

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

S.C. Supreme Court

WCC File No. 1004913

Virginia A. Miles, Employee, ... Appellant,

v.

Waffle House, Inc., Employer, and Brentwood Services, Inc., Carrier, ... Respondents.

RECORD ON APPEAL

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ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENTS

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Claimant's Name: Virginia Ann Miles SSN: [REDACTED] Employer's Name: Waffle House
Address: [REDACTED] Address: 7813 Broad River Road
City: Columbia State: SC Zip: 29210 City: Irmo State: SC Zip: 2906
Home Phone: [REDACTED] Work Phone: () Insurance Carrier: Self-insured
Preparer's Name: Stephen B. Samuels Law Firm: Samuels Law Firm, LLC Preparer's Phone #: (803) 779-4000

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: 3/14/10

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to See 1b. (Part(s) of Body Injured) on 3/14/10 (Month/Day/Year) in Richland county, state of SC.
- 1b. Body part(s) affected are: Back, Brain, (L) Shoulder, (L) Arm, Both Legs
Briefly describe how the accident occurred. Hit by car driven by customer.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 3/14/10 (Month/Day/Year) in the following manner:
In person.
- ☒ 6. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for: back, brain, left shoulder, left arm, both legs
☐ (b) additional medical examination and treatment for: _____
- ☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
March 14, 2010 and continuing on running award
- ☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☒ (2) Specific Disability: ☐ Total ☒ Partial
☐ (3) Wage Loss ☐ Partial
- ☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

- 10a. At the time of the injury, the Claimant was paid weekly wages of \$400.00, and demands accounting of days worked and wages earned as provided in law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

- 11a. Further grounds or unusual aspects of claim:

- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See Attachment.
- 11c. To the best of your knowledge, did you have any prior permanent disability? No prior disability awards
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 13b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: 60 minutes

I verify the contents of this form are accurate and true to the best of my knowledge.

[Signature] Attorney at Law Stephen@SamuelsLawFirm.net 5/5/10
Preparer's Signature Title Email Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

Claimant: Virginia Jones
WCC File No.: Unassigned

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See Attachment

Lexington Medical Center
2720 Sunset Boulevard
West Columbia, South Carolina 29169

Lexington County EMS
407 Ball Park Road
Lexington, South Carolina 29072

Lexington County EMS
5005 Sunset Boulevard
Lexington, South Carolina 29072

Lexington Orthopaedics
811 West Main Street, Suite 101
Lexington, South Carolina 29072

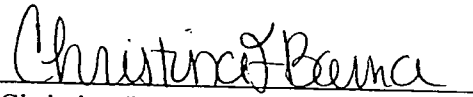
SAMUELS LAW FIRM, LLC
1527 BLANDING STREET
P.O. Box 50349
COLUMBIA, SC 29250
(803) 779-4000 ♦ FAX (803) 779-4004

CERTIFICATE OF SERVICE

This is to certify that I, Christina F. Barna, legal assistant to attorney Stephen B. Samuels, have served a copy of the following described document by mailing a copy of same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

Document served: **FORM 50 (REQUEST FOR HEARING)**

Person served: Waffle House
Post Office Box 1125
Brentwood, Tennessee 37024


Christina F. Barna
Legal Assistant

Dated: 5/3/10

SAMUELS LAW FIRM, LLC
1527 BLANDING STREET
P.O. Box 50349
COLUMBIA, SC 29250
(803) 779-4000 ♦ FAX (803) 779-4004

CERTIFICATE OF SERVICE

This is to certify that I, Christina F. Barna, legal assistant to attorney Stephen B. Samuels, have served a copy of the following described document by mailing a copy of same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

Document served: **FORM 50 (REQUEST FOR HEARING)**

Person served: Waffle House
7813 Broad River Road
Irmo, South Carolina 29063

Christina F. Barna
Christina F. Barna
Legal Assistant

Dated: 5/3/10

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500 • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803) 737-5739

www.wcc.sc.gov

WCC File #: unassigned

Carrier File #: _____

Carrier Code #: _____

Employer FEIN #: _____

Claimant's Name: Virginia Ann MilesSSN: [REDACTED]Employer's Name: Waffle HouseAddress: [REDACTED]Address: P.O. Box 6450City: Columbia State: SC Zip: 29210City: Norcross State: Ga Zip: 30091Home Phone: () - Work Phone: () -Date of Injury: 3/14/10Insurance Carrier: Self-InsuredPreparer's Name: Darryl D. SmallsLaw Firm: Darryl D. Smalls AttyPreparer's Phone #: (803) 727-6288Date of Injury or Illness: 3/14/10

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Claim under investigation
2. It is **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:

3. It is **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:

4. It is **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:

5. It is **Denied** notice of injury was given the employer. The reasons for denial are:

6. It is **Denied** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:

7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :

8. It is **Denied** the employee is permanently disabled. The reasons for denial are:

9. It is **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ to be determined applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:

12. Estimated time needed for hearing: 30 min.

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Steven Samuels

Address: P.O. Box 50349 Columbia, S.C. 29250

Served on the 17 day of May, 2010 by ☒ first class mail ☐ personal service ☐ certified mail.
I certify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Title

Email

Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

CERTIFICATE OF SERVICE

I, the undersigned attorney for defendants, do hereby certify that I have on May 17, 2010 served the claimant's counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

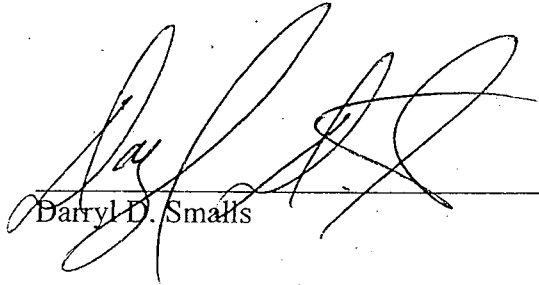
Pleadings:

Form 51

Counsel Served:

Stephen Samuels
P.O. Box 50349
Charleston, S.C. 29250

5/17, 2010


Darryl D. Smalls



Claimant's Name: Virginia A. Miles SSN: 248 -23- [REDACTED] Employer's Name: Waffle House
Address: [REDACTED] Address: 7813 Broad River Road
City: Columbia State: SC Zip: 29210 City: Irmo State: SC Zip: 29063
Home Phone: () - Work Phone: () - Insurance Carrier: Brentwood Services, Inc.
Preparer's Name: Stephen B. Samuels Law Firm: Samuels Law Firm Preparer's Phone #: (803) 779-4000

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 03/14/2010 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Please see Attachment to Form 30.

Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Erroll Anne Hodges, Esquire, Attorney for Defendants,
Name

Post Office Box 2980, Greenville, SC 29602

Address

on the 12th day of October, 2010, by ☒ first class mail ☐ personal service ☐ certified mail.

[Signature] Attorney for Claimant 10/11/2010
Preparer's Signature Title Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

ATTACHMENT TO FORM 30

Virginia Ann Miles v Waffle House, Inc., and Brentwood Services, Inc.
WCC File No. 1004913

Grounds of Appeal:

1. Whether the Single Commissioner erred as a matter of fact and law in failing to find injuries suffered by a waitress who was assaulted by a customer of the employer did not arise in the course and scope of her employment?
2. Whether the Single Commissioner erred as a matter of fact and law in holding "Pursuant to § 42-17-80, this matter was brought without reasonable legal grounds and hearing costs in amount of \$634.20 are assessed against the Claimant."
3. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant worked as a waitress/server for Waffle House and in that capacity was instructed not to follow customers into the parking lot for failure to pay a food ticket but instead was instructed to obtain a tag number, if possible, from within the store."
4. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant was instructed verbally by her manager, James Kearse, not to go outside after dark while working third shift."
5. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, including Claimant's own testimony, on March 14, 2010, Claimant followed a customer into the parking lot and stood behind said customer's car while the customer had a conversation with the car's other occupant, switched places with that occupant and moved to the driver's seat, and then backed up. She testified that she was "bumped" to the side of the car, then walked around the side of the car, and stood in front of the car. When the customer put the car in drive, she jumped onto the hood of the car at which point the customer drove out of the parking lot and down the road for approximately one block before the Claimant rolled off of the hood of the car."
6. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions leading to her injuries clearly were not within the course and scope of her employment, nor did they benefit Waffle House, the Defendant."
7. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing

(particularly Claimant's testimony), while not dispositive in this matter, I find that Claimant did not follow the patron to the parking lot for failure to pay a ticket."

8. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions were in violation of Defendant's policies (APA p. 65) and completely contrary to common sense."
9. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Lori Green, a co-worker, testified that she was present on March 14, 2010 and witnessed the events that occurred that night and further, she went outside after Claimant and attempted to get her to come back inside, but Claimant refused to do so."
10. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, the testimony of Lori Green is credible, particularly as it relates to her attempting to remove Claimant from a dangerous situation and Claimant's refusal to comply."
11. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, the testimony of James Kearse, the unit manager at the time of the incident on March 14, 2010, is credible as it relates to all aspects of this claim, including but not limited to communication of Waffle House policies and procedures and Claimant's average weekly wage and compensation rate."
12. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse provided credible testimony regarding Waffle House's policies when dealing with rowdy or unruly customers and confirmed that no employee is to follow a customer into the parking lot to obtain a tag number or for any other reason. He provided further credible testimony that if a customer attempts to walk out of the store without paying, the employees are instructed to attempt to obtain a tag number from inside the store and, if unable to do so, are to call the police."
13. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse provided credible testimony that third shift employees are not to go outside after dark and that if they do so, they are reprimanded or written up for that action if caught."
14. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence and testimony in the record, Claimant's injuries clearly did not arise out of, nor were they in the course and scope of her employment for Waffle House,

and did not benefit Waffle House.”

15. Whether the Single Commissioner erred as a matter of fact and law in finding “Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's request for benefits is denied in its entirety, meaning that she is not entitled to any benefits, temporary or permanent under the Act; nor is she entitled to any medical treatment or payment for any past medical treatment as it relates to the incident occurring on March 14, 2010.”
16. Whether the Single Commissioner erred as a matter of fact and law in finding “Based on the evidence submitted by the parties, as well as testimony presented at the hearing, I find this proceeding was brought without reasonable legal grounds and costs of \$634.20 are assessed against the Claimant. I note that the pre-hearing conference and hearing lasted in excess of three hours and thirty minutes.”
17. Whether the Single Commissioner erred as a matter of fact and law in finding “Pursuant to § 42-1-160, Claimant did not sustain a compensable injury to her back, brain, left shoulder, left arm, and bilateral legs or any other body part or organ as a result of an accident occurring on March 14, 2010.”
18. Whether the Single Commissioner erred as a matter of fact and law in finding “Claimant failed to prove that she sustained a compensable injury to any of the alleged body parts and is not entitled to any benefits, temporary or permanent, under the Act.”
19. Whether the Single Commissioner erred as a matter of fact and law in finding “Pursuant to § 42-15-60, Defendants are not responsible for any medical treatment (past or future) whatsoever for the incident occurring on March 14, 2010 and subsequent injuries allegedly therefrom.”
20. Whether the Single Commissioner erred as a matter of fact and law in finding “Pursuant to § 42-9-10, 42-9-20, 42-9-30, Claimant is not entitled to and Defendants are not responsible for any benefits whatsoever, temporary or permanent, under the S. C. Workers' Compensation Act as Claimant failed to prove by the greater weight or preponderance of the evidence that she sustained a compensable injury to any body part on March 14, 2010 while working for Defendants.”
21. Whether the Single Commissioner erred as a matter of fact and law in finding “Pursuant to § 42-1-160, Claimant failed to prove that her alleged injuries arose out of and in the course and scope of her employment, and therefore, she is not entitled to any benefits whatsoever under the South Carolina Workers' Compensation Act, Title 42.”
22. Whether the Single Commissioner erred as a matter of fact and law in finding “Pursuant to § 42-17-80, this matter was brought without reasonable legal grounds and hearing costs in amount of \$634.20 are assessed against the Claimant.”

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1004913

VIRGINIA A. MILES,

Employee,

Claimant,

vs.

WAFFLE HOUSE, INC.,

Employer,

AND

BRENTWOOD SERVICES, INC.,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Columbia, S.C. on July 29, 2010.

APPEARANCES:

Claimant appeared and represented by Stephen B. Samuels, Esquire, of Samuels Law Firm of Columbia, South Carolina.

Defendants represented by Erroll Anne Y. Hodges, Esquire of McAngus Goudelock & Courie, L.L.C. of Greenville, South Carolina.

PURPOSE OF THE HEARING:

To determine all issues as set forth in Forms 50 and 51.

