident caused the death of
16 another person, that Mr. Escalante did not stop or
17 failed to return to the scene.

18 The State must prove beyond a reasonable doubt
19 that he failed to give his name, address and vehicle
20 registration and failed to give reasonable assistance
21 to the injured person as required by law in our
22 state. Reasonable assistance includes taking a
23 person to a doctor or hospital or making arrangements
24 to have the person taken if it is apparent that
25 treatment is needed.

1 The State must prove beyond a reasonable doubt
2 that Mr. Escalante knew or should have known that an
3 accident had happened. This may be shown by
4 circumstances or conditions which would cause an
5 ordinary reasonable person to believe that their
6 vehicle had been involved in an accident in which the
7 death of another person resulted.

8 As I told you in the jury room, you will have
9 with you the indictment. On the back of the
10 indictment there is the word verdict and four lines
11 beneath on the bottom line. You will sign and put
12 the date. On one of the other lines above that, you
13 will write the jury's verdict. The verdict must be
14 unanimous. All twelve juror's must agree.

15 Once all twelve jurors have agreed on a verdict,
16 then Mr. Foreman, you will write the verdict on one
17 of those lines. If the jury's unanimous verdict is
18 that Mr. Escalante is not guilty, you are to write
19 those two words on one of those three lines above
20 your signature. If the State has proven his guilt to
21 your satisfaction beyond a reasonable doubt, you
22 would write the one word guilty if that is the jury's
23 unanimous verdict.

24 If you have any questions while you are
25 deliberation, just knock on the door, let the bailiff

1 know. Write the question down and send it out. It
2 may be that I can write an answer or response on the
3 note. It may be that I need to bring you back in the
4 courtroom and you can have testimony replayed for you
5 if you wish. I do not have a written charge to send
6 in to you. Some states do that. We do not.

7 If you wish for me to go over any part or all of
8 the law, come back in. Let me know. Come back in
9 and we will do it here in open court recharge you on
10 any part of all of my charge. When you have reached
11 a verdict, knock on the door. Tell the bailiff. The
12 bailiff come and get us. -I am going to be starting
13 another trial. I can't interrupt it but I will send
14 for you as promptly as possible once I hear from you.

15 When you initially go into the jury room, do not
16 start deliberating yet. I must go over my charge
17 with the jury, I mean, with the lawyers. If I have
18 made an error, I will bring you back in and correct
19 it. If not, we will send in the exhibits and the
20 bailiff will tell you to start deliberating and we
21 also will have, the indictments will come in at that
22 time.

23 Mr. Hoover is the alternate. He will just
24 remain here when the jury exit at this time. I'm
25 going to let the jury go to the jury room. But don't

1 start deliberating and don't get to comfortable
2 because if I have to send for you, it will be very
3 prompt.

4 (WHEREUPON, the jury exit at approximately 9:51 a.m.)

5 **THE COURT:** Any exceptions?

6 **MRS. DRAWDY:** None from the State, Your Honor.

7 **THE COURT:** From the defense?

8 **MR. WARDER:** No, Your Honor.

9 **THE COURT:** Check and make sure you've got the
10 right indictment. Check and make sure the exhibits
11 are right and the indictment has been fixed.

12 **MR. WARDER:** Yes, sir.

13 **THE COURT:** Mr. Hoover, they'll give you your
14 cell phone back. If you'll go back downstairs to the
15 jury assembly room, you may be lucky enough to get on
16 another jury. One that you might actually get to
17 participate in. So if you'll just return to the jury
18 assembly room.

19 (WHEREUPON, the alternate exits.)

20 **MR. WARDER:** Your Honor, I have examined the
21 indictment with the Defendant and it's fine to submit
22 to the jury.

23 **THE COURT:** All right. Thank you, sir. We'll
24 send that in. Tell them to start deliberating.

25 (WHEREUPON, deliberation began at approximately

1 9:54 a.m.)

2 (WHEREUPON, the Court resume at approximately
3 10:39 a.m.)

4 **THE COURT:** Bring in the jury. Everybody who's
5 here, we do not tolerate outburst. If you can't
6 control your emotions during the verdict, please
7 leave now. Because if you do can not and you cause a
8 distraction, you'll be in contempt of court and I'll
9 have to put you in jail. All right. Bring them in.

10 (WHEREUPON, the jury enter at approximately
11 10:39 a.m.)

12 **THE COURT:** Mr. Foreman, I understand the jury
13 has reached a verdict.

14 **JUROR:** Yes, sir.

15 **THE COURT:** If you will hand to the bailiff, she
16 will hand it to me.

17 **THE CLERK:** Your Honor, this is case number 2005-
18 GS-5305, the State versus Rafael Escalante. He is
19 indicted for Leaving the Scene of an Accident with
20 Death. The verdict is guilty. Signed, Matthais
21 Foster.

22 This is your verdict so say you all?

23 (WHEREUPON, the jury respond affirmatively.)

24 **THE COURT:** Anything from the State before the
25 jury is dismissed?

1 **MRS. DRAWDY:** Nothing from the State, Your
2 Honor.

3 **THE COURT:** Anything from the defense before the
4 jury is dismissed?

5 **MR. WARDER:** No, Your Honor.

6 **THE COURT:** All right. Members of the jury
7 panel, I appreciate your help. I'm going to ask you
8 to return now to the jury assembly room down on the
9 first floor where you came in yesterday morning.

10 Everybody else remain seated while the jury
11 exit.

12 (WHEREUPON, the jury exit at approximately 10:41
13 a.m.)

14 **THE COURT:** Now that the jury has been dismissed,
15 anything from the defense?

16 **MR. WARDER:** I certainly move for a new
17 trial. My view the verdict is against all the
18 evidence.

19 **THE COURT:** I deny the motion. Thank you. Bring
20 the sentencing sheet. I will sentence on this and on
21 the other charge that he already pled guilty on the
22 homicide. Madam Solicitor, I'll be glad to hear from
23 you. You've indicated during the trial that he had
24 no record at least nothing that he could be impeached
25 with.

1 **MRS. DRAWDY:** He does have a record that the
2 Court does need to be aware of. And the family --

3 **THE COURT:** I will hear from the victim's family
4 also.

5 **MRS. DRAWDY:** -- would also like to speak.
6 The Defendant has a record that goes back to 1999 all
7 involving driving. He's been convicted nine times of
8 driving without a license.

9 **THE COURT:** How many?

10 **MRS. DRAWDY:** Nine. Two of operating
11 uninsured, two false information. Uh, he has
12 numerous bench warrants. He has to my knowledge
13 never voluntarily appeared for court. He has been
14 convicted of unregistered vehicle twice, shoplifting
15 once and at that time of this incident, he had two
16 pending charges for hit and run and one pending
17 charge for failure to stop for blue light which is
18 yet to be resolved in the court system.

19 **THE COURT:** If the family wants to come forward,
20 I'll be glad to hear from them.

21 **MRS. DRAWDY:** Your Honor, this is Norman
22 McCall.

23 **THE COURT:** Right here.

24 **MR. MCCALL:** I'm very nervous so I wrote this
25 down.

1 **THE COURT:** That's fine. Take your time and be
2 calm.

3 **MR. McCALL:** I'm Norman McCall and as the oldest
4 one left in the family, I've been asked to speak to
5 the court on behalf of the Vicki Fulmer, the Vicki
6 McCall Fulmer family. The Court has heard all the
7 testimony and the facts. What I'd like to do is just
8 share how the accident has impacted our family.

9 Vicki was the baby among the siblings. It kind
10 of makes her special. She was actually born when I
11 was in service. I saw her the first time when she
12 was two years old. She lost her husband to cancer
13 when her Megan, her daughter was just three years
14 old. She raised Megan and played the role of father
15 and mother. Did a great job.

16 After Megan finished college, began teaching.
17 Vicki moved in with her dad and my dad. When daddy
18 was 90, she was his primary care giver. He was a
19 father, a grandfather, a great grandfather and she
20 was on her way to pick him up from church when the
21 accident occurred that same morning.

22 That Sunday, February the 6th, '95 was a
23 beautiful day, even warm for February but the day of
24 her funeral wasn't. And daddy at the age of 90 came
25 down with the flu and pneumonia, was hospitalized.

1 And nine weeks on April the 12th, '05 after Vicki was
2 dead, daddy died. So we lost our baby sister. We
3 lost our father, grandfather, our great grandfather.
4 So then those were two traumas. Then we came to the
5 trauma of having to settle the estates and get houses
6 ready and sell them. It was very traumatic. It
7 affected the whole family.

8 Megan subsequently has married her fiancé that
9 she met in college. She didn't have a mother to the
10 wedding. She didn't have a grandfather to celebrate
11 with her, possibly walk her down the aisle. My
12 brother, my other sister and I tried to fill in and
13 bridge some of the gaps. But we all knew that it was
14 just not the same.

15 Your Honor, we don't want revenge. We want
16 justice. We feel that justice will be served if
17 Rafael is given the maximum sentences allowed by law
18 and that these sentences were run consecutively as
19 opposed to concurrently. We'd like to express to Mr.
20 Escalante through you that although it hasn't been
21 requested, the entire family has forgiven him for
22 what happened. We can't go through life with
23 bitterness and anger. I had to settle that literally
24 at lunch that Sunday that Vicki was killed for my own
25 self.

1 And it would be as he's serving his time, paying
2 his debt to society, our prayers are with him, real
3 prayers from real Christians that he would come to
4 know Jesus Christ as his savior while he's in prison
5 and that his life while he's there and the rest of
6 his life would be changed. Thank you again for this
7 opportunity.

8 **THE COURT:** Anything else from the State?

9 **MRS. DRAWDY:** Nothing from the State.

10 **THE COURT:** Mr. Warder.

11 **MR. WARDER:** Your Honor, my client is 24
12 years old. He worked construction on a regular
13 basis. He support his whole family. He lives with
14 his sister who has two children. He supported them,
15 gave money to his mother. A hard worker, worked most
16 every day, worked in Atlanta some. Back here the
17 weekend this happened from a job to see the family.
18 Your Honor, it's a terrible accident.

19 As to the reckless homicide, it's certainly a
20 bad set of facts. I feel just the opposite way about
21 the leaving the scene. I feel it's a case that if he
22 left the scene, he went a very short distance was
23 caught almost immediately and bought back. The time
24 he left there was other people there giving help and
25 aid. Had he called, he wouldn't have been one second

1 quicker from the 911 call that had already been made.