COMMISSIONER:

Commissioner T. Scott Beck

FILED:

October 5, 2010

STIPULATIONS

The parties stipulated at the hearing to the following:

1. Notice of the hearing was timely and properly served upon all parties of interest.
2. The South Carolina Workers' Compensation Commission has jurisdiction of this claim.
3. Venue is proper in Richland County.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and Regulations of the South Carolina Workers' Compensation Commission, the following records and documents were submitted into evidence:

Claimant submitted the following:

APA	MEDICAL PROVIDER	DATES	PAGES
I.	Lexington County EMS	3/14/10	1-2
2.	Lexington Medical Center	3/14/10-3/20/10	3-37
3.	Lexington Orthopaedics	3/26/10-5/5/10	38-50

	EXHIBITS	DATES	PAGES
A.	Employer Records	4/20/10	51-52
B.	Law Enforcement Records	3/14/10	53-54

Defendants submitted the following:

APA	DOCTOR	PRACTICE	DATES	PAGES
4.		Lexington Medical Center - Radiology	3/14/10	55
5.		Lexington Orthopaedics	5/27/10 - 3/26/10	56-59

6.		Lexington Medical Center – Rehabilitation Services	6/16/10 – 5/14/10	60-63
7.		Waffle House Safety/Security Procedures	Undated	64-67
8.		SCHD	6/29/10	68-69

Claimant submitted the following supplemental records:

APA	MEDICAL PROVIDER	DATES	PAGES
9.	Lexington Orthopaedics	7/16/10	70

	EXHIBITS	DATES	PAGES
C.	CAD Incident Report	3/14/10	71-72

The following Exhibits were submitted at the hearing: (Hr. Tr. p. 4)

1. Claimant's Exhibit 1 (Photographs)
2. Claimant's Exhibit 2 (Safety checklist)
3. Claimant's Exhibit 3 (C.D.)
4. Claimant's Exhibit 4 (Deposition of M. Strong)
5. Claimant's Exhibit 5 (Police Statement)
6. Claimant's Exhibit 6 (Performance Review)
7. Defendant's Exhibit 1 (Payroll Record)

STATEMENT OF THE CASE

Claimant alleges injuries to her back, brain, left shoulder, left arm and bilateral legs as a result of an accident occurring on March 14, 2010. She seeks payment of causally related medical treatment as well as TTD benefits from March 15, 2010 through the present and

continuing. She further asserts that her average weekly wage is \$375 with a corresponding compensation rate of \$250.02.

Defendants deny the claim in its entirety. They assert that claimant's injuries are not work related as they did not arise out of and in the course and scope of her employment. They assert that Claimant's average weekly wage is \$265.69 with a corresponding compensation rate of \$177.13 per their Form 20. They assert that Claimant violated known policy regarding the actions involved in this particular accident and that all benefits should be denied. Further, they assert that in the alternative, if Claimant is found to have suffered a compensable accident, they contend that there is no medical evidence to support claimant's claim as it relates to Claimant's alleged back and brain injuries in this matter.

EVIDENCE OF THE CASE

Claimant's testimony

Claimant testified on her own behalf and stated that she is 47 years old and that she is divorced. She testified that she was hired to work as a waitress for Waffle House in October 2008. (Hr. Tr. p. 9) Claimant testified that she was paid \$3.29 per hour and that she worked approximately 40 hours per week. Claimant was shown a document that James Kearse, the manager of Waffle House, prepared for her for victims' assistance which indicated that she had a gross salary of between \$275 and \$375 per week. Claimant testified that she agreed those figures reflected approximately what she earned per week. (Hr. Tr. pp. 10-11)

Claimant testified that she was trained as to how to report her tips but that she actually put in \$0 when reporting those. (Hr. Tr. p. 11) Claimant testified that upon being hired by Waffle House, she underwent a training period but that she was not provided any training by James Kearse. She stated that she was initially trained at the Piney Grove location but that she

actually worked at store number 1198 on Broad River Road. (Hr. Tr. p. 12) Claimant testified that her orientation consisted primarily of a brief period at Piney Grove and then training at the Irmo store by Kim in which she learned how to call orders, write tickets, and serve food. She testified that it was her understanding that Waffle House's primary concern was that she please the customers, make sure they left happy, and be in full uniform. (Hr. Tr. p. 13) Claimant stated that after the second day of training, she was a "no call, no show" for the third day because she felt she was being trained so quickly that she didn't think she could handle it. She further testified that she never made up the third day of training.

Claimant testified that she signed documents during her training, but that she was not given copies of those documents. (Hr. Tr. pp. 14-15) Claimant testified that she was given training regarding security and that she was told if there was a yellow tag on the back door after dark, she was not to go out the back door. She testified that she was trained that if someone came in to rob the store, she was to give them all of the money. She denied ever being given any training specifically to deal with the kind of situation she faced on March 14, 2010. She further denied that she was ever told not to go outside while on third shift. She testified that she works mostly on third shift and that she saw other employees go outside on third shift. (Hr. Tr. p. 17) She testified that she saw other employees stand in front of the store to smoke cigarettes while others went next door to a convenience store to buy candy or lottery tickets. (Hr. Tr. p. 18) She specifically identified herself, Lori Green, Charles Seabrook, Mike Strong, Mary Summers, and Brittany Massalou as those that she saw go outside while on third shift. Claimant testified that there was not generally a manager present on third shift and that the cook ran the store during that time period. She testified that Mary Summers and Mike Strong were the cooks running the store on March 14, 2010. She further testified that Lori Green, Brittany Massalou and she were

working that particular evening. (Hr. Tr. p. 19) She denied ever being told by any of the cooks not to go outside on third shift, and she further denied that a manager ever told her not to go outside on third shift. Claimant testified that no one ever disciplined her or wrote her up for going outside. (Hr. Tr. p. 20)

Claimant testified that she has responsibilities as a waitress if someone tried to leave without paying his or her bill. She testified that she was to try to get them to pay their bill if they happened to be walking out the door without paying. She stated that she was to go outside if a customer tried to leave without paying and that she was specifically told to do so by James Kearse, the manager of the store. (Hr. Tr. p. 20) She testified that she was not given any specific training regarding when she should call the police, although she admitted that it was common sense that when they saw someone getting rowdy, they should call 911. (Hr. Tr. p. 21)

Claimant testified specifically regarding March 14, 2010 and stated that she was working third shift on that date which meant that she worked from 9:00 p.m. to 4:00 a.m. (Hr. Tr. p. 21) She testified that it was a particularly busy third shift that night because it was St. Patrick's Day weekend. She testified that sometimes there is a security guard working but that none was working that particular night. Claimant testified that her shift was very busy and hectic and a little overwhelming. (Hr. Tr. p. 22) Claimant testified that she has medical conditions such as anxiety, stress and panic disorders for which she takes medication. (Hr. Tr. p. 23)

Claimant testified that she told Brittany, a co-worker, that she was "off the floor and not picking up any more tables" so that she could finish her side work and leave. Claimant testified that Brittany did not pick up those tables so she had to do so. (Hr. Tr. p. 23) Claimant testified that as some customers were finishing their meal, they began to argue and that she approached them and asked them if they could hurry up and finish their meal so that they could pay their bill and

leave. (Hr. Tr. p. 24) Claimant testified that the customers were two men and two women and that upon asking them to leave, one of the customers told her that she would not get a tip. Claimant testified that she then left the table, told the customer she didn't care, and continued with her side work. She stated that the two men then went outside and that one of them attempted to get Mike Strong, a cook, to come outside and fight but that Mike did not do so. She stated that as the customer started to come back inside, Lori Green politely told him not to do so. (Hr. Tr. pp. 25-26) Claimant testified that the two men then left but that the two women were still inside the store. She testified that one girl then went outside without paying her bill and that Claimant proceeded to go outside to the customer's car to tell her that she needed to pay her bill. She testified that the customer indicated that she was looking for money to pay the bill so Claimant returned to the store and continued her side work. She testified that she did not see the other girl come back in the store and that she next saw one of the female customers approach Brittany, a co-worker, and she appeared to be "coming over the counter." (Hr. Tr. p. 26) Claimant said that she thought she saw an altercation begin between the customer and Brittany and that she then called 911. Claimant stated that no one instructed her to call 911 and that none of the managers did so. (Hr. Tr. p. 27)

At that point, the 911 call was played and entered into evidence. Claimant identified herself as the one on the recording. She testified that during the time she made the call, the customer began to vandalize the store by taking her arm and raking the condiments off the counter and throwing bottles. She stated that the customer did this in three different areas of the store. (Hr. Tr. pp. 29-30) Claimant stated that after the 911 call ended, she ran outside because the customer started to leave and she ran after her. She stated that she was attempting to stand behind the car and prevent the customer from leaving until the police arrived.

Claimant stated that the customer backed up her car and that she bumped the Claimant out of the way with her car. (Hr. Tr. p. 30) Claimant stated that after being bumped by the car, she ended up on the side of the car and then she walked around to the front of the car. She stated that she stared into the eyes of the customer, but the customer did not look her in the eyes and that she put the car in drive and pressed on the gas. She stated that the car then hit her calves and that at that point she jumped on the hood of the car. Claimant stated that it never occurred to her that the customer would act in that way. She testified that the customer then left the parking lot with the Claimant still on the hood of the car and traveled about a block and a half. (Hr. Tr. p. 31) Claimant testified that she then screamed for the customer to pull over and that she pulled into a Burger King parking lot and slammed on the brakes at which point Claimant fell off the car and the customer took off. Claimant stated that Mike and Brittany, two of her co-workers, came to her in the Burger King parking lot and that she was taken to the hospital. (Hr. Tr. p. 32)

Claimant was shown pictures of Waffle House which were submitted as Exhibit 1 for Claimant. She identified herself in the pictures and identified that she scraped her elbow as noted on page five of the exhibit. Claimant testified that she also scraped her bilateral knees, her head, and noted that her foot was injured. She stated that she did not know it was broken at the time. She also noted that she had injured her shoulder. She testified that she is still under a doctor's care with Dr. Boyer and that he is treating her for RSD in her foot. (Hr. Tr. p. 33) Claimant testified that she may have to have cortisone shots in her shoulder as she experiences a burning sensation and bone chips. She described the burning sensation as being towards the back of her shoulder or near her rotator cuff. She stated that her arm initially began to go numb but that she is no longer experiencing numbness. (Hr. Tr. p. 34) Claimant stated that she is experiencing dizziness and frequent headaches. She denied having problems with dizziness prior

to the alleged accident and stated that it began following the incident. Claimant stated that she was referred to a neurologist but that she has not been able to see same. She stated that she walked on crutches for a period of time but that she is no longer doing so. (Hr. Tr. p. 35) Claimant testified that she feels she needs additional medical treatment. At that point, she was asked by her attorney to stand and walk across the room. The undersigned asked her if she had a problem with her left leg to which she replied that she does and the undersigned stated that it appeared from her gait that her left leg is much more stiff than the right. (Hr. Tr. p. 36)

Claimant testified that she attempted to return to work and that she worked one day from 2:00 p.m. to 9:00 p.m. sometime in April. (Hr. Tr. p. 36) Claimant stated that after that attempt, she did not return to work because she woke up the next morning and could not walk. Claimant stated that she had a conversation with James Kearse about returning to work and that he told her she was not allowed to return until she was completely released from her doctor. Claimant testified that she does not believe she violated any company policies on March 14, 2010. She further testified that she did not have a chance to think about any policies that night. (Hr. Tr. p. 37) She testified that she was never written up or disciplined for anything that she did that particular night. (Hr. Tr. p. 38)

On cross-examination, Claimant testified that she is 47 years old and that she currently lives alone. She admitted that no one is dependent upon her for financial support and that she has two grown children. She stated that she is not currently married and that she has previously been known by four other names due to her other marriages. (Hr. Tr. p. 38) Claimant testified that she has had the last name of Davis, Butler, Register, and Johnson. (Hr. Tr. pp. 39, 41) Claimant testified that all of those marriages ended in divorce. Claimant admitted that she is

currently looking into attending Midlands Technical College to continue her education and potentially get a degree in creative writing. (Hr. Tr. p. 41)

Claimant admitted to a conviction in 2007 of criminal domestic violence and that she was sentenced to 26 classes in that regard. Claimant also admitted to breaking a restraining order in 2007 in connection with her divorce. (Hr. Tr. p. 42)

Claimant admitted that she has had a number of waitressing jobs which lasted less than a year in most cases. She testified that in several of those cases, she left the job due to disagreements with supervisors or other employees. Claimant then testified that she also held a job as a secretary where she was responsible for accounts payable, payroll, quarterly taxes, ordering carpet, and working in the warehouse. She further testified that she basically would tell people that "the check was in the mail when it wasn't". She stated she left that job because the company went out of business. (Hr. Tr. p. 43) Claimant testified that she also worked for two different tree services and that she left one of those jobs due to sexual harassment, and her employment with the other job ended because the owner essentially skipped town. (Hr. Tr. p. 43) Claimant further testified that she worked for Equifax as a telephone investigative reporter and that she quit that job because of a misunderstanding over something that was said to a client. Claimant stated that she has also worked as a seamstress for Tripp's Cleaners and as an entertainer/dancer for Twin Peaks and Heartbreakers. Claimant also testified that she has also worked for different family members when they were ill and that she worked for her brother basically running his household for a while. (Hr. Tr. p. 44)

Claimant testified that when she came to work for Waffle House, James Kearse was her supervisor. (Hr. Tr. p. 44) She admitted that she was trained that if she was in a robbery situation, she was to give them all the money and back away. She also admitted that she was

trained that she was not supposed to follow them or do anything such as help the police arrest them and that she was just supposed to get out of the way. She further admitted that she was to stay inside the store in that situation. (Hr. Tr. pp. 45-46) Claimant testified that at other restaurants where she had previously worked, she was told to read posters and other postings on the back wall where she clocked in. She admitted that this was something that she had done in the past. (Hr. Tr. p. 47)

Claimant admitted that she was to just let a customer go if she could not catch them before leaving the parking lot or getting in their car without paying the bill. She testified that in those situations, she was supposed to hand the ticket over to the cook who would initial it as being a walk-out. (Hr. Tr. pp. 48-49) Upon closer cross-examination, Claimant further admitted that she actually was not supposed to chase a customer down or keep them from leaving once they were in their car. She admitted that she knew she was not to do that. In fact, Claimant even testified that "common sense would say, no" that she was not supposed to keep a customer from leaving once he or she was in his or her car. (Hr. Tr. pp. 49-50)