2 I guess I'm asking for the same thing that
3 victims are asking. I'm asking for justice for a
4 young man that has made some mistakes. It's a young
5 man that has a lot of good about it. His family
6 knows that in his effort to support them. As we've
7 already discussed in the court, Your Honor, whatever
8 sentence you give is done, he'll be deported. I
9 certainly urge in this particular case the minimum
10 sentence.

11 **THE COURT:** Mr. Escalante, you want to say
12 anything?

13 **MR. ESCALANTE:** Yes, ma'am. I would like to tell
14 the people I'm very sorry. I didn't mean to run the
15 stop light. I'm very sorry. I'm very sorry I make a
16 big mistake. I'm very sorry. That's it.

17 **THE COURT:** For the last six years, you've been
18 anything but responsible. You've got a history of
19 irresponsibility and you've been called to account.
20 I disagree with counsel. They are not mistakes.
21 Mistakes happen once or twice. There is a history of
22 irresponsibility rather than mistakes.

23 I'm sure there is a good side. There's a good
24 side to most people. It's hard to see with this
25 history of irresponsibility at least as far as his

1 relationship to his behavior to the rest of the
2 world, good to his family and not good to anybody
3 else.

4 Even though he will be deported, with the kind
5 of history he has, any fool would think that he won't
6 be back. His family is here. And as irresponsible
7 as he is, there would be a revolving door between
8 here and I don't know if he's in Mexico or one of the
9 other South American country, I just know he's
10 Hispanic. Where he came from, he'd gotten in once.
11 Only a fool would think he wouldn't come back.
12 That's not my problem. That's a higher level
13 attending to those discussions as we speak.

14 Mr. Escalante, I'm going to sentence you to 25
15 years on Leaving the Scene of the Accident, 10 on the
16 Homicide. I will run them concurrent so that you
17 have a 25-year sentence. Maybe by the time he gets
18 out, he would have matured to some extent. But
19 somebody needs to be off the streets, out of these
20 automobiles, away from people who are families living
21 good lives, obeying the laws. He won't be around
22 them for a while. Thank you. We'll be at ease for a
23 few minutes.

24 **END OF PROCEEDINGS**
25

FORM 5

2009-CP-23-

2315

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

IN THE COURT OF COMMON PLEAS

RAFEAL ESCALANTE #306027)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LIEBER CORRECTIONAL INSTITUTION
P.O. BOX 205, RIDGEVILLE, SC. 29472
2. Name and location of Court which imposed sentence GreenVille County
General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2005-GS-5305 (Leaving the Scene of Accident Resulting in

death

(b) 2005-GS-5307 Escape

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) October 10, 2006 25 years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty jury trial

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. affirmed conviction and sentences

ii. _____

iii. _____

(c) the date of each such result:

i. December 18, 2008

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Op. No. 2008-UP-714

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

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

(a) Ineffective Assistance of Counsel

(b) Denial of 6th and 14th Amendments

(c) _____

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

(a) see attached memorandum of law in support

(b) same as above

(c) same as above

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

(a) any petition in a State Court under South Carolina Law? No

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

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

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

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

no, first filing PCR

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) no, first filing PCR
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? no
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. N/A
- ii. Richard Warder, Esquire
Greenville, County Bar
- iii. Robert Dudek, Esquire
S.C. Appellate Defense
- (b) the proceedings at which each such attorney represented you:
- i. ii Richard Warder, trial and sentencing
- ii. iii Robert Dudek, Direct Appeal
- iii. _____

STATE OF SOUTH CAROLINA
 IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE

Indict.No. 05-GS-23-5305, 5307

RAFEAL M. ESCALANTE #306027.....PETITIONER,

-VS-

STATE OF SOUTH CAROLINA.....RESPONDENT,

MEMORANDUM OF LAW IN SUPPORT OF
 POST CONVICTION RELIEF APPLICATION
 BROUGHT PURSUANT TO: S.C. CODE ANN.
 §17-27-20 THROUGH §17-27-160

Respectfully Submitted,

/s/ Rafeal Escalante

Rafeal Escalante

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

RAFEAL M. ESCALANTE #306027) Indict.No. 05-GS-23-5305, 5307

PETITIONER,)

-V-

) MEMORANDUM OF LAW IN SUPPORT OF

STATE OF SOUTH CAROLINA) POST CONVICTION RELIEF APPLICATION

RESPONDENT,) BROUGHT PURSUANT TO: S.C. CODE ANN

) §17-27-20 THROUGH §17-27-160

COMES NOW, Rafeal Escalante, pro-se, herein after as
Petitioner, seeking relief in this Honorable Court claiming that
his Sixth Amendment right to the effective assistance of trial
counsel was violated at trial. Further, that his Fourteenth
Amendment right to due process of law was violated as well, that
is protected by the State and Federal Constitution. Through the
issues presented, statement of facts and citations of authorities
relied, Petitioner will show unto this Court his entitlement to
the requested stated herein.

Respectfully Submitted,

/s/ Rafeal Escalante

Rafeal M. Escalante

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO STRIKE JUROR
NUMBER 56 BECAUSE HIS BROTHER IS AN ATTORNEY, WHICH IS A RACE
NEUTRAL REASON TO STRIKE?

FACTS

During Jury selection in the instant case the Trial Judge made the following inquiry:

THE COURT: Are any of you or a member of your immediate family involved in law enforcement at any level? Anything from military police to local sheriff or municipal officer or in the prosecution of criminal cases? Anybody in your family involved...[Tr.p.22, L.21-25]...the prosecution of criminal cases at any level? Anything from General to U.S. Attorney, anything like that. If so please stand.

All right. Yes sir. Your name and number.

POTENTIAL JUROR: Matt Foster. My number is 56. I have a brother that's an attorney.

THE COURT: Okay. Just remain standing...[Tr.p.23, L.1-7].

To this inquiry juror 56, prospective juror responded that he had close relatives that worked with the judicial system. [Tr.p.23, L.5-6].

Since Juror 56 stated that his brother was an attorney. Petitioner contends that counsel was ineffective for failing to strike Juror 56 because of his relationship and possibilities of being pro-law enforcement.

Petitioner contends that the reason that counsel should have moved to strike the juror was legitimate and race neutral, because it is plausible to believe that Matt Foster, Juror 56 is pro-law enforcement. See State v. Ford 334 S.C. 59, 512 S.E.2d 500 at 504 (1999). Counsel's failure to exercise a preemptory strike against Juror 56 was prejudicial to Petitioner's cause at trial.

Petitioner contends that he was denied due process of law because his right to exercise a preemptory challenge against juror 56 was impaired because of counsel's negligence to strike juror 56.

DISCUSSION

In State v. Richburg 304 S.C. 162, 403 S.E.2d 315 (1991), the State's explanation that a juror was anti-law enforcement was race neutral and legitimate, as was in the instant case, it would have been a legitimate reason to strike juror 56 on the grounds of the possibility of being pro-law enforcement, which is also a race neutral reason for the strike.

Petitioner contends that his right to a fair trial was abridged because he was denied the right to a trial by an impartial jury.

In State v. Short 333 S.C. 473, 511 S.E.2d 358 (S.C.1999) The Court of Appeals, in finding reversible error, adopted the analysis of United States v. Annigon 96 F.3d 1132 (9th.Cir.), requiring [no] showing of actual prejudice to reverse for

Petitioner is not looking with hindsight knowledge of what course of conduct would have produced a different result. Rather, all the facts are being viewed from the prospective of counsel at the time of the incident.

Petitioner is taking into account all of the circumstances of the case, but only as to those circumstances as were known to [counsel] at the time in question. Douglas v. Wainwright 714 F.2d 1532, 1554 (11th.Cir)(quoting Washington v. Watkins 655 F.2d 1346, 1356 (5th.Cir)).

The failure of counsel to exercise a preemptory strike to challenge juror 56 cannot be viewed as strategic, but rather is negligence. Workman v. Tate 957 F.2d 1339 (7th.Cir.); Crisp v. Duckworth 743 F.2d 585, cert. denied 469 U.S. 1226 (1985).

*No- says
Att not
effective
fornt
interview
witness*

Petitioner contends that counsel knew it would be prejudicial to Petitioner to have someone on the jury with a family member involved with the judicial system.

As previously stated it is legitimate to strike a juror with close family members working as an attorney, especially since counsel did not conduct any vior dire of cause as to what type of attorney juror 56's brother was, because it is very plausible that the attorney may have been pro-law enforcement.

For the aforementioned violations of Petitioner's rights that denied him constitutionally guaranteed right to the effective assistance of counsel that is protected by the Sixth Amendment as well as his Fourteenth Amendment right to Due Process of law,

ISSUE (B) WAS COUNSEL INEFFECTIVE FOR FAILING TO STRIKE JUROR
NUMBER 202 BECAUSE HIS BROTHER IS AN ATTORNEY, WHO IS AFFILIATED
WITH LAW ENFORCEMENT, WHICH IS A RACE NEUTRAL REASON TO STRIKE?

FACTS

During Jury selection in the instant case the Trial Judge made the following inquiry:

THE COURT: Are any of you or a member of your immediate family involved in law enforcement at any level? Anything from military police to local sheriff or municipal officer or in the prosecution of criminal cases? Anybody in your family involved...[Tr.p.22, L.21-25]...the prosecution of criminal cases at any level? Anything from General to U.S. Attorney, anything like that. If so please stand.

THE COURT: Okay. Yes, Sir.

POTENTIAL JUROR: George Howard. My brother is an attorney.

THE COURT: Okay. Would the fact that you have these situations that there is involvement with law enforcement, would this prevent any of you from being...[Tr.p.23, L.20-25]..fair and impartial? If so, please raise your hand.

THE CLERK: 202, George Howard, Jr.

MR. DRAWDY: Please present Mr. Howard.

THE CLERK: What says the Defendant?

MR. WARDER: Please swear the juror.
[Tr.p.28, L.18-22].

To this inquiry juror 202, prospective juror responded that he had close relatives that worked with the judicial system. [Tr.p.23, L.21-22].

Since Juror 202 stated that his brother was an attorney. Petitioner contends that counsel was ineffective for failing to strike Juror 202 because of his relationship and affiliations with the judicial system that could render possibilities of being pro-law enforcement.

Petitioner contends that the reason that counsel should have moved to strike the juror was legitimate and race neutral, because it is plausible to believe that George Howard, Juror 202 is pro-law enforcement. See State v. Ford 334 S.C. 59, 512 S.E.2d 500 at 504 (1999). Counsel's failure to exercise a preemptory strike against Juror 202 was prejudicial to Petitioner's cause at trial.