Claimant admitted that in the particular situation on March 14, 2010, she did not walk out in pursuit of the customer because she had not paid her ticket. (Hr. Tr. p. 50) She admitted that she was never told in any Waffle House training that she should keep a customer from leaving once they were in their car. (Hr. Tr. p. 50) She admitted that in this situation, she just was "not thinking". (Hr. Tr. p. 50) She admitted that the girl she followed outside originally got in the passenger seat. She and the driver had a conversation and then the two then switched places. (Hr. Tr. p. 50) She stated that after the two vehicle occupants had a conversation and switched places in the car, the girl she originally followed out of the Waffle House began driving. She admitted that this was not a situation in which the driver got in and immediately started backing

up. (Hr. Tr. p. 51) Claimant testified that during the conversation between the two people in the car, she continued to stand behind the car and that the driver bumped her to get her out of the way. She admitted that she was then on the side of the car but she walked around to the front of the car and stood in front of it. (Hr. Tr. p. 52)

Claimant testified that as far as her problems with headaches, she has them a couple of times a week and if they are really bad, she takes Goody Powders. (Hr. Tr. p. 52)

Claimant admitted that since this incident, she has applied for other jobs and has applied for a customer service job with Tele-Performance. She also applied for a job at Jackie's Alterations. She further admitted that she testified in her deposition that she did not want to apply for a job and then have to tell them that she would have to go for a deposition and come to trial in this case. She also admitted that after her workers' compensation case is completed, she has thought about sitting with older people as a job. She admitted that she is still able to drive and that she is able to clean everything in her apartment and clean her car. (Hr. Tr. p. 53-54)

Claimant testified in regards to her back, she has degenerative disc disease and a bulging disc that was diagnosed in 2007 and that she actually went to a doctor in 2007 about extreme back pain. She testified that she underwent an MRI and that her back pain has essentially been the same since 2007. (Hr. Tr. pp. 54-55) She admitted that she has not sustained a back injury as a result of this incident. She further admitted that since 2003, she has applied for Social Security Disability benefits a couple of times for her back as well as other conditions including panic attacks, anxiety, sleep disorders, and manic depression, but she has been denied and there is no application currently pending. (Hr. Tr. p. 55)

Claimant admitted that her tax return that was filed last year claims wages basically in line with those that were revealed on the Form 20 filed by Defendants. (Hr. Tr. p. 56)

On re-direct examination, Claimant testified that she still wants to work. (Hr. Tr. p. 56) Claimant testified that a friend of hers told her that he has a friend who will hire her at Subway. She further testified that her leg may possibly swell if she performs that job because it does so when she stands on it for several hours. Claimant testified that she has heard the second 911 call and that she was able to identify the person in that call as being Brittany Massalou who is also a Waffle House employee. (Hr. Tr. p. 57) The second 911 call was then played. Claimant testified that the situation which occurred on March 14, 2010 was not a robbery situation like she had been trained to handle. (Hr. Tr. pp. 59-60) She claimed that she was never told what to do one way or another in the kind of situation which occurred on that night. She stated that she was never cautioned or instructed about how she handled the incident after the fact. She claimed she was never written up for any of her actions on that night and that she was never suspended or terminated because of what happened. (Hr. Tr. p. 60)

On re-cross examination, Defendants directed Claimant's attention to her prior testimony regarding chasing down customers in cars. (Hr. Tr. pp. 61, 61)

Michael Strong

Mr. Strong testified that he is employed with Waffle House and has been there for approximately a year and a half. He stated that he works in store 1198 on Broad River Road and that immediately before the hearing, he and a group of his co-workers met with defense counsel. (Hr. Tr. p. 64) Mr. Strong testified that he is a grill operator and that he was hired by James Kearse. He testified that he generally works third shift from 9:00 p.m. to 7:00 a.m. and that there are no managers on that shift. (Hr. Tr. pp. 65-66) He testified that the grill operator generally runs the store during that time and that that includes him as well as three other servers unless it is a week night and then it includes him and two other servers. He testified that he is in charge on

third shift and that he was working third shift on March 14, 2010. (Hr. Tr. p. 66) He testified that the shift was pretty regular, but that every third shift is rowdy at the Waffle House. He stated that the Waffle House currently employs a security guard on Friday nights but that there is no security guard for any other night. He testified that he has seen other employees who work third shift go outside during the shift. (Hr. Tr. p. 67) Mr. Strong testified that on March 14, 2010, he was working along with Brittany, Lori, Mary, and Claimant. Mr. Strong testified that people occasionally go outside during third shift to smoke a cigarette. He testified that he does not know what else they do when they go outside. (Hr. Tr. pp. 68-69) Mr. Strong testified that he was written up once when he went outside and was involved in an altercation. (Hr. Tr. p. 71)

Mr. Strong testified that on March 14, 2010, they had disgruntled customers and that the customers were asked to leave. He stated that one of the customers asked him to come outside and fight and that he declined to do so. He testified that one of the female customers then attempted to hit one of the other waitresses, Brittany. (Hr. Tr. p. 72) He testified that the customer took a swing at Brittany and that Brittany swung back.

He testified that when he saw Claimant go outside, she stood behind the car. He said that the customer driving the car would not back up. He stated that a couple of waitresses went outside to try to get Claimant to come from behind the car but that she would not move. He stated that the girls in the car then switched seats and that the new driver proceeded to back up over Claimant. (Hr. Tr. p. 73) Mr. Strong testified that he does not know specifically who went outside and that Claimant said she went outside to get a license plate number. He testified that he does not know for sure why the other people went outside. (Hr. Tr. p. 77) He testified that he was not outside at that point but that he later went outside and got in his own truck to find out what happened to Claimant. (Hr. Tr. p. 78) Mr. Strong referred to his previous testimony during

his deposition in which he testified that he tried to control the situation by keeping everyone in the store but stated that someone needed to get a license plate number and that is when the customer tried to back up over her. (Hr. Tr. p. 81) Mr. Strong testified that no one went outside until Claimant went outside. (Hr. Tr. p. 82) Mr. Strong again confirmed that no one went in the parking lot until Claimant went in the parking lot. (Hr. Tr. p. 84) Mr. Strong testified that as he understood it, nobody went outside until Claimant was on the hood of the car. He testified that that was when Brittany came outside because at that point, he hopped in his truck as the customer left the parking lot. (Hr. Tr. p. 85)

Mr. Strong testified that in most dine and dash situations, they would attempt to get the license tag number because otherwise that particular server would get a write up. He further testified that he needed the tag number in this particular situation because the customer had torn up the restaurant. (Hr. Tr. p. 87) Mr. Strong testified that he gave a written accident report or statement to the police at 5:47 a.m. on March 13, 2010^{*}. He further testified that he has seen someone try to run over someone else before but not at Waffle House. (Hr. Tr. p. 88)

On cross-examination, Mr. Strong addressed the question from the claimant's attorney which implied that there was an "agreement" between him and defense counsel as to what his testimony would be. Mr. Strong denied that defense counsel told him what his testimony should be. (Hr. Tr. p. 89) He further testified that defense counsel specifically told him that it was his responsibility to tell the truth whether it helped or hurt his company. He testified that defense counsel told him that he would potentially be asked questions by Claimant's attorney as well as the commissioner and that it was his responsibility to answer those questions and tell the truth.

^{*} Mr. Strong testified that it was March 13, 2010 but all other records reflect March 14, 2010.

He adamantly denied that there was any agreement between him and defense counsel as to what his story should be. (Hr. Tr. p. 90)

He testified that Ms. Summers was also working as a cook or grill operator on March 14, 2010 and that neither one of them are actually in management. He testified that as part of his "running the store", that means that he simply writes up a walk-out if such occurs. (Hr. Tr. p. 90) He testified that it is up to the employees as to whether or not they go outside during their shift and that he does not know what activities they perform when they go. He stated that it is not his job to give permission to people to go outside. He testified that Waffle House has a policy that you are not to go outside after dark. He stated that if you do so, it is "on you". (Hr. Tr. p. 91)

Mr. Strong testified that everyone knew employees were not to go outside on third shift and that he was present during a conversation between Claimant and James Kearse about that specific policy. (Hr. Tr. p. 92) Mr. Strong confirmed that if someone tries to walk out without paying, the employee is to try to get the tag number if possible but is not to attempt to stop people from leaving. He further confirmed that no one is supposed to run outside and stand behind a car to keep a customer from leaving. He testified that if caught doing that activity, the employee would get in trouble and would potentially get a write up from Waffle House. He further testified that the situation which he was trying to control was the situation in which the Claimant actually went outside. (Hr. Tr. pp. 93-94) Mr. Strong testified that those who went outside were trying to control Claimant, not the person who was backing up. In addition, he testified that the waitresses were actually able to get the license plate number and came back in the store while Claimant remained outside. He confirmed that someone actually had the license plate number before Claimant jumped on the hood of the car. He further testified that those who

went outside were trying to get Claimant to move from behind the car but that she refused to do so. (Hr. Tr. p. 94) Mr. Strong further testified that if he were to characterize the situation as an emergency, in his opinion, the emergency was outside the store when Claimant went outside and caused the situation. He confirmed that no one ever told Claimant to go outside and get a license plate number. He further confirmed that he had seen Claimant act in other situations without thinking. (Hr. Tr. p. 95)

On re-direct examination, Mr. Strong testified that there were rowdy customers in the store that night and that he guesses they were throwing things around the store. He admitted that this occurred before Claimant went outside. He stated that he did not know whether Claimant had called the police while the customers were throwing things inside the store. (Hr. Tr. p. 96) He testified that Claimant went outside first and that the rest of the employees went outside after her. He stated that it was at that time that one of the other waitresses got the license tag number. (Hr. Tr. p. 97) He further testified that Brittany was not the first one to go outside. (Hr. Tr. p. 98) Mr. Strong testified that his job was to get the situation under control and that all he was required to do was get the customers to go outside. He stated that he did so and that Claimant chose to follow them. (Hr. Tr. p. 99)

Mr. Strong testified that he didn't recall being written up for going outside in this situation, but that there is most definitely a rule that employees are not to go outside after dark. He stated that that rule is in the handbook. He testified that it is general procedure to give all new employees an employee handbook. (Hr. Tr. p. 102)

On re-cross examination, Mr. Strong testified that he considered the situation was under control once the people causing the problem were outside of the restaurant. He further testified that Claimant made the situation worse by going outside and following the customers. He denied

that anyone told her to go outside and get the tag number. (Hr. Tr. p. 103) He further testified that he did not want to testify in this matter and admitted that Defendants had a lot of trouble contacting him because he did not want to talk to them. (Hr. Tr. p. 104) He testified that he was told by defense counsel to answer the questions truthfully whether it helped or hurt the company and that that is what he had done throughout his testimony. He further confirmed that he was sure Claimant was the first one to go outside and follow the customers. (Hr. Tr. p. 105)

On re-direct examination, Mr. Strong stated that the car was parked facing the store so that the tag number was in the back. (Hr. Tr. pp. 105-106) He stated that the only way anybody could have gotten the tag number was to go outside. He stated that Lori stood off to the side of the car and got the tag number. (Hr. Tr. p. 106) He confirmed that not all the employees went outside at one time. Mr. Strong testified that though he may have only been written up once for going outside when he was in an altercation, he was reprimanded other times when he went outside. (Hr. Tr. p. 107)

On re-cross examination, Mr. Strong confirmed that he has either been written up or been reprimanded when going outside while on third shift. He further confirmed that the tag number could have been obtained when the car left the parking lot. (Hr. Tr. p. 108)

Lori Green

Ms. Green testified on behalf of Defendants and stated that she is an employee of Waffle House as a server and has been employed there for approximately one year. She stated that Waffle House's policy regarding employees going outside on third shift is that they are not to do so no matter what. She stated that if someone walks out without paying, the policy is to get the license plate number from the window. She stated that if that is impossible to do, the employee is supposed to call the police and tell the manager about it in the morning. (Hr. Tr. p. 111) She

stated that though it does not happen frequently, it does occur "sometimes." Ms. Green testified that employees are not supposed to chase customers no matter what they have done inside the store. She stated that this policy has been made clear to all employees. (Hr. Tr. p. 112)

Ms. Green testified that she is aware of the policy because she was given an employee handbook at orientation and has also had conversations in the back room with supervisors about not going outside. She further confirmed that third shift employees are not to go outside after dark. She stated that if you are to get a tag number, you are to do it from the window. (Hr. Tr. p. 112) She stated that if you are unable to obtain the tag number, you are simply to tell the manager about it in the morning. (Hr. Tr. p. 113)

Ms. Green testified that she was working on the night of March 14, 2010 and that Claimant went outside first when the situation occurred. (Hr. Tr. p. 113) She stated that she went outside to try to get the Claimant to come back inside. Ms. Green was the one who got the license plate number. She glanced down and quickly got the tag number before returning inside the store. She stated that though she attempted to get Claimant to come back inside, Claimant refused to do so. In fact, she testified that Claimant adamantly refused to come back inside even after being specifically asked to do so. She stated that she even grabbed Claimant's arm and told her to come inside. She stated that during this time, Claimant continued to stand behind the car. (Hr. Tr. p. 114) She confirmed that no employees are to go outside to get a tag number or to chase a customer. She further testified that she had witnessed Claimant on multiple occasions act without thinking or in a way that was not beneficial to Waffle House's interests. She testified that she once saw Claimant arguing with people in front of customers or throwing a cup from the coke machine to the dish table getting water all over some of the customers. (Hr. Tr. p. 115)