Petitioner contends that he was denied due process of law because his right to exercise a preemptory challenge against juror 202 was impaired because of counsel's negligence to strike juror 202.

DISCUSSION

In State v. Richburg 304 S.C. 162, 403 S.E.2d 315 (1991), the State's explanation that a juror was anti-law enforcement was race neutral and legitimate, as was in the instant case, it would have been a legitimate reason to strike juror 202 on the grounds of the possibility of being pro-law enforcement, which is also a

race neutral reason for the strike.

Petitioner contends that his right to a fair trial was abridged because he was denied the right to a trial by an impartial jury.

In State v. Short 333 S.C. 473, 511 S.E.2d 358 (S.C.1999) The Court of Appeals, in finding reversible error, adopted the analysis of United States v. Annigon 96 F.3d 1132 (9th.Cir.), requiring [no] showing of actual prejudice to reverse for infringement of the Federal Statutory right to exercise a preemptory challenge.

Petitioner is not looking with hindsight knowledge of what course of conduct would have produced a different result. Rather, all the facts are being viewed from the prospective of counsel at the time of the incident.

Petitioner is taking into account all of the circumstances of the case, but only as to those circumstances as were known to [counsel] at the time in question. Douglas v. Wainwright 714 F.2d 1532, 1554 (11th.Cir)(quoting Washington v. Watkins 655 F.2d 1346, 1356 (5th.Cir)).

The failure of counsel to exercise a preemptory strike to challenge juror 202 cannot be viewed as strategic, but rather is negligence, especially since Counsel failed to strike juror 56 for the very same reasoning. Workman v. Tate 957 F.2d 1339 (7th.Cir.); Crisp v. Duckworth 743 F.2d 585, cert. denied 469 U.S. 1226 (1985).
 NO-This case states Atty in-
 for failing to even
 interview witness.

Petitioner contends that counsel knew it would be prejudicial to Petitioner to have someone on the jury with a family member

involved with the judicial system.

As previously stated it is legitimate to strike a juror with close family members working as an attorney, especially since counsel did not conduct any vior dire of cause as to what type of attorney juror 202 or 56's brothers were, because it is very plausible that the attornies may have been pro-law enforcement. As the Court promptly pointed out..."Would the fact that you have these situations that there is involvement with law enforcement...[Tr.p.23, L.23-25].

For the aforementioned violations of Petitioner's rights that denied him constitutionally guaranteed right to the effective assistance of counsel that is protected by the Sixth Amendment as well as his Fourteenth Amendment right to Due Process of law, Petitioner will forever pray that this Court will grant the requested relief of a new trial.

ISSUE (C) WAS COUNSEL INEFFECTIVE FOR CONCEDED PETITIONER'S GUILT TO THE JURY, THUS RELIEVING THE STATE OF THE BURDEN OF PROVING PETITIONER'S GUILT BEYOND A REASONABLE DOUBT?

FACTS

During opening remarks to the Jury the Trial Court told the following: "The only indictment that is before the Court for your disposition is one one Leaving the Scene of an Accident. And that's what Mr. Escalante is on trial for. That is the issue before you that you will be determining. He has entered a plea of not guilty. And to this plea of not guilty, the State must respond by presenting evidence to....[Tr.p.34, L.19-25]...prove his guilt beyond a reasonable doubt before you convict him. [Tr.p.35, L.1-2].

The Court has told the Jury that Petitioner has plead "[n]ot guilty" and it is therefore the State's burden of proving Petitioner's guilt beyond a reasonable doubt.

Coming directly after the Court's remarks, the State gave the following opening statement to the Jury, as recorded:

MRS. DRAWDY: The crime that was committed at that time.....[Tr.p.39, L.25]....was committed by Rafeal Escalante who was driving a large Ford SUV at the time and ran a stop sign at a very high rate of speed knocking her almost 100 feet through a chain-linked fence. She died within several hours at the hospital.

Mr. Escalante did not offer to help her. He did not do what our law requires that every citizen who is involved in any type of traffic collision to remain at the scene, to make sure that anyone injured in the collision receives medical attention and to provide information about himself, the vehicle he's driving.

He chose to get out of his overturned vehicle and run. And that is what constitutes the crime the crime of Leaving the Scene an Accident resulting in death.

It's a basic requirement. Not only a moral requirement. But a requirement that the law places on everyone who drives an automobile in our state.

You will hear testimony from eyewitnesses to the scene and from law enforcement officers who were involved in this incident and who made the charges after the investigation I don't expect this to be a very terribly lengthy trial But I would appreciate very much your focusing on the issues at hand. There will...[Tr.p.40, L.1-25]...be several stipulations of fact in this trial you don't need to worry about.

But basically the issue in this case is whether he left the scene in the common sense form of it and in the legal sense of it. And there is no question that he ran from the scene. The only reason he's here today is because someone chased him and brought him back. That would be the evidence that the State will present to you..[Tr.p.41, L.1-9].

After the State's opening, Petitioner Counsel's gave the following statement to the Jury, as recorded:

MR. WARDER: Ladies and Gentleman of the Jury, most things in this case have already been stipulated to or in agreement. There is no question that someone dies as a result. There's no question that initially my client when he got out of his car went and looked at the victim and took off and ran.

The issue we are deciding is whether he left the scene. The scene would be something that we'll talk about after you have heard the testimony. My client never left the scene. He was apprehended at the scene. The crime would take the actual departure from that area. And you will hear the law as His Honor will charge it at the end of this case.

We ask that you listen carefully to this...[Tr.p.41, L.11-25].....testimony. The testimony is not going to be greatly different. But one of the issues that we're focusing on is where was Rafael when he was apprehended. All the other issues have been disposed of. My client has accepted responsibility for the accident and his conduct at the accident. The only question is this one little piece, this one little charge that's outstanding. That's what you will be determining. I thank you very much. [Tr.p.42,, L.1-9].

DISCUSSION

Petitioner contends that he was denied his constitutional right to the effective assistance of counsel because his court appointed attorney conceded in his opening argument to the jury that there was no reasonable doubt regarding one of the factual issues in dispute, that was whether Petitioner left the scene or not, and thus in doing so overrode Petitioner's plea of not

guilty by telling the Jury that Petitioner "did run from the scene", and has accepted responsibility for his conduct.

The adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an advocate". Anders v. California 87 S.Ct. 1396 (1967). The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted even if the defense counsel may have made demonstrable errors the kind of testing envisioned by the Sixth Amendment has occurred. But if the process loses it's character as a confrontation between adversaries, the constitutional guarantee is violated. Cronic 466 U.S. at 656-57, 104 S.Ct. at 2045-46.

Petitioner further contends that a criminal defendant is also protected from unfairness in the criminal process by the due process clause requirement that his guilt be "proved" beyond a reasonable doubt.

The United States Supreme Court has held that, "The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. In re Winship 90 S.Ct. 1068 (1970), The Supreme Court has also stated that "due

process commands that no man shall lose his liberty unless [the Government has borne the burden of producing the evidence and convincing the factfinder of his guilt"]. Spencer v. Randall 78 S.Ct. 1332 (1958). When a defense attorney concedes that there is no reasonable doubt concerning factual issues in dispute, the Government has not been held to it's burden of persuading the jury that the defendant is guilty.

The Supreme Court recognized in Cronic that there are circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified. Cronic 104 S.Ct. at 2046. The Court identified the complete denial of counsel or the deprivation of effective representation at a critical stage of an accused's trial as justifying a presumption of prejudice. *Id* at 104 S.Ct. 2047.

The Strickland test, requiring a showing of prejudice caused by counsel's ineffectiveness, is applicable, (1) in cases where the record reflects that an attorney's errors or omissions occurred during an inept attempt to present a defense, or (2) that he/she engaged in an unsuccessful maneuver that was intended to assist the defendant in obtaining a favorable ruling. (quoting U.S. v. Swanson 943 F.2d 1070, at 1073.

When counsel concedes a client's guilt during the guilt-innocence phase of a trial in spite of the clients earlier

plea of not guilty and without the defendant's consent, counsel clearly provides "ineffective assistance of counsel" regardless of the weight of evidence against the defendant or the wisdom of counsel's honest approach strategy. Francis v. Spraggins 720 F.2d 1190 (11th Cir); Wiley v. Sowders 647 F.2d 642 (6th.Cir); North Carolina v. Harbison 315 N.C. 175, 337 S.E.2d. 504. The gravity of the consequences of a decision to plead guilty or not to admit one's guilt demands the decision remain in the defendant's hand.

An attorney cannot deprive his client of the right to have the issue of guilt-innocence presented to have the jury as an adversarial issue on which the State bears the burden of proof without committing ineffective assistance of counsel.

In the instant case counsel's opening argument was not merely a negligent misstep in an attempt to champion Petitioner's cause. The concession that there was no doubt that Petitioner "ran from the scene" was a clear abandonment of the defense of Petitioner at a critical stage of the proceeding. In Herring v. New York 95 S.Ct. 250 (1975), The United States Supreme Court recognized the importance of the opening and closing argument to the criminal defendant. The Court found that a New York law which allowed every judge in a non jury criminal trial deny counsel any opportunity to make closing argument deprived the accused of his constitutional right to the assistance of counsel Id at 95 S.Ct. 2556.

A lawyer who informs the jury that it is his view of the evidence that there is no reasonable doubt regarding one of the factual issues that are in dispute has utterly failed to subject the prosecution's case to a meaningful adversarial testing. U.S. v. Cronin 104 S.Ct. at 2047. The Tenth Circuit has recognized that "an attorney who adopts and acts upon a belief that his client should be convicted fails to function in any meaningful sense as the Government's adversary. Osborne v. Shillinger 861 F.2d 612 (10th cir.1988)(Quoting Cronin 104 S.Ct. at 2051) Counsel's statement conveyed to the jury his belief that Petitioner was in fact guilty. Here counsel has utterly failed to function as the Government's adversary during his summation to the jury. The action of counsel has made it irrelevant to charge the jury on the law, because counsel has admitted to the jury that Petitioner is guilty.

Here Counsel in effect said Petitioner is guilty and members of the jury should find Petitioner guilty and not feel bad about it. This argument by counsel not only fails to uphold the responsibility of defense counsel, but it is also just plainly wrong from another standpoint. There are many cases that uphold admonitions by the trial Court that defense Counsel is not to inform the jury of his opinion of the guilt or innocence of the defendant.

Customarily, this is when defense counsel asserts in effect,

"I believe this man is innocent because otherwise I would not be here defending him. This is universally held to be an improper argument. United States v. Young 105 S.Ct. 1038 (1984)(defense counsel, like the prosecutor must refrain from interjecting personal beliefs into the presentation of his case); United States v. Swafford 766 F.2d 426 (10th.Cir.)(a lawyer's assertion of personal opinion during trial is an example of improper advocacy); United States v. Singer 660 F.2d 1295 (8th.Cir.)(a personal expression before the jury is objectionable) 102 S.Ct. 1030 (1982); United States v. Alanis 611 F.2d 123 (5th.Cir.)(An attorney may not express his personal opinion regarding a defendant's guilt), 100 S.Ct. 1067 (1980); United States v. Bess 593 F.2d 749 (6th.Cir.)(personal opinions of counsel have "no place at trial".); United States v. Cain 544 F.2d 1113 (1st.Cir.)(It is of course, elementary that statements of counsel as to personal belief or opinions are improper.).

In the instant case clearly, counsel was not obligated nor ethically authorized to tell the jury what he did, and deny Petitioner a defense at trial. Petitioner argues this issue under the standard set forth in Cronic 104 S.Ct. 2039 to 2051. Therefore, no prejudice has to be specified, Yet the prejudice incurred is apparent by counsel's opening argument which denied Petitioner a fair trial and the right to the effective assistance of counsel, that is guaranteed by the Sixth Amendment of the S.C. Const. and the U.S. Const.

CONCLUSION

WHEREFORE, Petitioner believes that through the issues presented and citations of authorities relied that he has shown unto this Honorable Court his entitlement to relief.

THEREFORE, Petitioner will forever pray that this Court will grant the requested relief of a new trial.

Respectfully Submitted,

/s/ Rafael Escalante

Rafeal Escalante

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

CERTIFICATE OF SERVICE

I, Rafeal Escalante, do hereby swear under the penalty of perjury that I have mailed the Original and (1) one copy of the enclosed Post Conviction Relief Application and Memorandum of Law in Support to the Greenville County Clerk of Court. This was done by placing the aforesaid documents in a properly addressed, sufficient postage affixed envelope and placed in the U.S. Mail Room here at Lieber Correctional Institution in Ridgeville, SC. 29472.

Respectfully Submitted,

/s/ Rafeal Escalante

Rafeal Escalante

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 16th DAY OF March, 2009

Christina J. Walker

NOTARY PUBLIC

MY COMM. EXPIRES 4/4/2011

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

vacate sentence and conviction or in the alternative
remand for a new trial or whatever relief this court deems
appropriate to serve justice

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Dorchester)

I, Rafeal Escalante, 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.

Rafeal Placencia Escalante

SWORN to and subscribed before me this 16th
 day of March, 2009.

Debra J. Walker (L.S.)
 Notary Public

My Commission Expires: 4/4/2011

2009-CP-23-

2315

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Rafeal Escalante, 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 thereof.

Rafael placencia Escalante
Applicant

SWORN or affirmed to and subscribed before me this

16th day of March, 2009.

[Signature]
Notary Public

My Commission Expires: 4/4/2011

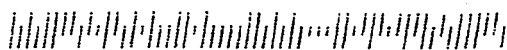
FIRST CLASS



UNITED STATES POSTAL SERVICE
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J. Wickensimer
E. North Street
ille, SC

29601-2121



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2009-CP-23-2315
COUNTY OF GREENVILLE	)	
	)	
Rafael Escalante,	)	
a/k/a Rafael Mendoza Escalante,	)	
a/k/a Victor Hugo Perez,	)	
a/k/a Rafael Escalante Placencia, ¹	)	
S.C.D.C. No. 306027,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed March 20, 2009, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the July 2005 term of General Sessions for leaving the scene of an accident resulting in death (2005-GS-23-5305), reckless homicide (2005-GS-23-5306), and escape (2005-GS-23-5307). Richard H. Warder, Esquire represented the Applicant.

The State brought these cases to trial on October 9, 2006. Prior to commencement of trial, trial counsel successfully moved to sever the escape charge. The Applicant then pled guilty to reckless homicide and the Honorable John C. Hayes levied a sentence of ten (10) years

¹ The Respondent notes the Applicant submitted his PCR application under the name Rafael Escalante while the South Carolina Department of Corrections lists his name as Rafael Escalante Placencia.

imprisonment. The Applicant proceeded to trial on the charge of leaving the scene of an accident resulting in death and was found guilty. On October 10, 2006, Judge Hayes levied a concurrent sentence of twenty-five (25) years imprisonment.²

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders³ brief. The Court of Appeals dismissed the appeal. State v. Escalante, Op. No. 2008-UP-714 (S.C. Ct. App. filed December 18, 2008).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

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

1. Ineffective assistance of counsel:
 - a. Failed to strike juror number 56. —
 - b. Failed to strike juror number 202. —
 - c. Conceded the Applicant's guilt to the jury.
2. Denial of 6th and 14th Amendments.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance

² The Applicant subsequently pled guilty to the escape charge on May 1, 2007. The Honorable Michael G. Nettles levied a concurrent sentence of five (5) years imprisonment. The Applicant did not file an appeal related to this indictment.

³ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

well within the standard of “reasonableness within professional norms” for a criminal defense attorney.

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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v.

Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

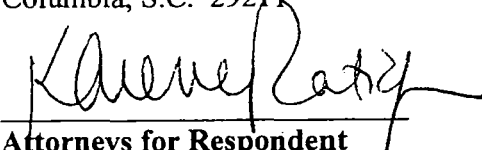
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

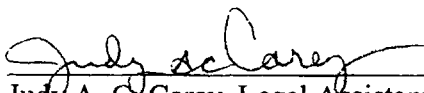
May 12, 2009

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2009-CP-23-2315
	)	
RAFAEL ESCALANTE, 306027	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rafael Escalante, 306027 (a/k/a Rafael Escalante Placencia)
Lieber Correctional Institution
Post Office Box 205
Ridgeville SC 29472

DATED this 12th day of May, 2009.



 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2009-CP-23-2315
	)	
	)	
	)	
	)	
RAFAEL ESCALANTE,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
	)	

ORIGINAL

August 27, 2010
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

CAROLINE M. HORLBECK, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Assistant Attorney General

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.(AW) RAFAEL ESCALANTE:

Direct Examination by Ms. Horlbeck.....7
Cross-Examination by Ms. Ratigan.....15

(RW) RICHARD WARDER:

Direct Examination by Ms. Ratigan.....17
Cross-Examination by Ms. Horlbeck.....19

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: The next case is Escalante.

Does he require a translator?

MS. HORLBECK: Yes, sir, he does.

THE COURT: I'm just going to ask that Ms. Sampson be sworn in.

THE CLERK: Please raise your right hand.

(WHEREUPON, the interpreter, Ms. Teresa Sampson, was sworn in at approximately 11:20 a.m.)

THE CLERK: Thank you.

THE COURT: Okay. And she's a qualified and certified interpreter who has appeared many times in court.

Okay. Yes, ma'am, Ms. Ratigan.

MS. RATIGAN: May it please the Court, Your Honor.

This is the case of Rafael Escalante v. the State.

The docket number is 2009-CP-23-2315. Mr. Escalante was indicted for leaving the scene of an accident resulting in death, reckless homicide, and escape. He was represented on these charges by Mr. Warder.

On October 9th, 2006, these charges were brought to trial before Judge John Hayes. At that point, Mr. Warder successfully had the escape charge severed from the other two. At that point, Mr. Escalante pled guilty to reckless homicide and was sentenced to 10 years. He was then tried

1 on the leaving the scene of an accident charge. He was
2 found guilty and received a 25-year sentence. So that
3 would be, obviously, an aggregate, the 25 years. He did
4 file an appeal that was perfected in the nature of an
5 Anders brief. The Court of Appeals dismissed that in
6 December of 2008.

7 And I believe Ms. Horlbeck has a motion to make at
8 this time.

9 THE COURT: Yes, ma'am.

10 MS. HORLBECK: Judge, I've spoken with Mr. Escalante
11 several times about this case over the phone. And I've,
12 also, met with him in person just by myself and, also,
13 with an interpreter, Teresa Sampson. And I'm prepared to
14 go forward. However, Mr. Escalante asked me to request a
15 continuance of the Court. He feels he needs additional
16 time to prepare his case.

17 If Your Honor would like Mr. Escalante to give you
18 additional reasons or additional explanation, then we're
19 prepared to do that.

20 THE COURT: Yes. If he wants to tell me anything,
21 I'll be glad to hear from his.

22 MR. RAFAEL ESCALANTE: How are you doing, sir?

23 THE COURT: Yes, sir.

24 MR. RAFAEL ESCALANTE: I would like to ask for some
25 more time to see if we can get me a continuance. Because

1 I just really speak a little bit of English. So I'm
2 trying to learn how to read and write so I can study my
3 case and be prepared for court the next time, if you'll
4 give me a chance. I'm not fully understanding the issues
5 I'm represented on right now.

6 MS. HORLBECK: And I would add, Your Honor, he is
7 incarcerated at Lieber Correctional Institute. And we've
8 been talking over the phone. But there is a bit of a
9 language barrier.

10 He was not -- this is the second time this matter has
11 been scheduled. But the first time it was scheduled, I
12 believe that he was not transported. He was one of the
13 several that were not transported to court that day. Our
14 position is that this is, basically, a first appearance.

15 MS. RATIGAN: And, Your Honor, just for the purposes
16 of the record, I would object to a continuance. We
17 have -- the back row here are members of the victim's
18 family. They've come today to have the case heard.
19 Mr. Warder is here today.

20 And Ms. Horlbeck is correct. This was scheduled at
21 the last term. And he was, actually, transported. But,
22 as you can see, he has several aliases. And, apparently,
23 SCDC has him under one alias. The county has him under
24 another alias. So he was here, but never, actually,
25 brought to court for some reason.

1 But we're ready to go forward. We have all the
2 parties here. And we -- it is, technically, a first
3 appearance. But if Ms. Horlbeck is ready to proceed and
4 the parties are here, we'd like to go ahead and have the
5 case heard.

6 THE COURT: What is it, specifically, you don't think
7 you've had time to do?

8 MR. RAFAEL ESCALANTE: Excuse me.

9 THE COURT: What is it, specifically, you don't think
10 you've had enough time to prepare for?

11 INTERPRETER TERESA SAMPSON: Basically, I'm learning
12 how to read in English. So I'm asking for more time so I
13 can try to read one day and see all the issues that are in
14 there. And I will feel more prepared by doing that.