On cross-examination, Ms. Green confirmed that she is a waitress and that she is not a manager. She stated that she has no authority over co-workers and that she generally works third shift. (Hr. Tr. pp. 115-116) She testified that it is common for employees on third shift to go outside to the convenience store which is next door. She admitted that she had gone to the store while working third shift. (Hr. Tr. p. 116)

Ms. Green further confirmed that the reason that she went outside on March 14, 2010 to attempt to have Claimant come back inside. (Hr. Tr. p. 116) She testified that the situation occurred quickly and that two customers were about to fight each other. (Hr. Tr. p. 117) Ms. Green testified that she does not know who initially called the police because she was on the other side of the restaurant. (Hr. Tr. p. 118)

Ms. Green testified that the cooks generally run the store on third shift and that on that night Mary and Mike were both cooks. (Hr. Tr. p. 119) Ms. Green testified that she was not written up for going outside that night and that she has never been written up for going outside while on third shift. (Hr. Tr. p. 120)

On re-direct, Ms. Green testified that once the customer was out of the building, the situation was not out of control. Instead, she testified that it became out of control once Claimant walked outside and refused to come back in. She confirmed that what made the situation become out of control was the fact that Claimant went outside. (Hr. Tr. p. 122) She further testified that Claimant has previously thrown things while in the store. She specified that once Claimant became angry with the coke machine and threw the coke. She also testified that one time Claimant threw a fork because Claimant became angry at her. She confirmed that if she had gone outside and been caught by management (not a cook as they are not part of management) she would have been written up or reprimanded. (Hr. Tr. p. 123)

On re-cross examination, Ms. Green testified that the situation began with rowdy customers. (Hr. Tr. p. 124)

On re-direct, Ms. Green confirmed that what caused the situation to continue out of control was the fact that Claimant went outside. (Hr. Tr. p. 126)

James Preston Kearse

Mr. Kearse testified that he is a district manager for Waffle House. He stated that at the time of the incident on March 14, 2010, he was the unit manager of that store. He stated that it is Waffle House's policy that no employees are to go outside on third shift as there are potential dangers outside. (Hr. Tr. p. 128) He stated that that policy is communicated verbally and is posted on the wall in the back room. He further testified that he knew it was posted in the back room because he was the unit manager of that store. (Hr. Tr. p. 129) He further testified that the policy was communicated to Claimant before March 4, 2010 and specifically that it had been communicated to her because there had been an incident with Claimant and Mike Strong. He stated that there had been a meeting with the normal third shift employees in the back room about how they are not to go outside while on third shift. He stated that Claimant was specifically given a verbal warning prior to March 14, 2010 for violating this policy. (Hr. Tr. p. 130)

Mr. Kearse testified that employees are not to chase customers down if they do not pay before leaving as that would create a dangerous situation. (Hr. Tr. p. 130) He stated that it is not a benefit to Waffle House to have an employee chase a customer outside for not paying for their meal. (Hr. Tr. p. 130)

Mr. Kearse testified that he is familiar with Claimant's history and verified a copy of her payroll history which was submitted as Defendants' Exhibit 1. He noted that the pay history

reflects the number of hours worked, the regular pay, gross pay before taxes, meal credits, taxes and net pay. He further testified that tips are also reflected in the payroll history. (Hr. Tr. p. 131) He confirmed that Claimant did not earn any tips while in training which is why there were no tips reported during that part of her employment. He stated that Waffle House's policy regarding reporting tips is that you should record what you make. He stated that he expects all employees to be honest and report honestly regarding the tips that they make. He stated that they can be disciplined if it is discovered that they have been dishonest about tips. He further testified that the tips are something that Claimant must actually punch into the store computer and that those numbers on the payroll history are generated from her actually putting them in. (Hr. Tr. p. 132)

Mr. Kearsse testified that regarding March 14, 2010, it was his understanding that the customers actually paid the bill and that it was other customers who witnessed the whole scene who got up and left because a girl started throwing bottles. He stated that he believes that the bills of the customers who went outside were paid because he watched the video of that night and saw that the two men, who were with the two women, come to the register with a ticket before the incident began. (Hr. Tr. p. 133) He did state that there was a ticket from a couple sitting at the counter that went unpaid. (Hr. Tr. p. 133)

Mr. Kearsse testified that he wrote up all of the employees who went outside during the incident. He stated that he did not write up Ms. Mary as she did not exit the building. He stated that he did not actually deliver Claimant's write up to her because she was gone for so long. He stated that he does not know whether or not she ever saw it. He further testified that she probably did not sign it. (Hr. Tr. p. 134) Mr. Kearsse viewed the document that was submitted to the state Office of Victim Assistance. He testified that he is the one who completed that

document and that he completed the section regarding her payroll by estimating how much she made. He further testified that her payroll history would be the exact amount that she made. He admitted he did not have the payroll history in front of him at the time he completed the document for the state Office of Victim Assistance, and that he had just "guesstimated" the figures. (Hr. Tr. p. 135)

Mr. Kearse testified that it is not Waffle House's policy to tell employees to go outside and get tag numbers, and he did not tell Claimant to do so. He testified that he had a specific conversation with third shift employees in the back room that there is "no sense in going outside." He further testified that they discussed that there was no sense in fighting customers, no sense in arguing with customers, and that if there is a major problem like that, the employees are to call the police. (Hr. Tr. p. 136) He stated that he knows that he specifically discussed going outside with Claimant. He further testified that it is prohibited under Waffle House policy for an employee to go outside while on third shift and that it is not to Waffle House's benefit to have arguments or altercations with customers such as that which occurred on March 14, 2010. (Hr. Tr. p. 137)

Mr. Kearse further testified and identified Defendants' APA #7 which was a flyer that was posted in the back of the room. He stated that the local and unit stores receive correspondence from the corporate office on a weekly basis and that it is posted where all employees are aware of it. (Hr. Tr. pp. 137-138)

On cross-examination, Mr. Kearse testified that he was the store manager of Store 1198 on March 14, 2010. He admitted that he hired Claimant but did not train her personally. He further testified that he does not train waitresses but instead trains the cooks. (Hr. Tr. p. 138) Mr. Kearse testified that he did not document any of the verbal warnings that he gave to

Claimant as they were verbal warnings only. He clarified that for a first time offense it is typically to only issue a verbal warning. Mr. Kearse testified that Claimant was a hard worker, dependable and punctual. (Hr. Tr. p. 139)

Mr. Kearse testified that he has access to payroll records from the corporate office and that he sees Claimant's paycheck stub every Sunday when he pays her. Mr. Kearse testified that he has never written up any waitresses for not reporting tips. He did not agree that Waffle House policy allows waitresses to not report all of their tips. (Hr. Tr. p. 140)

Mr. Kearse was shown a document, (Claimant's Exhibit p. 51), which he admitted that he completed and which he understood to be an official government document which was reported to a state agency. He acknowledged that he completed the form indicating that Claimant earned from between \$275-\$375 per week. He stated that he based those figures upon an estimate. (Hr. Tr. p. 141)

Mr. Kearse testified that when an employee is going through training, they are given certain training documents. He was shown Claimant's Exhibit 2 and stated that he recognized the document as a Unit Manager's safety checklist. (Hr. Tr. p. 142) Mr. Kearse stated that the specific procedure to go back over the items listed in the safety checklist was not done in this particular case as it was to be followed by the human resources specialist. He further acknowledged that no manager signed off on the safety checklist. (Hr. Tr. p. 143) He acknowledged that he could not tell, based on that document, whether any manager went over the security policy with Claimant. (Hr. Tr. p. 144) He testified that he did not personally go over the checklist with Claimant but that someone else may have done so. (Hr. Tr. p. 144)

Mr. Kearse was then shown APA p. 64 and testified that that document should be the same thing that is posted in the back room. He testified that on that specific document, there is

no specific rule that third shift employees are not to go outside. However, he testified that violence in the workplace is covered on that document and that the document informed employees that they were to remain calm and polite and maintain a safe distance so that they are out of the range of physical attack. Further, he acknowledged that the document instructed employees to not be a hero by overpowering the person or making any physical contact. Mr. Kearse did not agree that Claimant complied with those instructions. Instead, he testified that he felt she was trying to be a hero by trying to stop the customers and save the day and get money for the check. Mr. Kearse testified that she did not make any physical contact with the customers that he was aware of but that he was not there. (Hr. Tr. p. 146)

Mr. Kearse was then asked to look at APA p. 65 and acknowledged that these documents did not come out of an employee handbook but were actually kept in the Safety and Security Manual. He testified that the Safety and Security Manual remains on the shelf next to the Coaching and Training Manual and stated that it is located in the back room which is unlocked at all times. (Hr. Tr. p. 148) Mr. Kearse agreed that these documents reflected safety tips for handling out of control customers. (Hr. Tr. p. 149) Mr. Kearse testified that it is Waffle House policy that employees are not to go outside after dark. He confirmed that that policy is written down but that he is sure that some people do go outside on third shift for cigarette breaks. He acknowledged that employees who are caught doing so have been written up for violating this policy. (Hr. Tr. p. 150) Mr. Kearse testified that there is generally not a manager on duty during third shift. (Hr. Tr. p. 151) He stated that the grill operator is generally the person in charge during that shift and that on March 14, 2010 that person was Mary Summers because she has worked for Waffle House for approximately 15 years while Mike Strong has been there for only one. He testified that Mary would have been in charge over Mike. He testified that Mary is

approximately 65 years old and that she is approximately 5 feet tall. (Hr. Tr. p. 152) Mr. Kears testified that third shift has seen its fair share of unusual situations and that it is typical for things to get broken and for customers to get asked to leave or kicked out of the restaurant. He stated that the staff is to handle the situation as best they can. He further testified that they should go to the grill operator or whoever is considered to be the person in charge and take advice from that person on how to handle the situation. (Hr. Tr. p. 153)

Mr. Kears testified that from what he could see in the video of March 14, 2010, when the customers walked out of the building, everything appeared to be under control. He acknowledged that getting license tag numbers is a benefit to Waffle House and that if a staff member is able to collect money from people rather than have them walk out, that is also a benefit to Waffle House. (Hr. Tr. p. 154) Mr. Kears testified that everyone who went outside the night of March 14, 2010 was written up. (Hr. Tr. p. 155) Mr. Kears testified that Claimant returned to work one time after March 14, 2010 in an attempt to work. He stated that she had actually returned to the store several times but only one time to work. He stated that he could tell that she was doing her job on that one occasion but that she was having trouble doing so. He testified that she was moving too slowly which was not conducive to her job duties. Mr. Kears testified that he is no longer in charge of that store but that Claimant would not be allowed to return until she was released at full duty. (Hr. Tr. p. 156)

Mr. Kears was given a document that reflected a performance review on hourly associates. He acknowledged that he, personally, completed the performance review on March 18, 2010 which was approximately four days after the incident on March 14, 2010. He stated that although the document was dated March 18, he could not be sure when it was actually completed as he would have dated it the day that it was actually due. He stated that he pre-dated

them with that date so that he would be reminded to turn them in by the due date. (Hr. Tr. p. 157) Mr. Kearse testified that obtained Claimant's signature on her performance review on possibly one of the days that she returned to the restaurant after the incident. He acknowledged that at the time that he evaluated her, he acknowledged that she met all expectations. He stated that he indicated on the performance review that Claimant should keep thoughts to herself and not speak them out loud so that others can hear her. He instructed her on the performance review to remember that customers are more important than the dish table. (Hr. Tr. p. 158) He stated that those comments were not likely reflective of the March 14, 2010 incident because he likely filled out the review prior to that incident. Mr. Kearse testified that Claimant's performance is "fine". (Hr. Tr. p. 159) Mr. Kearse again testified that at the time he completed the performance review, Claimant had done a good job and that he could not be sure when it was actually completed, but that it was likely completed before March 14, 2010. (Hr. Tr. p. 160) Mr. Kearse testified that when employees are written up there are three copies and that the employee is given one of those copies. (Hr. Tr. p. 161)

On re-direct examination, Mr. Kearse testified that regardless of the lack of initials on the Unit Manager Checklist, he could testify and knew that he had a specific conversation with Claimant about the fact that she was not to go outside while on third shift. He further confirmed that when employees do go outside while in third shift, they are reprimanded or written up if caught. (Hr. Tr. p. 162) Mr. Kearse testified that "controlling the situation" does not include going outside and standing in front of a car in the parking lot. He denied that the actions of Claimant would be considered of any benefit whatsoever to Waffle House and that it was actually to Waffle House's detriment that she acted in the manner in which she did. He stated that her actions violated Waffle House's principles about interacting with customers. He further

acknowledged that when completing performance reviews, he does not necessarily write down every single thing that an employee may have done wrong. He further testified that it is not necessary for someone to be perfect in order to meet expectations. (Hr. Tr. p. 163) He testified that if an employee is generally showing up for work and generally doing a good job, that is considered meeting expectations even if they have been reprimanded in the past for violation of policies. (Hr. Tr. p. 164)

Mr. Kears testified that employees are to get tag numbers from inside the building and if they can't or are unable to do so, they are to let the customer go and call the police. He stated that this is the policy because they do not want employees to go outside as 90% of those who come up outside of the Waffle House on third shift are "under the influence of something," meaning that it is unsafe for employees to go outside and that is why it is not to Waffle House's benefit for them to do so. (Hr. Tr. pp. 164-165)

On re-cross examination, Mr. Kears testified that even if on first or second shift, Claimant would have been reprimanded if she went outside without a manager's permission. (Hr. Tr. p. 164)

Mary Summers

Ms. Summers was not allowed to testify as Claimant's attorney objected to her testimony given that she had been subpoenaed for a deposition two days prior to the hearing and failed to appear. Therefore, the undersigned sustained the objection and Ms. Summers was not allowed to testify.