15 THE COURT: Well, I note that he has filed a 19-page
16 memorandum typed with case citations in support of his
17 petition. And his counsel states that she's ready to
18 proceed. And it's been pending now and back in the Court
19 of Appeals since 2008. So without some type of concrete
20 specific matter that would support an order continuing the
21 case, we're going to go forward today.

22 So I deny the motion for a continuance.

23 And you can call your first witness.

24 MS. HORLBECK: Your Honor, we would call Rafael
25 Escalante to the stand.

1 THE CLERK: Step up here to the Bible, please. Place
2 your left hand on the Bible and raise your right hand.

3 WHEREUPON,

4 RAFAEL ESCALANTE,
5 after first having been duly sworn, testified as follows:

6 THE CLERK: You may be seated.

7 State your full name for the record, please.

8 THE WITNESS: Rafael Escalante, 306027.

9 THE CLERK: Thank you.

10 (WHEREUPON, the following testimony of Mr. Rafael
11 Escalante was interpreted by Ms. Teresa Sampson.)

12 DIRECT EXAMINATION

13 BY MS. HORLBECK:

14 Q Mr. Escalante, where are you incarcerated?

15 A Leiber Correctional.

16 Q And are you at Lieber Correctional serving a 10-year
17 sentence on a reckless homicide charge?

18 A I'm doing 10 years concurrent, 25 years total.

19 Q Okay. 10 years on the reckless homicide, and 25
20 years for leaving the scene?

21 A Yes.

22 Q All right. Did you plead guilty to the reckless
23 homicide?

24 A Yes.

25 Q Did you have a jury trial on the leaving the scene

1 charge?

2 A Yes.

3 Q Who represented you on this charge?

4 A Richard Warder.

5 Q All right. And, as a result of your guilty plea and
6 your trial, did you file this petition for post-conviction
7 relief?

8 A Yes.

9 Q Okay. Mr. Escalante, I'm going to ask you some
10 questions about the allegations in your petition. In your
11 petition, you allege that there was some issues with the
12 members of the jury that was chosen to hear your trial; is
13 that correct?

14 A Yes.

15 Q Okay. And two of the jurors on your jury trial, were
16 they -- well, two of the members of your jury panel -- let
17 me back up. Two of the members of your jury panel, were
18 they related to an attorney?

19 A Yes.

20 Q Okay. And the jury -- do you recall the numbers of
21 the -- the juror numbers of the jurors that you had
22 concerns about?

23 A I think #56 and #202, maybe, I think.

24 Q All right. That's correct. What was the concern
25 that you had with those two jurors, juror #56 and #202?

1 A I think because they were related or had something to
2 do with the law.

3 Q All right. When you say "they were related," are you
4 saying that they were related to someone who had something
5 to do with the law?

6 A Not specifically, but they had knowledge of the law.

7 Q Okay. Did they have a relative -- did both those
8 jurors have attorneys who were relatives of theirs?

9 A Yes.

10 Q Okay. Specifically, juror #56, didn't he have an
11 attorney who was, also, his brother?

12 A Yes.

13 Q Okay. And juror #202, also, had an attorney -- also,
14 had a brother who was an attorney?

15 A Yes.

16 Q Okay. Tell the Court what effect those two jurors
17 had on your right to a fair trial.

18 A I think if those two jurors wouldn't be present that
19 the outcome would have been different.

20 Q Okay. Do you think -- so is it your argument today
21 that if those two jurors had been removed from your jury,
22 then you may have been found not guilty?

23 A Not specifically. But, at least, I would have a
24 chance for a fair trial.

25 Q Okay. Did your attorney, Mr. Warder, make a motion

1 in front of the Court to remove those two from the jury?

2 A No, he didn't do it.

3 Q Okay. Was Mr. Warder retained, or was he appointed
4 to represent you?

5 A My mom hired him.

6 Q Okay. When did she hire him?

7 A About eight months prior to my court date.

8 Q How many times did you speak to Mr. Warder about your
9 case?

10 A I think twice. Once -- the first time was about a
11 week or two weeks prior to the trial. And then the second
12 time was here on the date of the trial.

13 Q All right. Did you and Mr. Warder discuss a witness
14 list?

15 A No. We never talked about that. We never decided
16 any of that.

17 Q Did you give Mr. Warder the names of any witnesses
18 that you wanted to testify at your trial?

19 A Yes.

20 Q All right. Do you recall the names of the witnesses
21 that you gave to Mr. Warder to contact for you?

22 A No. I can't remember the names, to be honest.

23 Q Okay. But in preparation for the trial, you knew the
24 name; is that right?

25 A Yes.

1 Q Did you, also, give Mr. Warder the witnesses contact
2 information, address?

3 A Yes. I gave it to his investigator.

4 Q Okay. Did that witness appear in court on the day of
5 your trial?

6 A Yeah. The witness was outside waiting. And somehow
7 he wasn't allowed to come in. So, after that, I don't
8 know what happened.

9 Q Did the witness testify at your trial?

10 A He didn't have a chance. They didn't allow him to.
11 I don't know what happened.

12 Q Okay. Now, were you always going to plead to one
13 charge and then have a trial on the other charge?

14 A No. To be honest, no.

15 Q What did you want to do with both of those charges?

16 A I had been thinking that they would offer me
17 something like a plea bargain for both charges, instead of
18 going to trial. And I would take that, instead of going
19 to trial.

20 Q All right. Is it true that you, in addition to
21 pleading to the reckless homicide, really wanted to plead
22 and intended to plead to the leaving the scene charge? Is
23 that true?

24 A Well, what happened was I did plead guilty to that of
25 the lady. But, I mean, obviously, I didn't plead guilty

1 for leaving the scene of the accident..

2 Q Okay. Did you -- but did you want to go to trial for
3 leaving the scene?

4 A Well, no, not really. But it just so happened like
5 all the sudden he came, the lawyer, to see me. And he
6 just kind of threw it at me and he said, What do you want
7 to do?

8 Q Okay. Well, why did you decide to -- tell the Court
9 why you decided to go to trial.

10 A I thought that they were not going to find me guilty.
11 And then since I had already pled guilty to the reckless
12 homicide, I thought it was going to be, you know, what it
13 was, my sentence.

14 Q Okay. When you made the decision to go to trial, did
15 you believe that your attorney had evidence to present?

16 A Yeah. He told me that they probably were going to
17 offer me 10 years. And then after, he said, No, we
18 probably -- we should go to trial because I have some
19 evidence.

20 Q Who said that? Did you tell Mr. Warder, No, we
21 should go to trial?

22 A He did.

23 Q When you say "he," do you mean Mr. Warder?

24 A Yes, ma'am.

25 Q All right. Are you saying that Mr. Warder advised

1 you to go to trial?

2 A He told me that he had evidence that he felt very
3 comfortable that everything was going to be okay.

4 Q All right. And, based on your attorney's advice, is
5 that why you went to trial that day, instead of pleading
6 guilty?

7 A Yes.

8 Q Okay. Did Mr. Warder tell you what evidence he had
9 that would, ultimately, win the case for you?

10 A No. He just told me, I do have evidence and I see
11 you in court next week.

12 Q Okay. Did you, at least, think that Mr. Warder would
13 put your witness on the stand?

14 A I thought that was part of the evidence he had.

15 Q Okay. But, at your trial, the witness didn't take
16 the stand, did he?

17 A No. They did not allow him to come in.

18 Q Okay. Did your attorney present any evidence on your
19 behalf at the trial?

20 A No, none.

21 Q Okay. And if you'd known Mr. Warder wasn't going to
22 present that witness or any other evidence, would you
23 still have gone to trial?

24 A No.

25 Q What would you have done differently?

1 A I would have taken a plea bargain.

2 Q Okay. Now, in Mr. Warder's opening statement, did --
3 was there anything that Mr. Warder said that you believe
4 hurt your chances to a fair trial?

5 A Yes. He said something that he didn't have any doubt
6 in his mind that I had fled the scene of the accident.
7 And that's in the transcript.

8 Q Okay. Did your attorney say that there was no
9 question you got out of your vehicle?

10 A Yes.

11 Q And did he say that after you got out of your
12 vehicle, you looked at the victim and then ran?

13 A Yes.

14 Q Okay. And is that really what happened?

15 A Well, what happened was when the truck flipped over,
16 I got out of the truck. And I went to see the lady. And
17 the lady was bleeding a lot. I got really nervous. And
18 what I did is there was a church right next to her -- to
19 the site. And I just went there because I wanted to ask
20 for help.

21 Q Did your attorney explain that to the jury?

22 A No.

23 Q Okay. And your attorney's explanation in opening was
24 that you -- there was no question you got out of your
25 vehicle?

1 A Yes.

2 Q Okay. And there was no question that -- and your
3 attorney, also, told the jury there was no question you,
4 initially, ran after you got out of your vehicle; right?

5 A Yes.

6 Q If your attorney had not said that, do you think that
7 would have changed the outcome of your trial?

8 A He -- I think, yes, it would have been different.
9 Because, you know, for my lawyer to say that, basically,
10 what he's saying is, you know, I'm guilty. He is guilty.

11 MS. HORLBECK: Mr. Escalante, please answer any
12 questions that Ms. Ratigan may have for you.

13 CROSS-EXAMINATION

14 BY MS. RATIGAN:

15 Q When you hired Mr. Warder, were you in jail or were
16 you out on bond?

17 A In jail.

18 Q And you only spoke to him twice before the trial
19 date?

20 A Yes.

21 Q And did you discuss with him the State's evidence
22 against you?

23 A Yes.

24 Q The witness statements and the police reports?

25 A Yes.

1 Q And did you tell him what you believed happened that
2 day?

3 A Yes, I told him.

4 Q And you told Mr. Warder to contact some witnesses?

5 A Through his investigator.

6 Q So the day you came to court, did you know there was
7 going to be a trial, or did you just think you were going
8 to plead guilty?

9 A No. I knew there was going to be a trial.

10 Q And did you ever tell Mr. Warder that you did not
11 want to go to trial, you wanted to plead guilty to both
12 charges?