Medical Evidence

An EMS report dated March 14, 2010 noted multiple abrasions to the left arm, bilateral knees, right hand as well as pain in the left shoulder and left ankle with a contusion to the left

side of the head at the hairline near the temple and back pain. The EMS records indicate that Claimant was an employee of the Waffle House on Broad River Road and I-26. A group of patrons vandalized the restaurant. The patient tried to stop them from leaving by standing in front of their car. When the group did not stop, she jumped on the hood to avoid being hit. The patient held onto the windshield wipers to keep from falling. The patient fell off the car a block away from the restaurant sustaining injuries.” (APA p. 2)

Claimant was transported to Lexington Medical Center where she underwent CT scans to the cervical spine, left ankle, head, lumbar spine, thoracic spine, and chest, all of which returned negative results. (APA p. 6) Claimant was released with no restrictions other than to avoid driving or operating heavy machinery due to medication. (APA p. 8) Claimant returned for a re-evaluation of her ankle sprain on March 20, 2010. She was given an ankle splint and instructed to follow up with an orthopedist if her pain did not improve. (APA p. 29)

Claimant presented to Lexington Orthopaedics on March 26, 2010 complaining of left foot and ankle pain as well as left shoulder pain. Though she was given a splint for her left foot and ankle at the emergency room, she admittedly stopped wearing it several weeks prior to her appointment with Lexington Orthopedics. She complained of pain in the left foot mainly towards the lateral aspect. She also noted pain in the left shoulder towards the AC area with no numbness or tingling. She was diagnosed with a fracture of the left metatarsal of the left foot and separation of the left shoulder, Grade 1. (APA p. 38) She was placed in a boot and advised that she could work in two weeks, weight bearing in the boot at work. (APA p. 39) Claimant returned on April 16, 2010 reporting not much improvement. She stated that she was not allowed to work in her boot because of the open toe. She was given a total contact cast closing in the toe to allow her to work. (APA p. 41) Claimant returned on April 19, 2010 reporting that

she had been able to work and did okay over the weekend. She received a new total contact cast at that appointment. (APA p. 43) On May 5, 2010, Claimant returned for a re-check of her fracture at which point the doctor noted that she was essentially doing somewhat better. The boot was discontinued at that point and she was to start back at work the following Monday at 4 hours a day. The doctor noted that she may have some swelling and pain but that she was going to have to tolerate a little bit of that. The doctor instructed her to return to work for 4 hours a day for 2 weeks and then return to full duty. (APA p. 48) Claimant returned on May 13, 2010 and noted that her foot was very uncomfortable and radiated up into her leg. The doctor noted that Claimant's pain may be stemming from RSD and that the RSD condition needed to be treated aggressively. (APA p. 49)

Claimant returned to Lexington Orthopaedics on May 27, 2010 at which point the doctor noted that Claimant's symptoms reportedly began in March of 2010 when "for some reason she jumped on another individual's car" which then went down the street where she fell. She noticed increasing right shoulder pain with heaviness and numbness extending down toward the elbow. The physician also noted that he had reviewed notes from Urgent Care dated May 11, 2010 which noted that she had been in altercation occurring on the same day (May 11, 2010) at which time she reported pain in the neck and back. She did not report any shoulder pain at that time. (APA p.56) Claimant was referred to a neurologist on July 16, 2010 by Lexington Orthopedics.

Prior to this alleged accident, Claimant underwent an x-ray of her right shoulder in October of 2003 due to pain after suffering a fall. (APA p.55)

Exhibits submitted at the hearing and reviewed and considered by this Commissioner

1. Claimant's Exhibit 1 (Photographs)

2. Claimant's Exhibit 2 (Safety checklist)
3. Claimant's Exhibit 3 (C.D.)
4. Claimant's Exhibit 4 (Deposition of M. Strong)
5. Claimant's Exhibit 5 (Police Statement)
6. Claimant's Exhibit 6 (Performance Review)
7. Defendant's Exhibit 1 (Payroll Record)

Both Claimant and Defendants also submitted Memorandums of Law in regards to this matter. This Commissioner has carefully read and considered both Memorandums, as well as the evidence and testimony in the record and has assessed the credibility of all who testified based on personal observation of their testimony. Based on my careful consideration of all of the evidence, testimony, and Memoranda submitted in this matter, I rule as follows.

FINDINGS OF FACT

1. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant alleges injuries to her back, brain, left shoulder, left arm, and bilateral legs as a result of an injury which she alleges occurred on March 14, 2010.
2. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Defendants submitted a Form 20 alleging an average weekly wage of \$265.69 with a corresponding compensation rate of \$177.13 which was based on Claimant's actual payroll history which included any tips Claimant reported that she earned.
3. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant alleges that her average weekly wage is \$375 with a corresponding compensation rate of \$250.02 based upon a document completed by James Kearse, the unit manager of the store in which she worked, for the State Office of Victim Assistance.

4. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse completed the document for the State Office of Victim Assistance without the benefit of reviewing Claimant's payroll history and simply estimated her wages without knowing exactly the amount Claimant earned in an average week.
5. Based on Claimant's testimony, she filed a tax return, and the wages reported were basically in line with what was revealed on the Form 20.
6. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, based on Claimant's actual payroll history which reflects an average weekly wage of \$265.69 with a corresponding compensation rate of \$177.13, as well as the testimony regarding the reporting of tips, the taxable wages Claimant claimed on her tax return, and lack of credible support for claimant's claimed higher wages, I find that Claimant's average weekly wage is \$265.69 with a corresponding compensation rate of \$177.13.
7. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant worked as a waitress/server for Waffle House and in that capacity was instructed not to follow customers into the parking lot for failure to pay a food ticket but instead was instructed to obtain a tag number, if possible, from within the store.
8. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant was instructed verbally by her manager, James Kearse, not to go outside after dark while working third shift.
9. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, including Claimant's own testimony, on March 14, 2010, Claimant followed a customer into the parking lot and stood behind said customer's car while the customer

had a conversation with the car's other occupant, switched places with that occupant and moved to the driver's seat, and then backed up. She testified that she was "bumped" to the side of the car, then walked around the side of the car, and stood in front of the car. When the customer put the car in drive, she jumped onto the hood of the car at which point the customer drove out of the parking lot and down the road for approximately one block before the Claimant rolled off of the hood of the car.

10. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions leading to her injuries clearly were not within the course and scope of her employment, nor did they benefit Waffle House, the Defendant.
11. Based on the evidence submitted by the parties, as well as testimony presented at the hearing (particularly Claimant's testimony), while not dispositive in this matter, I find that Claimant did not follow the patron to the parking lot for failure to pay a ticket.
12. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions were taken without thinking. (Claimant's testimony)
13. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions were in violation of Defendant's policies (APA p. 65) and completely contrary to common sense.
14. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Lori Green, a co-worker, testified that she was present on March 14, 2010 and witnessed the events that occurred that night and further, she went outside after Claimant and attempted to get her to come back inside, but Claimant refused to do so.

15. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, the testimony of Lori Green is credible, particularly as it relates to her attempting to remove Claimant from a dangerous situation and Claimant's refusal to comply.
16. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, the testimony of James Kearse, the unit manager at the time of the incident on March 14, 2010, is credible as it relates to all aspects of this claim, including but not limited to communication of Waffle House policies and procedures and Claimant's average weekly wage and compensation rate.
17. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse provided credible testimony that Claimant is required under Waffle House policy to report all tips which she earns during her shifts and, further, provided credible testimony that when he completed the document for the State Office of Victim Assistance, he merely completed the document based on an estimate of her earnings and did not have Claimant's payroll history in front of him. He further provided credible testimony that Claimant's payroll history is an accurate reflection of Claimant's actual earnings.
18. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse provided credible testimony regarding Waffle House's policies when dealing with rowdy or unruly customers and confirmed that no employee is to follow a customer into the parking lot to obtain a tag number or for any other reason. He provided further credible testimony that if a customer attempts to walk out of the store without paying, the employees are instructed to attempt to obtain a tag number from inside the store and, if unable to do so, are to call the police.

19. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse provided credible testimony that third shift employees are not to go outside after dark and that if they do so, they are reprimanded or written up for that action if caught.
20. Based on the evidence and testimony in the record, Claimant's injuries clearly did not arise out of, nor were they in the course and scope of her employment for Waffle House, and did not benefit Waffle House.
21. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's request for benefits is denied in its entirety, meaning that she is not entitled to any benefits, temporary or permanent under the Act; nor is she entitled to any medical treatment or payment for any past medical treatment as it relates to the incident occurring on March 14, 2010.
22. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, I find this proceeding was brought without reasonable legal grounds and costs of \$634.20 are assessed against the Claimant. I note that the pre-hearing conference and hearing lasted in excess of three hours and thirty minutes.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Workers' Compensation Act and § 42-1-10, S.C. Code of Laws, etc., seq., that:

1. Pursuant to § 42-1-160, Claimant did not sustain a compensable injury to her back, brain, left shoulder, left arm, and bilateral legs or any other body part or organ as a result of an accident occurring on March 14, 2010.

2. Claimant failed to prove that she sustained a compensable injury to any of the alleged body parts and is not entitled to any benefits, temporary or permanent, under the Act.
3. Pursuant to § 42-1-40, Claimant's average weekly wage is \$265.69 with a corresponding compensation rate of \$177.13, as based upon her actual payroll history, the Form 20, and other evidence and testimony in the record noted.
4. Pursuant to § 42-15-60, Defendants are not responsible for any medical treatment (past or future) whatsoever for the incident occurring on March 14, 2010 and subsequent injuries allegedly therefrom.
5. Pursuant to § 42-9-10, 42-9-20, 42-9-30, Claimant is not entitled to and Defendants are not responsible for any benefits whatsoever, temporary or permanent, under the S. C. Workers' Compensation Act as Claimant failed to prove by the greater weight or preponderance of the evidence that she sustained a compensable injury to any body part on March 14, 2010 while working for Defendants.
6. Pursuant to § 42-1-160, Claimant failed to prove that her alleged injuries arose out of and in the course and scope of her employment, and therefore, she is not entitled to any benefits whatsoever under the South Carolina Workers' Compensation Act, Title 42.
7. Pursuant to § 42-17-80, this matter was brought without reasonable legal grounds and hearing costs in amount of \$634.20 are assessed against the Claimant.

ORDER

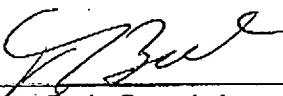
IT IS HEREBY ORDERED that Claimant did not sustain a compensable injury to any body part or organ on March 14, 2010. She failed to prove that her alleged injuries arose out of and in the course and scope of her employment.

IT IS HEREBY ORDERED that the greater weight of the evidence supports a finding that Claimant's average weekly wage is \$265.69 with a corresponding compensation rate of \$177.13.

IT IS HEREBY ORDERED that this proceeding was brought without reasonable legal grounds and hearing costs in the amount of \$634.20 are assessed against the Claimant.

IT IS HEREBY ORDERED that Claimant is not entitled to any benefits pursuant to § 42-9-10, § 42-9-20, or § 42-9-30 or any other section under the South Carolina Workers' Compensation Act including but not limited to any temporary or permanent indemnity or disability benefits and/or medical treatment, past, present, or future, as it relates to the incident that occurred on March 14, 2010. Claimant's request for benefits under the Act is hereby **DENIED**.

AND IT IS SO ORDERED.



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
October 5, 2010

By: Amy Bracy, Administrative Assistant to Commissioner Beck

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1004913

VIRGINIA A. MILES,

Employee,

Claimant,

vs.

WAFFLE HOUSE, INC.,

Employer,

AND

BRENTWOOD SERVICES, INC.,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING: Hearing held in Columbia, S.C. on January 18, 2011.

APPEARANCES: Claimant appeared and represented by Stephen B. Samuels, Esquire, of Samuels Law Firm of Columbia, South Carolina.

Defendants represented by Erroll Anne Y. Hodges, Esquire of McAngus Goudelock & Courie, L.L.C. of Greenville, South Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Claimant's Form 30

FULL COMMISSION PANEL: Commissioners G. Bryan Lyndon, David W. Huffstetler, and Andrea P. Roche

FILED:

3/23/11

STATEMENT OF THE CASE

The parties were heard by Commissioner T. Scott Beck on July 29, 2010 in Columbia, South Carolina. On October 5, 2010, he issued the following Order:

FINDINGS OF FACT

1. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant alleges injuries to her back, brain, left shoulder, left arm, and bilateral legs as a result of an injury which she alleges occurred on March 14, 2010.
2. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Defendants submitted a Form 20 alleging an average weekly wage of \$265.69 with a corresponding compensation rate of \$177.13 which was based on Claimant's actual payroll history which included any tips Claimant reported that she earned.
3. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant alleges that her average weekly wage is \$375 with a corresponding compensation rate of \$250.02 based upon a document completed by James Kearse, the unit manager of the store in which she worked, for the State Office of Victim Assistance.
4. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse completed the document for the State Office of Victim Assistance without the benefit of reviewing Claimant's payroll history and simply estimated her wages without knowing exactly the amount Claimant earned in an average week.
5. Based on Claimant's testimony, she filed a tax return, and the wages reported were basically in line with what was revealed on the Form 20.
6. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, based on Claimant's actual payroll history which reflects an average weekly

wage of \$265.69 with a corresponding compensation rate of \$177.13, as well as the testimony regarding the reporting of tips, the taxable wages Claimant claimed on her tax return, and lack of credible support for claimant's claimed higher wages, I find that Claimant's average weekly wage is \$265.69 with a corresponding compensation rate of \$177.13.

7. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant worked as a waitress/server for Waffle House and in that capacity was instructed not to follow customers into the parking lot for failure to pay a food ticket but instead was instructed to obtain a tag number, if possible, from within the store.
8. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant was instructed verbally by her manager, James Kearse, not to go outside after dark while working third shift.
9. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, including Claimant's own testimony, on March 14, 2010, Claimant followed a customer into the parking lot and stood behind said customer's car while the customer had a conversation with the car's other occupant, switched places with that occupant and moved to the driver's seat, and then backed up. She testified that she was "bumped" to the side of the car, then walked around the side of the car, and stood in front of the car. When the customer put the car in drive, she jumped onto the hood of the car at which point the customer drove out of the parking lot and down the road for approximately one block before the Claimant rolled off of the hood of the car.

10. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions leading to her injuries clearly were not within the course and scope of her employment, nor did they benefit Waffle House, the Defendant.
11. Based on the evidence submitted by the parties, as well as testimony presented at the hearing (particularly Claimant's testimony), while not dispositive in this matter, I find that Claimant did not follow the patron to the parking lot for failure to pay a ticket.
12. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions were taken without thinking. (Claimant's testimony)
13. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions were in violation of Defendant's policies (APA p. 65) and completely contrary to common sense.
14. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Lori Green, a co-worker, testified that she was present on March 14, 2010 and witnessed the events that occurred that night and further, she went outside after Claimant and attempted to get her to come back inside, but Claimant refused to do so.
15. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, the testimony of Lori Green is credible, particularly as it relates to her attempting to remove Claimant from a dangerous situation and Claimant's refusal to comply.
16. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, the testimony of James Kearse, the unit manager at the time of the incident on March 14, 2010, is credible as it relates to all aspects of this claim, including but not limited to communication of Waffle House policies and procedures and Claimant's average weekly wage and compensation rate.

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19. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse provided credible testimony that third shift employees are not to go outside after dark and that if they do so, they are reprimanded or written up for that action if caught.
20. Based on the evidence and testimony in the record, Claimant's injuries clearly did not arise out of, nor were they in the course and scope of her employment for Waffle House, and did not benefit Waffle House.

21. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's request for benefits is denied in its entirety, meaning that she is not entitled to any benefits, temporary or permanent under the Act; nor is she entitled to any medical treatment or payment for any past medical treatment as it relates to the incident occurring on March 14, 2010.
22. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, I find this proceeding was brought without reasonable legal grounds and costs of \$634.20 are assessed against the Claimant. I note that the pre-hearing conference and hearing lasted in excess of three hours and thirty minutes.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Workers' Compensation Act and § 42-1-10, S.C. Code of Laws, etc., seq., that:

1. Pursuant to § 42-1-160, Claimant did not sustain a compensable injury to her back, brain, left shoulder, left arm, and bilateral legs or any other body part or organ as a result of an accident occurring on March 14, 2010.
2. Claimant failed to prove that she sustained a compensable injury to any of the alleged body parts and is not entitled to any benefits, temporary or permanent, under the Act.
3. Pursuant to § 42-1-40, Claimant's average weekly wage is \$265.69 with a corresponding compensation rate of \$177.13, as based upon her actual payroll history, the Form 20, and other evidence and testimony in the record noted.
4. Pursuant to § 42-15-60, Defendants are not responsible for any medical treatment (past or future) whatsoever for the incident occurring on March 14, 2010 and subsequent injuries allegedly therefrom.

5. Pursuant to § 42-9-10, 42-9-20, 42-9-30, Claimant is not entitled to and Defendants are not responsible for any benefits whatsoever, temporary or permanent, under the S. C. Workers' Compensation Act as Claimant failed to prove by the greater weight or preponderance of the evidence that she sustained a compensable injury to any body part on March 14, 2010 while working for Defendants.
6. Pursuant to § 42-1-160, Claimant failed to prove that her alleged injuries arose out of and in the course and scope of her employment, and therefore, she is not entitled to any benefits whatsoever under the South Carolina Workers' Compensation Act, Title 42.
7. Pursuant to § 42-17-80, this matter was brought without reasonable legal grounds and hearing costs in amount of \$634.20 are assessed against the Claimant.

ORDER

IT IS HEREBY ORDERED that Claimant did not sustain a compensable injury to any body part or organ on March 14, 2010. She failed to prove that her alleged injuries arose out of and in the course and scope of her employment.

IT IS HEREBY ORDERED that the greater weight of the evidence supports a finding that Claimant's average weekly wage is \$265.69 with a corresponding compensation rate of \$177.13.

IT IS HEREBY ORDERED that this proceeding was brought without reasonable legal grounds and hearing costs in the amount of \$634.20 are assessed against the Claimant.

IT IS HEREBY ORDERED that Claimant is not entitled to any benefits pursuant to § 42-9-10, § 42-9-20, or § 42-9-30 or any other section under the South Carolina Workers' Compensation Act including but not limited to any temporary or permanent indemnity or

disability benefits and/or medical treatment, past, present, or future, as it relates to the incident that occurred on March 14, 2010. Claimant's request for benefits under the Act is hereby DENIED.

AND IT IS SO ORDERED.

Within the statutory period, counsel for Claimant filed an application for review in the case setting forth her reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on January 18, 2011. All proper testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Claimant respectfully submits the following:

1. Whether the Single Commissioner erred as a matter of fact and law in failing to find injuries suffered by a waitress who was assaulted by a customer of the employer did not arise in the course and scope of her employment?
2. Whether the Single Commissioner erred as a matter of fact and law in holding "Pursuant to § 42-17-80, this matter was brought without reasonable legal grounds and hearing costs in amount of \$634.20 are assessed against the Claimant."
3. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant worked as a waitress/server for Waffle House and in that capacity was instructed not to follow customers into the parking lot for failure to pay a food ticket but instead was instructed to obtain a tag number, if possible, from within the store."

4. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant was instructed verbally by her manager, James Kearse, not to go outside after dark while working third shift."
5. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, including Claimant's own testimony, on March 14, 2010, Claimant followed a customer into the parking lot and stood behind said customer's car while the customer had a conversation with the car's other occupant, switched places with that occupant and moved to the driver's seat, and then backed up. She testified that she was "bumped" to the side of the car, then walked around the side of the car, and stood in front of the car. When the customer put the car in drive, she jumped onto the hood of the car at which point the customer drove out of the parking lot and down the road for approximately one block before the Claimant rolled off of the hood of the car."
6. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions leading to her injuries clearly were not within the course and scope of her employment, nor did they benefit Waffle House, the Defendant."
7. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing (particularly Claimant's testimony), while not dispositive in this matter,

I find that Claimant did not follow the patron to the parking lot for failure to pay a ticket."

8. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions were in violation of Defendant's policies (APA p. 65) and completely contrary to common sense."
9. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Lori Green, a co-worker, testified that she was present on March 14, 2010 and witnessed the events that occurred that night and further, she went outside after Claimant and attempted to get her to come back inside, but Claimant refused to do so."
10. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, the testimony of Lori Green is credible, particularly as it relates to her attempting to remove Claimant from a dangerous situation and Claimant's refusal to comply."
11. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, the testimony of James Kearse, the unit manager at the time of the incident on March 14, 2010, is credible as it relates to all aspects of this claim, including but not limited to communication of Waffle House policies and procedures and Claimant's average weekly wage and compensation rate."

12. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse provided credible testimony regarding Waffle House's policies when dealing with rowdy or unruly customers and confirmed that no employee is to follow a customer into the parking lot to obtain a tag number or for any other reason. He provided further credible testimony that if a customer attempts to walk out of the store without paying, the employees are instructed to attempt to obtain a tag number from inside the store and, if unable to do so, are to call the police."
13. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse provided credible testimony that third shift employees are not to go outside after dark and that if they do so, they are reprimanded or written up for that action if caught."
14. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence and testimony in the record, Claimant's injuries clearly did not arise out of, nor were they in the course and scope of her employment for Waffle House, and did not benefit Waffle House."
15. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's request for benefits is denied in its entirety, meaning that she is not entitled to any benefits, temporary or permanent under the Act; nor is she

entitled to any medical treatment or payment for any past medical treatment as it relates to the incident occurring on March 14, 2010."

16. Whether the Single Commissioner erred as a matter of fact and law in finding "Based on the evidence submitted by the parties, as well as testimony presented at the hearing, I find this proceeding was brought without reasonable legal grounds and costs of \$634.20 are assessed against the Claimant. I note that the pre-hearing conference and hearing lasted in excess of three hours and thirty minutes."
17. Whether the Single Commissioner erred as a matter of fact and law in finding "Pursuant to § 42-1-160, Claimant did not sustain a compensable injury to her back, brain, left shoulder, left arm, and bilateral legs or any other body part or organ as a result of an accident occurring on March 14, 2010."
18. Whether the Single Commissioner erred as a matter of fact and law in finding "Claimant failed to prove that she sustained a compensable injury to any of the alleged body parts and is not entitled to any benefits, temporary or permanent, under the Act."
19. Whether the Single Commissioner erred as a matter of fact and law in finding "Pursuant to § 42-15-60, Defendants are not responsible for any medical treatment (past or future) whatsoever for the incident occurring on March 14, 2010 and subsequent injuries allegedly therefrom."
20. Whether the Single Commissioner erred as a matter of fact and law in finding "Pursuant to § 42-9-10, 42-9-20, 42-9-30, Claimant is not entitled to and Defendants are not responsible for any benefits whatsoever, temporary or permanent, under the S. C. Workers' Compensation Act as Claimant failed to prove

by the greater weight or preponderance of the evidence that she sustained a compensable injury to any body part on March 14, 2010 while working for Defendants."

21. Whether the Single Commissioner erred as a matter of fact and law in finding "Pursuant to § 42-1-160, Claimant failed to prove that her alleged injuries arose out of and in the course and scope of her employment, and therefore, she is not entitled to any benefits whatsoever under the South Carolina Workers' Compensation Act, Title 42."

22. Whether the Single Commissioner erred as a matter of fact and law in finding "Pursuant to § 42-17-80, this matter was brought without reasonable legal grounds and hearing costs in amount of \$634.20 are assessed against the Claimant."

In an Appellate Review, the Panel shall, pursuant to S.C. Code § Section 42-17-50 (2007), reward the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law, consistent with or inconsistent with those of the Hearing Commissioner. After careful review of all of the evidence in the instant case and after carefully considering the oral arguments made by the parties, , the Commission, by majority vote, AFFIRMS IN PART AND REVERSES IN PART the Hearing Commissioner's Findings of Fact and Conclusions of Law. The Panel, by majority vote, finds the following:

FINDINGS OF FACT

1. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant alleged injuries to her back, brain, left shoulder, left arm, and bilateral legs as a result of an injury which she alleged occurred on March 14, 2010.

2. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Defendants submitted a Form 20 alleging an average weekly wage of \$265.69 with a corresponding compensation rate of \$177.13 which was based on Claimant's actual payroll history which included any tips Claimant reported that she earned.
3. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant alleged that her average weekly wage was \$375.00 with a corresponding compensation rate of \$250.02 based upon a document completed by James Kearse, the unit manager of the store in which she worked, for the State Office of Victim Assistance.
4. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse completed the document for the State Office of Victim Assistance without the benefit of reviewing Claimant's payroll history and simply estimated her wages without knowing exactly the amount Claimant earned in an average week.
5. Based on Claimant's testimony, she filed a tax return, and the wages reported were basically in line with what was revealed on the Form 20.
6. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, based on Claimant's actual payroll history which reflects an average weekly wage of \$265.69 with a corresponding compensation rate of \$177.13, as well as the testimony regarding the reporting of tips, the taxable wages Claimant claimed on her tax return, and lack of credible support for claimant's claimed higher wages, we find that Claimant's average weekly wage is \$265.69 with a corresponding compensation rate of \$177.13.

7. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant worked as a waitress/server for Waffle House and in that capacity was instructed not to follow customers into the parking lot for failure to pay a food ticket but instead was instructed to obtain a tag number, if possible, from within the store.
8. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant was instructed verbally by her manager, James Kearse, not to go outside after dark while working third shift.
9. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, including Claimant's own testimony, on March 14, 2010, Claimant followed a customer into the parking lot and stood behind said customer's car while the customer had a conversation with the car's other occupant, switched places with that occupant and moved to the driver's seat, and then backed up. She testified that she was "bumped" to the side of the car, then walked around the side of the car, and stood in front of the car. When the customer put the car in drive, she jumped onto the hood of the car at which point the customer drove out of the parking lot and down the road for approximately one block before the Claimant rolled off of the hood of the car.
10. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions leading to her injuries clearly were not within the course and scope of her employment, nor did they benefit Waffle House, the Defendant.
11. Based on the evidence submitted by the parties, as well as testimony presented at the hearing (particularly Claimant's testimony), while not dispositive in this matter, we find that Claimant did not follow the patron to the parking lot for failure to pay a ticket.

12. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions were taken without thinking. (Claimant's testimony)
13. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's actions were in violation of Defendant's policies (APA p. 65) and completely contrary to common sense.
14. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Lori Green, a co-worker, testified that she was present on March 14, 2010 and witnessed the events that occurred that night and further, she went outside after Claimant and attempted to get her to come back inside, but Claimant refused to do so.
15. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, the testimony of Lori Green is credible, particularly as it relates to her attempting to remove Claimant from a dangerous situation and Claimant's refusal to comply.
16. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, the testimony of James Kearse, the unit manager at the time of the incident on March 14, 2010, is credible as it relates to all aspects of this claim, including but not limited to communication of Waffle House policies and procedures and Claimant's average weekly wage and compensation rate.
17. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kearse provided credible testimony that Claimant is required under Waffle House policy to report all tips which she earns during her shifts and, further, provided credible testimony that when he completed the document for the State Office of Victim Assistance, he merely completed the document based on an estimate of her earnings and did not have Claimant's payroll history in front of him. He further provided credible

testimony that Claimant's payroll history is an accurate reflection of Claimant's actual earnings.

18. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kears provided credible testimony regarding Waffle House's policies when dealing with rowdy or unruly customers and confirmed that no employee is to follow a customer into the parking lot to obtain a tag number or for any other reason. He provided further credible testimony that if a customer attempts to walk out of the store without paying, the employees are instructed to attempt to obtain a tag number from inside the store and, if unable to do so, are to call the police.
19. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Mr. Kears provided credible testimony that third shift employees are not to go outside after dark and that if they do so, they are reprimanded or written up for that action if caught.
20. Based on the evidence and testimony in the record, Claimant's injuries clearly did not arise out of, nor were they in the course and scope of her employment for Waffle House, and did not benefit Waffle House.
21. Based on the evidence submitted by the parties, as well as testimony presented at the hearing, Claimant's request for benefits is denied in its entirety, meaning that she is not entitled to any benefits, temporary or permanent under the Act; nor is she entitled to any medical treatment or payment for any past medical treatment as it relates to the incident occurring on March 14, 2010.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Workers' Compensation Act and § 42-1-10, S.C.

Code of Laws, etc., seq., that:

1. Pursuant to § 42-1-160, Claimant did not sustain a compensable injury to her back, brain, left shoulder, left arm, and bilateral legs or any other body part or organ as a result of an accident occurring on March 14, 2010.
2. Claimant failed to prove that she sustained a compensable injury to any of the alleged body parts and is not entitled to any benefits, temporary or permanent, under the Act.
3. Pursuant to § 42-1-40, Claimant's average weekly wage is \$265.69 with a corresponding compensation rate of \$177.13, as based upon her actual payroll history, the Form 20, and other evidence and testimony in the record noted.
4. Pursuant to § 42-15-60, Defendants are not responsible for any medical treatment (past or future) whatsoever for the incident occurring on March 14, 2010 and subsequent injuries allegedly therefrom.
5. Pursuant to § 42-9-10, 42-9-20 and 42-9-30, Claimant is not entitled to and Defendants are not responsible for any benefits whatsoever, temporary or permanent, under the S. C. Workers' Compensation Act as Claimant failed to prove by the greater weight or preponderance of the evidence that she sustained a compensable injury to any body part on March 14, 2010 while working for Defendants.
6. Pursuant to § 42-1-160, Claimant failed to prove that her alleged injuries arose out of and in the course and scope of her employment, and therefore, she is not entitled to any benefits whatsoever under the South Carolina Workers' Compensation Act, Title 42.

ORDER

IT IS HEREBY AFFIRMED AND ORDERED that Claimant did not sustain a compensable injury to any body part or organ on March 14, 2010. She failed to prove that her alleged injuries arose out of and in the course and scope of her employment.

IT IS HEREBY AFFIRMED AND ORDERED that the greater weight of the evidence supports a finding that Claimant's average weekly wage is \$265.69 with a corresponding compensation rate of \$177.13.

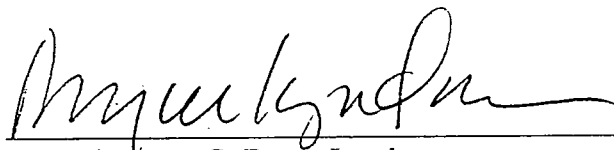
IT IS HEREBY AFFIRMED AND ORDERED that Claimant is not entitled to any benefits pursuant to § 42-9-10, § 42-9-20, or § 42-9-30 or any other section under the South Carolina Workers' Compensation Act including but not limited to any temporary or permanent indemnity or disability benefits and/or medical treatment, past, present, or future, as it relates to the incident that occurred on March 14, 2010. Claimant's request for benefits under the Act is hereby DENIED.

IT IS HEREBY AFFIRMED AND ORDERED that the Hearing Commissioner's finding that this proceeding was brought without reasonable legal grounds and his assessment of hearing costs against Claimant is REVERSED.

ORDER

IT IS, THEREFORE, ORDERED the Order of the Single Commissioner filed in the above-captioned matter on June 11, 2009 is hereby **AFFIRMED in part and REVERSED in part** by the Panel in accordance with the above findings.

AND IT IS SO ORDERED.

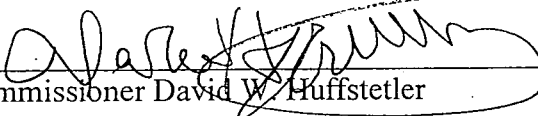


Commissioner G. Bryan Lyndon



Commissioner Andrea P. Roche

The undersigned would **AFFIRM** the decision of the Hearing Commissioner in its entirety.



Commissioner David W. Huffstetler

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 23 day of March, 2001
By: Valene D. Deller

Administrative Assistant to the Commissioner

Stephen B. Samuels
Enroll Clerk Hodges

State of South Carolina
 Before the
 South Carolina Workers' Compensation Commission
 WCC File No.: 1004913

Virginia Miles,	)	
	)	
Claimant,	)	
	)	HEARING
vs.	)	
	)	
Waffle House, Inc.,	)	July 29, 2010
	)	
Employer,	)	
	)	
and	)	
	)	
Brenwood Services,	)	
Incorporated,	)	COPY
	)	
Carrier, Defendants.	)	

Hearing reported by Deborah S. Thomas,
 Certified Verbatim Reporter and Notary Public in and
 for the State of South Carolina; said hearing held
 before Commissioner T. Scott Beck, and in accordance
 with the South Carolina Workers' Compensation Laws,
 at the South Carolina Workers' Compensation
 Commission, 1333 Main Street, Suite 500, Columbia,
 South Carolina, on July 29, 2010, at the hour of
 10:32 a.m.

ABACTIS REPORTING SERVICES
 2117 PINE LAKE DRIVE
 WEST COLUMBIA, SOUTH CAROLINA 29169
 (803) 206-7390

Appearances

Representing the Claimant:

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Columbia, South Carolina 29520

Representing the Defendants:

ERROLL ANNE YARBROUGH HODGES, ESQUIRE
McAngus, Goudelock & Courie, LLC
P.O. Box 2980
Greenville, South Carolina 29602

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21 * * * * *

22

23

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* * * * *

Miles vs. Waffle House

1 This hearing is conducted in
2 accordance with the South Carolina Workers'
3 Compensation Commission Laws.

4 (MARKED CLAIMANT'S EXHIBIT NO. 1.)

5 COMMISSIONER BECK: Today's date is
6 July 29, 2010. This is Workers' Compensation File
7 Number 1004913. The Claimant is Virginia A. Miles
8 represented today by Attorney Stephen Samuels. The
9 Employer is Waffle House. The Carrier is Brentwood
10 Services, Incorporated, both represented today by
11 Attorney Errol Anne Hodges.

12 The average weekly wage and compensation
13 rate in this matter are in dispute. The date of
14 alleged accident is March 14, 2010. I have received
15 A.P.A.s from both the Claimant and the Defendant in
16 this matter as well as a memorandum of law submitted
17 on behalf of the Claimant. I'm leaving the record
18 in this matter open until close of business on
19 July 30, 2010, to allow Ms. Hodges to respond to
20 that memorandum of law. I've also received a series
21 of photographs that appear to be from the Irmo
22 Police Department. Is that correct, Mr. Samuels?

23 MR. SAMUELS: That's correct, Your
24 Honor.

25 COMMISSIONER BECK: And they are

Miles vs. Waffle House

1 submitted on behalf of the Claimant, and then marked
2 as Claimant's Exhibit Number 1. I've also got a
3 number of different cases in support of both the
4 Defendant's and the Claimant's position in this
5 matter.

6 Are there any objections to the A.P.A.s,
7 any of the other items I've discussed, jurisdiction,
8 venue, or any other matter in this case, Mr.
9 Samuels?

10 MR. SAMUELS: Not from the Claimant,
11 Your Honor.

12 COMMISSIONER BECK: Ms. Hodges?

13 MS. HODGES: None, Your Honor.

14 COMMISSIONER BECK: All right.

15 Without objection the Commission file becomes a part
16 of the record with the exception of self-serving
17 declarations and unstipulated medical reports.

18 During a prehearing conference in this
19 matter the respective positions of both the parties
20 was discussed. From the standpoint of the Claimant,
21 she is here seeking a finding of compensability to
22 her back, brain, left shoulder, left arm, and both
23 legs. She is asking for causally-related medical
24 care for those injuries. Asserts entitlement to
25 temporary total disability benefits from March 15,

Miles vs. Waffle House

1 2010, to the present and continuing. And is
2 asserting her average weekly wage is \$375 and her
3 compensation rate is \$250.02.

4 The difference between the compensation
5 rate she is alleging and the compensation rate the
6 Defendants are asserting, I believe, Mr. Samuels,
7 has something to do with some tip income; is that
8 correct?

9 MR. SAMUELS: That's correct.

10 COMMISSIONER BECK: All right. Mr.
11 Samuels, anything in addition to that or any
12 clarifications that I need to get on the record,
13 sir?

14 MR. SAMUELS: Only if Your Honor
15 needs to hear legal argument on our respective
16 positions.

17 COMMISSIONER BECK: No, sir. No,
18 sir.

19 MR. SAMUELS: Then I have nothing
20 further, Your Honor.

21 COMMISSIONER BECK: All right. From
22 the Defendants' standpoint, they are asserting an
23 average weekly wage of \$265.69 and a compensation
24 rate of \$177.13 per their Form 20. They are denying
25 compensability of this matter in its entirety,

Miles vs. Waffle House

1 asserting that the Claimant violated known policy,
2 known specific policy regarding her actions involved
3 in this particular incident.

4 If, in fact, I found the incident to be
5 compensable, they would argue that there is no
6 medical evidence as it relates to the back and the
7 brain in this matter. Ms. Hodges, anything in
8 addition to that or clarifications you would like to
9 make, ma'am?

10 MS. HODGES: One just bit of
11 clarification that basically our position is that
12 we -- that she acted outside the course and scope of
13 her employment. And that is why we feel that it's
14 not compensable.

15 COMMISSIONER BECK: All right. As I
16 mentioned, we are here on Ms. Miles' Form 50. Ms.
17 Miles, you are our first witness today. Would you
18 raise your right hand, please. Do you swear or
19 affirm that the testimony you are about to give
20 today is the truth, the whole truth, and nothing but
21 the truth, ma'am?

22 MS. MILES: I do.

23 COMMISSIONER BECK: Please state your
24 full name for the record.

25 MS. MILES: Virginia Ann Miles.

Virginia Miles - Direct Examination

Miles vs. Waffle House

1 COMMISSIONER BECK: And, Ms. Miles,
2 you've got a real, real low voice. We are going to
3 ask if you could just try to speak up just a little
4 bit. Counsel has got to be able to hear you and all
5 of these microphones have to be able to pick you up
6 in here as well. Okay? All right. Thank you. Mr.
7 Samuels?

8 MR. SAMUELS: Thank you, Your Honor.

9 WHEREUPON:

10 VIRGINIA MILES, being duly sworn and
11 cautioned to speak the truth, the whole truth and
12 nothing but the truth, testifies as follows:

13 DIRECT EXAMINATION

14 BY MR. SAMUELS:

15 Q. Ginny, how old are you?

16 A. Forty-seven.

17 Q. You are divorced; is that right?

18 A. Yes, sir.

19 Q. You were hired to work as a waitress for
20 Waffle House; is that correct?

21 A. Yes, sir.

22 Q. You were hired approximately October 14th,
23 2008?

24 A. Yes, sir.

25 Q. How were you paid at Waffle House?

Miles vs. Waffle House

1 A. On Sundays in cash.

2 Q. Did you -- was that for your hourly pay?

3 A. Yes, sir.

4 Q. How much was your hourly pay?

5 A. At the time 3.29 an hour.

6 Q. Approximately how many hours a week did
7 you work?

8 A. Pretty much 40 hours.

9 Q. I'm going to show you a document that is
10 Claimant's A.P.A. Page 51. And have you ever seen
11 this document before?

12 A. Yes.

13 Q. Okay. Is this a document that James
14 Kearse, the manager of Waffle House, prepared for
15 you for Victim's Assistance?

16 A. Yes.

17 Q. He's indicated that you have a gross
18 salary of 275 to 375 a week; is that right?

19 A. Pretty much.

20 COMMISSIONER BECK: Speak up a little
21 bit, ma'am.

22 THE WITNESS: I'm sorry. Yes, sir.
23 I mean, yes, ma'am.

24 BY MR. SAMUELS:

25 Q. And do you agree that that is

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1 approximately what you earn per week?

2 A. Yes.

3 Q. When you were trained, did somebody train
4 you on how you are supposed to report your tips to
5 Waffle House?

6 A. Yes, sir.

7 Q. Do you know a specific person?

8 A. It would be Kim.

9 Q. Okay. What were you told about reporting
10 your tips to Waffle House?

11 A. Whatever tips you made, you put them in
12 the machine.

13 Q. And did anybody tell you anything
14 different?

15 A. Yes, sir.

16 Q. Who told you something different?

17 A. A lady by the name of Ms. T.

18 MS. HODGES: I will object to
19 testimony from somebody else other than --

20 COMMISSIONER BECK: Sustained.

21 BY MR. SAMUELS:

22 Q. What did you actually do about reporting
23 your tips to Waffle House?

24 A. I was told to put in 0000.

25 MS. HODGES: I object to --

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1 COMMISSIONER BECK: Sustained.