13 A Yeah. In the beginning, I told him if they would
14 offer me something, I would plead guilty.

15 MS. RATIGAN: That's all I have, Your Honor.

16 MS. HORLBECK: No redirect.

17 THE COURT: All right. Thank you, sir.

18 You may step down, Mr. Escalante.

19 You may call your next witness.

20 MS. HORLBECK: Judge, the Petitioner rests.

21 THE COURT: Does the State wish to present any
22 evidence?

23 MS. RATIGAN: Your Honor, the State would call
24 Mr. Warder at this time.

25 THE CLERK: Mr. Warder, place your left hand on the

1 Bible, please, and raise your right hand.

2 WHEREUPON,

3 RICHARD WARDER,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you.

6 You may be seated.

7 State your full name for the record, please.

8 THE WITNESS: Richard Warder.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MS. RATIGAN:

12 Q Do you recall being retained to represent
13 Mr. Escalante on these charges?

14 A Yes, I do.

15 Q And do you recall how many times you may have met
16 with him before the trial date?

17 A Not exactly. We met several times.

18 Q Had you filed discovery motions?

19 A I'm sorry. I didn't hear the question.

20 Q Did you file discovery motions in this case?

21 A Yes, we did.

22 Q And did you review the State's evidence with
23 Mr. Escalante?

24 A Yes, we did.

25 Q Were there eyewitness statements?

1 A Yes.

2 Q And you reviewed the impact those statements would
3 have on your case?

4 A Yes.

5 Q Do you recall him ever telling you or your
6 investigator to contact some witnesses?

7 A Yes.

8 Q And were you able to contact those witnesses?

9 A Part of them.

10 Q Were you able to contact those witnesses?

11 A We contacted part of them, some we couldn't find.

12 Q Okay. Did you plan on calling any of those witnesses
13 at trial?

14 A No. There were really no witnesses that were
15 helpful.

16 Q And did you explain that to Mr. Escalante?

17 A Yes.

18 Q Now, how did you come to the conclusion to plead him
19 guilty to reckless homicide, and then take a trial on the
20 other? How did y'all come to that conclusion?

21 A Well, we couldn't get a plea deal, which is what we,
22 essentially, wanted. We were faced with a situation that
23 if we pled to it, the Solicitor would be asking for the
24 maximum. And there was some outside chance that we had a
25 defense that turned upon the definition of what the scene

1 was.

2 My client was caught very close to the automobile
3 accident, probably debris might have flown about as far as
4 he was from the accident. So the question was whether or
5 not it was the scene of the accident.

6 Q And that was the Defense argument at trial?

7 A Yes.

8 Q Did Mr. Escalante ever tell you he did not want to go
9 to trial that day?

10 A Yes, he had. He didn't want to go to trial. And he
11 didn't want to plead with no assurances of what the
12 sentence would be.

13 Q But he knew that day the case had been called for
14 trial?

15 A Yes.

16 MS. RATIGAN: That's all I have, Your Honor.

17 THE COURT: Cross-examination.

18 MS. HORLBECK: Just briefly, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. HORLBECK:

21 Q Mr. Warder, do you recall that jurors -- there were
22 two jurors, #56 and #202, that stood in response to the
23 question of whether anyone had -- knew anyone that was
24 involved in the Prosecution side of criminal cases? Do
25 you recall that?

1 A I don't particularly recall that. When I got the
2 brief, I saw it in the transcript.

3 Q Okay. Do you -- did you strike those jurors?

4 A No. I didn't strike them.

5 Q All right. Did you have the strikes available to
6 exercise at that point?

7 A I think I did, yes.

8 Q Okay. And the reason I believe those two jurors
9 stood is because they both had brothers who were
10 attorneys?

11 A Yes. I considered that positive.

12 Q Okay. No, I understand. Is that a -- is having a
13 brother as an attorney, is that -- that is a race and
14 gender-neutral reason to strike someone? Is that fair to
15 say?

16 A I'm not sure I understand the question.

17 Q The -- if you were going to strike those two, the
18 reason could have been -- or you could have struck those
19 two because they had an attorney for a brother in their
20 family; correct?

21 A I could have used a pre-emptory strike.

22 Q Right.

23 A I don't think it was a strike for cause.

24 Q I mean a pre-emptory strike, yes. And that would
25 have been a race and gender-neutral reason to strike;

1 right?

2 A Sure.

3 Q I'm sorry. I didn't phrase that very well.

4 Now, in your opening statement, did you have a chance
5 to review that?

6 A Yes.

7 Q Okay. Do you have your transcript with you, if you
8 need it?

9 A Yes.

10 Q All right. Specifically, I'm looking at Page 41,
11 Lines 15 through 17.

12 A Page 41. Line what?

13 Q Lines 15 through 17.

14 A Yes.

15 Q Okay. And, in Lines 15 through 17, you told the
16 jury, There's no question that, initially, my client, when
17 he got out of his car, went and looked at the victim and
18 took off and ran?

19 A Yes. That's what I said.

20 Q And that was part of the defense in your case?

21 A It was going to be a fact I considered that would be
22 proven. And to simply deny it would take away from the
23 credibility of the position that he hadn't left the scene,
24 that he had been there before he left the scene.

25 Q Did you and Mr. Escalante discuss whether he was

1 running to a church?

2 A Yeah. In fact, we talked to the people at the
3 church. There was some problem that -- with that. It
4 wasn't -- the theory that he was running to get help to
5 that location didn't pan out.

6 Q Okay.

7 A I can't remember whether it was -- I think he was
8 running in the wrong direction is what it was.

9 Q Okay. And, unfortunately, at the end of the trial,
10 the jury found him guilty; right?

11 A Yes.

12 MS. HORLBECK: I beg the Court's indulgence.

13 THE COURT: Yes, ma'am.

14 (Pause.)

15 MS. HORLBECK: That's all I have.

16 Thank you.

17 MS. RATIGAN: I have no redirect.

18 And the State would rest at this time, Your Honor.

19 THE COURT: Thank you, Mr. Warder.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Okay. Any argument either side wishes to
22 present at this time?

23 MS. RATIGAN: We would waive argument, Your Honor.

24 MS. HORLBECK: Judge, I just have a brief argument.

25 Our position is that on Page 41, counsel, in his

1 opening argument, said to the jury, There's no question
2 that, initially, my client, when he got out of his car,
3 went and looked at the victim, and took off and ran. And
4 our position is going to be that that's just overwhelming
5 evidence of guilt presented by the person who's supposed
6 to be the advocate for Mr. Escalante.

7 Our position is going to be that that is not mere
8 negligence or trial strategy that misfired, that that was
9 a comment to the jury that, essentially, deprived
10 Mr. Escalante of effective representation. And our
11 position is that prejudice existed, and that the outcome
12 of the case would have been different if trial counsel had
13 not made that comment to the jury at all.

14 Specifically, I'm looking at United States v.
15 Swanson. That citation is 943 F2d 1070. I do have a copy
16 for the Court, if the Court would like to see it. I'm
17 sorry I don't have a copy for Ms. Ratigan, but I did give
18 her the citation.

19 THE COURT: What does it say?

20 MS. HORLBECK: Judge, the facts are a bit different.

21 In the Swanson case, defense counsel rested at the
22 close of the State's case without calling witnesses. That
23 is the same thing that happened in our case. In the
24 closing in Swanson, defense counsel said that the evidence
25 against the client was overwhelming and that he was not

1 going to insult the jurors intelligence. That's,
2 obviously, not -- that's a little bit different -- a bit
3 different from our case. And, in Swanson, the Defense
4 attorney said the jury should not look back, if they
5 convict. Now, clearly, that didn't happen in our case.

6 But the Court cites U.S. v. Cronic, which is 466 U.S.
7 648. And Cronic said that the depravation of effective
8 representation justifies the finding of prejudice, the
9 existence of prejudice. And the Court said that defense
10 counsel's concession was not mere negligence nor trial
11 strategy that misfired.

12 And if Your Honor would like to see it, I would be
13 happy to hand it up.

14 THE COURT: Okay. Sure.

15 MS. HORLBECK: And that's all we have.

16 And we would just ask that Your Honor grant the
17 Petitioner's application.

18 THE COURT: Okay. Well, thank you for your
19 presentations.

20 I find that there's no ineffectiveness of counsel.
21 And there's -- even if there was, there was no prejudice
22 within the meaning of the Strickland v. Washington
23 criteria.

24 So I respectfully deny the petition for
25 post-conviction relief.

1 And if Ms. Ratigan will prepare an order within 10
2 days and send a copy to Ms. Horlbeck, I'll review that.

3 Thank you very much.

4 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

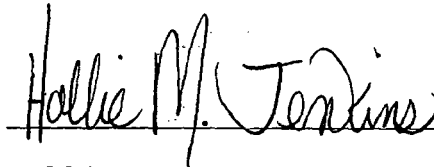
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 27th day of August, 2010.

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

December 7, 2010

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2009-CP-23-2315
COUNTY OF GREENVILLE	)	
	)	
Rafael Escalante,	)	
a/k/a Rafael Mendoza Escalante,	)	
a/k/a Victor Hugo Perez,	)	
a/k/a Rafael Escalante Placencia, ¹	)	
S.C.D.C. No. 306027,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

2009 OCT - 5 P 4: 20

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 20, 2009. The Respondent made its return on May 12, 2009. An evidentiary hearing into the matter was convened on August 27, 2010 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Richard H. Warder, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

¹ The Applicant submitted his PCR application under the name Rafael Escalante while the South Carolina Department of Corrections lists his name as Rafael Escalante Placencia.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the July 2005 term of the Greenville County Grand Jury for leaving the scene of an accident resulting in death (2005-GS-23-5305), reckless homicide (2005-GS-23-5306), and escape (2005-GS-23-5307). He was represented by Richard H. Warder, Esquire.

The State called the case to trial on October 9, 2006. Prior to commencement of trial, however, trial counsel successfully moved to sever the escape charge. The Applicant then pled guilty to reckless homicide and the Honorable John C. Hayes levied a sentence of ten (10) years imprisonment. The Applicant proceeded to trial on the charge of leaving the scene of an accident resulting in death and was found guilty. On October 10, 2006, Judge Hayes levied a concurrent sentence of twenty-five (25) years imprisonment.²

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders³ brief. The Court of Appeals dismissed the appeal. State v. Escalante, Op. No. 2008-UP-714 (S.C. Ct. App. filed December 18, 2008).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failed to strike juror number 56.
 - b. Failed to strike juror number 202.

² The Applicant pled guilty to the escape charge on May 1, 2007 and the Honorable Michael G. Nettles levied a concurrent sentence of five (5) years imprisonment. The Applicant did not file an appeal.

³ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

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- c. Conceded the Applicant's guilt to the jury.
2. Denial of 6th and 14th Amendments.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

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The Applicant stated he only had two (2) meetings with counsel before trial. The Applicant stated he and counsel discussed both his version of events and the discovery materials (which included witness statements and police reports). The Applicant stated he wanted to plead guilty to both the reckless homicide and leaving the scene of an accident charges. The Applicant stated trial counsel "sprung" it on him that he would plead guilty to one charge and have a jury trial on the other. The Applicant testified he ended up going to trial because he thought he would be found not guilty. The Applicant testified he asked counsel's investigator to interview witnesses but that he never reviewed potential witnesses with counsel. The Applicant testified trial counsel should have objected to jurors 56 and 202 because they had relatives who were attorneys. The Applicant testified counsel's opening statement hurt his case because he admitted the Applicant left the scene. The Applicant testified counsel failed to explain to the jury that he only left the scene in order to get help.

Trial counsel testified he had several meetings with the Applicant. Trial counsel testified they reviewed the discovery materials and the impact the eyewitnesses' statements would have upon their case. Trial counsel testified he contacted several witnesses but that they were not helpful to the defense case. Trial counsel testified he explained this to the Applicant. Trial counsel testified he attempted to obtain a plea recommendation from the State but was unsuccessful. Trial counsel stated that, if the Applicant pled guilty to all the charges, the State said they would seek the maximum possible sentence. Trial counsel stated the Applicant knew his case was going to trial that day. Trial counsel stated his theory of the case at trial involved the definition of the accident scene and arguing the Applicant was found close to the accident. Trial counsel stated there was no reason to strike jurors 56 and 202. Trial counsel stated he admitted during his closing argument that the Applicant left the immediate scene of the accident

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because it was part of their theory that he left only in order to get help for the victim.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant did not meet his burden of proving trial counsel failed to interview or present witnesses. Trial counsel testified he spoke to several witnesses but that their testimony would not have been beneficial to the defense case. Regardless, as these alleged witnesses did not testify at the evidentiary hearing, this Court finds that any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the inclusion of jurors 56 and 202 on the jury. This Court finds the Applicant failed to articulate a compelling reason why these jurors should not have been included on his jury. This Court notes the Applicant has failed to produce any testimony from these jurors that their deliberations on his case were influenced by having an attorney as a family member. See id.

This Court finds the Applicant failed to meet his burden of proving trial counsel should not have made this statement during opening argument: "There's no question that initially my client when he got out of his car went and looked at the victim and took off and ran." (Trial

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transcript, p.41, lines 15-17). Trial counsel testified, however, that the defense strategy at trial was to argue that the Applicant never left the scene when he ran to get help for the victim. This strategy was made clear in the sentences of opening argument that immediately follow the one complained of by the Applicant. Trial counsel tells the jury that the Applicant never left the scene of the accident. (Trial transcript, p.41, lines 18-23). This Court finds, therefore, that trial counsel's comment in opening argument was merely strategic in nature. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

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CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1st day of OCTOBER, 2010.



D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

229 STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.INDICTMENT/CASE#: 2005GS2305305Rafael Mendoza Escalante, aka Rafeal EscalanteA/W#: B818976AKA: Victor Hugo PerezDate of Offense: 02-06-2005Race: H Sex: M Age: 24S.C. Code § : 56-05-1210(A)(3)DOB: 1 SS#: 000-00-0000CDR Code #: 2463Address: 9DL#: 99999999 SID#:

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: LEAVING THE SCENE OF AN ACCIDENT RESULTING IN DEATHin violation of § 56-05-1210(A)(3) of the S.C. Code of Laws, bearing CDR Code # 2463☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sara L. M. Brown
Solicitor:RAFAEL ESCALANTE
DefendantRafael Escalante
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years of ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §7-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE John C. HayJudge Code: 201419Sentence Date: 10/10/06

SCCA/217 (9/2006)

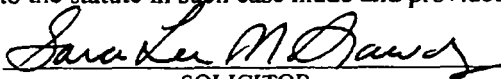
Paul B. Wickens
Clerk of Court/ Deputy ClerkCourt Reporter: T. Johnson

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) INDICTMENT FOR
 LEAVING THE SCENE OF AN ACCIDENT WITH DEATH

At a Court of General Sessions, convened on July 26, 2005 the Grand Jurors of Greenville
County present upon their oath:

That RAFAEL MENDOZA ESCALANTE aka RAFEAL ESCALANTE aka VICTOR HUGO PEREZ did in Greenville County, on or about the 6th day of February, 2005, while operating a motor vehicle on Woodside Ave and East Main Street, in Greenville, South Carolina, strike another vehicle driven by Vicki McCall Fulmer, inflicting bodily injury, and ultimately causing the death of Vicki McCall Fulmer, and then fleeing the scene of the accident without either properly identifying himself or providing any assistance to the victim(s). This is in violation of §56-5-1210 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

C. M. Edwards *DICKERSON/S*

S. C. Highway Patrol

2/6/2005

ARREST WARRANT NUMBER

B818976

ACTION OF GRAND JURY

TRUE BILL

D. Daniel J. [Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

M. F. [Signature]
Foreperson of Petit Jury

10-10-06

Date:

DOCKET NO. 2005-GS-23-

SLD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2005

THE STATE

PLEAD GUILTY

vs.

RAFAEL MENDOZA ESCALANTE

aka

RAFEAL ESCALANTE

aka

VICTOR HUGO PEREZ

Indictment for

2463

LEAVING THE SCENE OF AN ACCIDENT WITH
DEATH

VIOLATION § 56-05-1210

284

005305

5305

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET232
5531
2-18-05

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME Kaleal MIDDLE NAME Escalante LAST NAME Escalante
STREET AND NO. 29687 CITY Greenville STATE SCSTATE LICENSED 382 TFW DRIVER'S LICENSE NO. SC DRI. LIC. CLASS 78VEH. LIC. NO. 382 TFW STATE SC MAKE OF VEH Ford YEAR 78 COMM. VEH. ADTS TRUCK COMB.
HAZ. MT. MOPED MTRCYCL. OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER P. M. Edwards STREET AND NO. 6247 White Horse RdDATE OF TRIAL 03/24/05 TIME OF TRIAL 1000 CITY Greenville STATE SC ZIP CODE 29611VIOLATION - COURT APPEARANCE REQUIRED YES NO NO VIOLATION SECTION NO. 56-5-1210
Leaving the sceneOWNER OF VEHICLE Leticia Escalante DATE OF ARREST 3/6/05ADDRESS OF OWNER SC DATE OF VIOLATION 3/6/05BAIL DEPOSITED Jail NAME OF ARRESTING OFFICER P. M. Edwards RANK TCRACE M SEX M BIRTH DATE 5/11/82 HT. 5'10" WT. 175 EYES BRN COUNTY Greenville NUMBER 23DATE BAIL REC'D. 20 BY 546 DISTRICT 3CASE BEFORE MAGISTRATE ☐ MUN. COURT ☐
CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐NAME OF TRIAL OFFICER P. M. Edwards TIME OF VIOLATION 1215 WEATHER ClearDEFENDANT: DID NOT APPEAR ☐ APPEARED ☐DISPOSITION GUILTY ☐ PLED: NOLO CONTENDERE ☐FORFEITED BOND ☐ TRIAL BY: TRIAL OFFICER ☐ JURY ☐VERDICT OF TRIAL IF ANY GUILTY ☐ NOT GUILTY ☐ DATE OF TRIAL IF ANY 20JAIL SUSPEND 1 FINE 1 AMT. COLLECTED 1 AMT. SUSPENDED 1COMMITTED TO: Yes OFFENSE CODE 63 B.A. LEVEL 3CERTIFIED CORRECT DATE 20 B 818976

DRIVER RECORDS COPY

233 STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.INDICTMENT/CASE#: 2005GS2305306Rafael Mendoza Escalante, aka Rafeal EscalanteA/W#: B818975AKA: Victor Hugo PerezDate of Offense: 02-06-2005Race: H Sex: M Age: 24S.C. Code § : 56-05-2910DOB: SS#: 000-00-0000CDR Code #: 0135Address: Taylors, SC 29681DL#: 99999999 SID#:

SENTENCE SHEET

#2

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Homicide, Reckless Homicide (gs)in violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 0135☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jana L. M. Dancy
Solicitor:RAFAEL ESCALANTE
DefendantRichard Warden
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: October 10th 2006☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §7-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE John O. HaganJudge Code: 2 0 1 4 1 9Sentence Date: 10/9/06

SCCA/217 (9/2006)

Pat B. Wickman
Clerk of Court/ Deputy ClerkCourt Reporter: T. Johnson

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
RECKLESS HOMICIDE

At a Court of General Sessions, convened on July 26, 2005 the Grand Jurors of Greenville

County present upon their oath:

That RAFAEL MENDOZA ESCALANTE aka ⁵⁰⁴RAFEAL ESCALANTE aka VICTOR HUGO PEREZ did in Greenville, on or about the 6th day of February, 2004, drive a vehicle in reckless disregard of the safety of others and as a proximate result thereof did cause injury resulting in the death of VICKI MCCALL FULMER on the 6th day of February, 2004. This is in violation of §56-5-2910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

C. M. Edwards

Dickerson

S. C. Highway Patrol

2/6/2005

ARREST WARRANT NUMBER

B818975

ACTION OF GRAND JURY
TRUE BILL*T. Daniel Jenkins*
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-23-

SLD

005306

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2005

PLEAD GUILTY
THE STATE

vs.

RAFAEL MENDOZA ESCALANTE

aka

RAFEAL ESCALANTE

aka

VICTOR HUGO PEREZ

Indictment for

0135

RECKLESS HOMICIDE

VIOLATION § 56-05-2910

285

UNIFORM TRAFFIC TICKET

5236
2-18-05

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME KATCAL MIDDLE NAME LAST NAME ESCALANTE
 STREET AND NO. CITY STATE

STATE LICENSED DRIVER'S LICENSE NO. ORL. LIC. CLASS
 VEH. LIC. NO. 382TPW STATE SC MAKE OF VEH. Ford YEAR 98 COMM. VEH. DRIVE TRUCK COMB.
 HAZ. MT. MOPED MTRCYCL. OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER Agly STREET AND NO. 111 CITY 21

DATE OF TRIAL 03/24/2005 TIME OF TRIAL 1000 CITY Greenville STATE SC ZIP CODE 29611

VIOLATION - COURT APPEARANCE REQUIRED (YES) NO Reckless Homicide VIOLATION SECTION NO. 56-5-2910

OWNER OF VEHICLE Leticia Escalante DATE OF ARREST 2/6/04

ADDRESS OF OWNER SC DATE OF VIOLATION 2/6/04

BAIL DEPOSITED JAIL NAME OF ARRESTING OFFICER P. M. Edwards RANK TFC

DESCRIPTION OF ACCUSED
 RACE H SEX M BIRTH DATE 5/11/82 HT 5'7" WT 140 EYES BRN COUNTY Greenville NUMBER 23
 DATE BAIL REC'D. BY 3 DISTRICT 3

CASE BEFORE
 MAGISTRATE ☐ MUN. COURT ☐
 CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐
 NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE
 DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

DISPOSITION
 GUILTY ☐ PLED: NOLO CONTENDERE ☐
 FORFEITED BOND ☐

TRIAL BY: TRIAL OFFICER ☐ JURY ☐

VERDICT OF TRIAL IF ANY
 GUILTY ☐ NOT GUILTY ☐ DATE OF TRIAL IF ANY 20
 JAIL ☐ SUSPEND ☐ FINE ☐ AMT. COLLECTED ☐ AMT. SUSPENDED ☐

COMMITTED TO: yes Arrest as Result of Accident yes OFFENSE CODE 82 S.A. LEVEL 3

CERTIFIED CORRECT DATE 20

DRIVER RECORDS COPY

DOCKET NO.

B 818975

237

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Rafeal Escalante aka Victor Hugo Perez
 AKA: Rafael Placencia
 Race: H Sex: M Age: 24
 DOB: SS#: 000-00-0000
 Address: _____
 DL#: 99999999 SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2005GS2305307
 A/W#: H892185
 Date of Offense: 02-06-2005
 S.C. Code §: 24-13-0410
 CDR Code #: 1251

SENTENCE SHEET

0 to 10 years

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO: Escape / Escape

in violation of § C/L _____ of the S.C. Code of Laws, bearing CDR Code # 2570
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

James L. M. Dawley x Rafael E. Placencia Richard W. Warden
 Solicitor: Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10-11-2006

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

Paul B. Wickensimer
 Clerk of Court/ Deputy Clerk

Court Reporter: Judith

PRESIDING JUDGE Michael J. Warden

Judge Code: 2

Sentence Date: 5-1-07

SCCA/217 (9/2006)

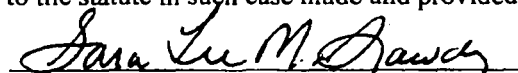
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ESCAPE

At a Court of General Sessions, convened on July 26, 2005 the Grand Jurors of Greenville
County present upon their oath:

That RAFAEL MENDOZA ESCALANTE aka RAFAEL ESCALANTE aka VICTOR HUGO PEREZ did in
Greenville County, on or about the 6th day of February, 2005, unlawfully escape or attempt to escape from lawful
confinement or custody, to wit: the defendant did, while in the custody of an officer with the South Carolina
Highway Patrol, escape and flee from the patrol vehicle. This is in violation of §24-13-410 of the South Carolina
Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Chad Edwards

DICKERSON

SCHP

2/6/2005

ARREST WARRANT NUMBER

H892185

ACTION OF GRAND JURY

TRUE BILL

D. Daniel J. [Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-23-005307
SLD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2005

PLEAD GUILTY THE STATE
vs.

RAFAEL MENDOZA. ESCALANTE

aka

RAFEAL ESCALANTE

aka

[Handwritten signature]

VICTOR HUGO PEREZ.

[Handwritten signature]
2570
1251

Indictment for

ESCAPE

VIOLATION § 24-13-0410

286

ARREST WARRANT

H- 892185 5531

STATE OF SOUTH CAROLINA 2-18-05

☒ County/ ☐ Municipality of

THE STATE

against

Rafael M Escalante

Address

Phone:

Sex: M Race: H Height: 5'7" Weight: 145DL State: SC DL #: 1ADOB: 2 Agency ORI#:Prosecuting Agency: SCHPProsecuting Officer: Chad M. EdwardsOffense: Escape from Arrest

Offense Code:

Code/Ordinance Sec. 24-13-410

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(LS.)

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Rafael Escalanteon 2-16-05

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Cagle

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofGreenvillePersonally appeared before me the affiant Chad M. Edwards whobeing duly sworn deposes and says that defendant Rafael Escalantedid within this county and state on February 06, 2005 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Escape

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The defendant Rafael M. Escalante being a Prisoner at the South Carolina Highway did escape and flee from the Patrol Vehicle in the Parking Lot of the Greenville Memorial Hospital.The defendant did know he was lawfully under arrest. He was handcuffed in vehicle and did attempt to flee police custody. This did occur in Greenville County

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality ofAffiant's Address 211 Century Drive Suite 200DGreenville SC 29607Affiant's Telephone (864) 241-1218

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 2-16-05 defendant

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE:

Escape

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 2-16-06Wilbur (LS.)

Signature of Issuing Judge

Judge Code: 946V. Garrison
ORIGINAL

Judge's Address

6247 White Horse Rd
Greenville SC 29611

Judge's Telephone

2944810

Issuing Court:

☐ Magistrate☐ Municipal☐ Circuit

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: VICTOR HUGO PEREZIndictment #: 2005GS2300636Address: 2413 Wade Hampton BlvdWarrant/Ticket #: H019192City: Taylors State: SC ZIP: 29687

No Warrant: _____

SS#: 0 Sex: M Race: HOffense Code: 0065Date of Birth: May 11, 1982Offense Name: Traffic / Failure to stop for a blue ligState: SC Driver's License #: 9999999999Date of Arrest: November 12, 2004DATE OF DISPOSITION: 5/1/07 MAY 02 2007

DISPOSITION:

- | | |
|---|---|
| ☐ 1. Guilty Plea | * ☐ 7. Remanded |
| ☐ 2. Trial (Guilty) | ☐ 8. Dismissed at Prelim |
| ☐ 3. Trial (Not Guilty) | ☐ 8. No Bill |
| * ☒ 4. Dism/Nol Pros/Pros Ended | * ☐ 9. Failure to Appear |
| * ☐ 5. Judicial Commitment | * ☐ 10. Other |
| ☐ 6. Judicial Dismissal | |

* Explain: Δ pled guilty to other charges

Judge: _____

Ct. Reporter: _____

Defense Attorney: WARDER, RICHARDSolicitor: Sara DrawdyOffense Code: 0065Offense Name: Traffic / Failure to stop for a blue lig

Sentence: _____

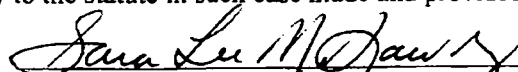
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FAILURE TO STOP FOR BLUE LIGHT

At a Court of General Sessions, convened on FEBRUARY 22, 2005 the Grand Jurors of Greenville
County present upon their oath:

That VICTOR HUGO ESCALANTE PEREZ aka RAFAEL MENDOZA ESCALANTE did in Greenville
County, on or about the 19th day of November, 2001, willfully, knowingly, and unlawfully commit the offense of
failure to stop for police vehicle in that the said defendant while driving on a road, street or highway of the State
did fail to stop when signaled to do so by a police vehicle using blue lights and/or siren. This is in violation of
§56-5-750 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

K. Lewis

Marler / S

Greenville County Sheriffs Office

11/12/2004

ARREST WARRANT NUMBER

H019192

ACTION OF GRAND JURY

TRUE BILL

Daniel J. ...

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-23-

SLD

The State of South Carolina 000636

County of Greenville

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2005

THE STATE

vs.

VICTOR HUGO ESCALANTE PEREZ

aka

RAFAEL MENDOZA ESCALANTE

Indictment for

0065

FAILURE TO STOP FOR BLUE LIGHT

VIOLATION § 56-05-0750(B)(1)

59

ARREST WARRANT

H-019192

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GREENVILLE

THE STATE

 AKA: Rafael Esculante
 against
VICTOR HUGO ESCULANTE PEREZ

Address: _____

Phone: _____

Sex: M Race: H Height: 5'11" Weight: 150DL State: _____ DL #: NONEDOB: _____ Agency ORI #: 3Prosecuting Agency: GREENVILLE COUNTY S.O.Prosecuting Officer: K.P. LEWIS #695 A-32Offense: FAILURE TO STOP FOR BLUE LIGHTSOffense Code: 80Code/Ordinance Sec. 56-5-750

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of _____

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge _____ (L.S.)

Date: _____

RETURN

 A copy of this arrest warrant was delivered to
 defendant VICTOR HUGO PEREZ
 on 11-17-01

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:

JUDGE GARRETT

0065

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GREENVILLE

AFFIDAVIT

 Personally appeared before me the affiant KEVIN P. LEWIS #695 A-32 who
 being duly sworn deposes and says that defendant VICTOR HUGO ESCULANTE PEREZ
 did within this county and state on 11-19-01

 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of GREENVILLE)

in the following particulars:

DESCRIPTION OF OFFENSE: FAILURE TO STOP FOR BLUE LIGHTS
 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

ON 11-19-01 DURING A TRAFFIC STOP FOR NOT HAVING A WORKING
 VEHICLE TAG LIGHT, THE DEFENDANT DID NOT STOP FOR AFFIANT,
 BUT INCREASED SPEED. THE DEFENDANT ALSO DID NOT STOP
 AT TWO STOP SIGNS DURING THE OFFENSE. THE DEFENDANT
 LATER STOPPED HIS VEHICLE AND FLED ON FOOT. AT THAT TIME
 THE AFFIANT WAS UNABLE TO LOCATE THE DEFENDANT. THIS
 OFFENSE OCCURRED IN GREENVILLE COUNTY.

Sworn to and subscribed before me _____

on 11-19-01

Signature of Affiant _____

Affiant's Address _____

Signature of Issuing Judge _____ (L.S.)

Signature of Affiant _____

Affiant's Address _____

Affiant's Telephone _____

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GREENVILLE

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 11-19-01 defendant VICTOR HUGO ESCULANTE PEREZ
 did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of GREENVILLE as set forth below:
DESCRIPTION OF OFFENSE: FAILURE TO STOP FOR BLUE LIGHTS.
 Now, therefore, you are directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address _____

Signature of Issuing Judge _____ (L.S.)

Judge's Telephone _____

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

 Form Approved by
 S.C. Attorney General
 July 26, 1990
 SCCA 5-18