2 BY MR. SAMUELS:

3 Q. Regardless of what you were told, did you
4 put in 000?

5 A. Yes, sir.

6 Q. Did you observe other waitresses doing the
7 same thing?

8 A. I did not watch their --

9 Q. So you don't know one way or the other
10 about that?

11 A. No, sir.

12 Q. All right. Let me move on to some other
13 things. Now, when you were hired by Waffle House
14 did you undergo a training period?

15 A. Yes, sir.

16 Q. Did James Kearse ever provide you any
17 training?

18 A. No, sir.

19 Q. Where were you trained?

20 A. First at Piney Grove orientation.

21 Q. Piney Grove is a different Waffle House
22 than the one you worked at; is that right?

23 A. Yes, sir.

24 Q. The one you worked at was Store 1198 on
25 Broad River Road?

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1 A. Yes, sir.

2 Q. Would you tell us what -- tell us what
3 you went through as far as the training went.

4 A. First we went through orientation at Piney
5 Grove which was extremely fast. Then after
6 orientation you went to -- I went to the Irmo store
7 and was trained there on first shift by Kim as to
8 how to call orders, how to write tickets, how to
9 serve food.

10 Q. What was the primary concern about the
11 training that you were given?

12 A. Please the customers, make sure they left
13 happy, and be in full uniform.

14 Q. Did you make it through all of the
15 training?

16 A. Yes, sir.

17 Q. Was there not a time where you felt
18 overwhelmed?

19 MS. HODGES: Objection. Leading the
20 witness.

21 COMMISSIONER BECK: Sustained, Mr.
22 Samuels.

23 BY MR. SAMUELS:

24 Q. Did you feel overwhelmed at any point?

25 MS. HODGES: I object to him leading

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1 the witness.

2 COMMISSIONER BECK: I'm going to
3 sustain the objection, Mr. Samuels.

4 BY MR. SAMUELS:

5 Q. Did you have any trouble with the
6 training?

7 A. After the second day I didn't show up the
8 third day nor did I call in.

9 Q. Why not?

10 A. Because I felt that I was being trained so
11 fast and my head filled so fast with stuff that I
12 did not think that I could handle it.

13 Q. Did you ever make up that third day of
14 training?

15 A. No, sir.

16 Q. So when you went through training did they
17 have you sign some documents?

18 A. Yes, sir.

19 Q. I'm showing you Claimant's Exhibit 2.
20 Have you seen this document before?

21 A. Yes, sir.

22 Q. Is that your signature at the bottom dated
23 October 3rd, 2008?

24 A. Yes, sir.

25 Q. Now, was a manager suppose to go over this

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1 document with you?

2 A. I suppose so.

3 Q. Was a manager suppose to sign off showing
4 that the manager had gone over the document with
5 you?

6 MS. HODGES: I object to her
7 testifying about what is supposed to be done if she
8 has no knowledge of that through management
9 training.

10 COMMISSIONER BECK: Ms. Hodges, I
11 think her answer was somewhat ambivalent. I'll take
12 note of that. Please proceed, Mr. Samuels.

13 BY MR. SAMUELS:

14 Q. Answer this. Did a manager sign off on
15 that piece of paper?

16 A. No, sir.

17 Q. Were you given a copy of this piece of
18 paper?

19 A. No, sir.

20 Q. Were you given any documents from your
21 training?

22 A. No, sir.

23 Q. Now, there are spots on there for you to
24 initial and the manager to initial. Did the manager
25 initial those?

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1 A. No, sir.

2 Q. Did you initial those yourself?

3 A. Yes, sir.

4 Q. Did you go through this thing -- well, did
5 you go through this thing and take your time or did
6 you go through it real fast?

7 MS. HODGES: I object to him leading
8 the witness.

9 COMMISSIONER BECK: I'm going to
10 allow it. Go ahead, Mr. Samuels.

11 THE WITNESS: Very fast.

12 BY MR. SAMUELS:

13 Q. Did anybody explain to you -- scratch
14 that.

15 COMMISSIONER BECK: You are offering
16 that, Mr. Samuels, at this point?

17 MR. SAMUELS: I'm offering it, Your
18 Honor.

19 COMMISSIONER BECK: Any objection,
20 Ms. Hodges?

21 MS. HODGES: No objection, Your
22 Honor.

23 COMMISSIONER BECK: Without
24 objection.

25 (MARKED CLAIMANT'S EXHIBIT NO. 2.)

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1 BY MR. SAMUELS:

2 Q. Did they give you any specific training
3 about security?

4 A. Yes, sir.

5 Q. What did they train you on?

6 A. If there was a yellow tag on the back door
7 after dark, do not go out the back door. And if
8 anyone come in to rob the place, give them all the
9 money.

10 Q. Did they ever give you any training on
11 dealing with the kind of situation that you faced on
12 March 14th, 2010?

13 A. No, sir.

14 Q. Did anybody ever tell you that there was a
15 rule that you were not supposed to go outside on
16 third shift?

17 A. No, sir.

18 Q. Did you mostly work third shift?

19 A. Yes, sir.

20 Q. Did Waffle House -- did you ever see
21 Waffle House employees going outside on third shift?

22 A. Many times.

23 Q. When you say many times, how many times on
24 a given shift?

25 MS. HODGES: I object to her

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1 testimony about this unless she has some specifics.

2 COMMISSIONER BECK: I'm going to
3 allow it. Go ahead.

4 THE WITNESS: Many times.

5 BY MR. SAMUELS:

6 Q. Can you give us a number?

7 A. Not for each individual employee.

8 Q. When people went outside, what did you see
9 them do?

10 MS. HODGES: I'll object to her
11 testifying about this. I mean, we need to have a
12 little more specificity about people and when and --
13 BY MR. SAMUELS:

14 Q. When you saw other employees go outside on
15 third shift, what did you see them do?

16 COMMISSIONER BECK: I'm going to
17 allow it, Ms. Hodges.

18 THE WITNESS: Some stood in front of
19 the store smoking cigarettes. Some went next door
20 for candy or lottery tickets.

21 BY MR. SAMUELS:

22 Q. Is there a convenience store next door?

23 A. Yes, sir.

24 Q. That was actually all the way off of
25 Waffle House's property?

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1 A. Yes, sir.

2 MS. HODGES: Your Honor, I'm going to
3 object to the lack of specificity.

4 COMMISSIONER BECK: Try to narrow it
5 down a little bit, Mr. Samuels.

6 BY MR. SAMUELS:

7 Q. Can you identify the names of the
8 individual employees you saw going outside on third
9 shift?

10 A. All the names?

11 Q. Yes, ma'am.

12 A. Myself, Lori Green, Charles Seaburke, Mike
13 Strong, Mary Summers, Britney Musilu.

14 Q. Who runs the store on third shift?

15 A. The cook.

16 Q. Is there generally a manager there on
17 third shift?

18 A. No, sir.

19 Q. Who was running the store on March 14th,
20 2010?

21 A. The cooks.

22 Q. Who are the cooks?

23 A. Mary Summers and Mike Strong.

24 Q. Who else was working that night?

25 A. Lori Green, Britney Musilu, and myself.

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1 Q. Has any of the cooks ever told you not to
2 go outside on third shift?

3 A. No, sir.

4 Q. Has any manager ever told you not to go
5 outside on third shift?

6 A. No, sir.

7 Q. Has anybody ever disciplined you or
8 written you up for going outside on third shift?

9 A. No, sir.

10 Q. Do you have responsibilities as a waitress
11 if somebody tries to leave without paying their
12 ticket?

13 A. Yes, sir.

14 Q. What are your responsibilities?

15 A. To try to get them to pay their ticket if
16 they happen to be walking out the door without
17 paying.

18 Q. Should you go outside if they try to leave
19 without paying?

20 A. Yes, sir.

21 Q. Did anybody tell you that you are suppose
22 to do that?

23 A. Yes, sir.

24 Q. Who told you you were suppose to do that?

25 A. James Kearse.

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1 Q. And he's the manager of the store?

2 A. Yes, sir.

3 Q. What are you supposed to do if somebody is
4 being rowdy?

5 A. Try to just stay calm and handle them the
6 best way we can.

7 Q. What were you told about when you should
8 call the police?

9 A. Really not -- that was not in training.
10 It was kind of common sense that when we saw someone
11 getting rowdy, then we called 911.

12 Q. Is that something you figured out on your
13 own or something a manager told you to do?

14 A. I figured it out on my own.

15 Q. Did you get any specific training about
16 when to call the police?

17 A. No, sir.

18 Q. Let me ask you specifically about
19 March 14th, 2010. What shift were you working that
20 night?

21 A. Third.

22 Q. What was your schedule, hours to hours?

23 A. 9:00 to 4:00 a.m.

24 Q. Was that the night for daylight savings
25 time to spring forward?

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1 A. Yes, sir.

2 Q. So what time should you have been off the
3 clock?

4 A. According to daylight savings time, at
5 3:00 a.m.

6 Q. Is that a particularly busy third shift?

7 A. Yes, sir.

8 Q. Was it the night of St. Patrick's Day
9 weekend?

10 A. Yes, sir.

11 Q. Did that make a difference?

12 A. Yes, sir.

13 Q. How so?

14 A. We had more drunks in there than usual
15 that night.

16 Q. Does Waffle House ever have a security
17 guard working?

18 A. Yes, sir.

19 Q. Did they have a security guard working
20 that night?

21 A. No, sir.

22 Q. For you, how was working that night even
23 before this incident happened?

24 A. Very busy and very hectic. A little
25 overwhelming.

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1 Q. Do you have a problem being overwhelmed?

2 A. Yes, sir.

3 Q. Do you have any sort of medical condition?

4 A. Yes, sir.

5 Q. What medical condition do you have?

6 A. Anxiety, stress, and panic disorder.

7 Q. Do you take medication for that?

8 A. Yes, sir.

9 Q. Who was working that particular night?

10 A. Myself, Britney Musilu, Lori Green, Mike
11 Strong, and Mary Summers.

12 Q. Were Lori Green and Britney Musilu also
13 waitresses?

14 A. Yes, sir.

15 Q. Mike Strong and Mary Summers are cooks?

16 A. Yes, sir.

17 Q. And did an incident occur involving some
18 customers?

19 A. Yes, sir.

20 Q. Can you describe the beginning of what
21 happened?

22 A. First off I told Britney that I was off
23 the floor and was not picking up any more tables so
24 I could finish my side work and leave. However, she
25 did not pick them up, so I did. Later on she

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1 approached me after they got their food --

2 MS. HODGES: I object to her
3 testifying about what somebody else told her.

4 MR. SAMUELS: She hasn't said what it
5 is first. She just said later on they approached
6 me.

7 COMMISSIONER BECK: All right.

8 MR. SAMUELS: And it's not going to
9 be hearsay because it's not being offered for the
10 truth of the matter there in when she says that
11 Britney told her.

12 COMMISSIONER BECK: Who is Britney?

13 THE WITNESS: A waitress.

14 COMMISSIONER BECK: I'll allow it.
15 Please proceed.

16 THE WITNESS: Britney did not pick up
17 the table. I picked up the table, served them their
18 food. They were just about done when Britney told
19 me that they were starting to argue. So I walked
20 over to them and I saw that they were just about
21 done. And I told them that we would appreciate -- I
22 said we have come to find out in here arguments
23 escalate into fights. I would appreciate it if you
24 hurry up, go ahead and finish, pay your ticket, and
25 leave.

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1 BY MR. SAMUELS:

2 Q. There were two men and two women?

3 A. Yes, sir.

4 Q. And what kind of response did you get when
5 you said that?

6 MS. HODGES: I object to her
7 testifying about what --

8 COMMISSIONER BECK: I'm going to
9 allow it. Please proceed.

10 THE WITNESS: Ms. House said that I
11 had waited on her before and was very nice. She
12 said however tonight you are not being nice so you
13 will not get a tip. And that she was going to pay
14 both tickets, but that I would not get a tip.

15 BY MR. SAMUELS:

16 Q. Now, what did you do once she said that to
17 you?

18 A. I walked over to other tables to clean
19 them off and told her I didn't care.

20 Q. And did you continue then with your side
21 work?

22 A. Yes, sir.

23 Q. Now, did either or any group of these
24 people leave?

25 A. The two men went outside. One antagonized

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1 Mike Strong to come outside and fight which Mike did
2 not. He started to come back inside and Lori Green
3 politely told him, no, not to come back inside.

4 Q. Did the two men stay outside?

5 A. No, sir. They left.

6 Q. And were the two girls still inside the
7 store?

8 A. Yes, sir.

9 Q. What happened next?

10 A. One girl went outside. And she was on a
11 ticket by herself. So I walked out to -- she was in
12 her car. I walked out to her car and said that she
13 needed to pay her ticket. She said that she was
14 looking for money to pay her ticket. So I came back
15 inside continuing my side work.

16 Q. Okay. What happened after that?

17 A. I continued doing any side work. I did
18 not see the other girl come back in. The next thing
19 I know I came with dishes in my hand and saw that
20 Ms. House had got up and approached Britney and
21 appeared to be coming over the counter. And at that
22 point she took her arm and just cleaned the counter.

23 Q. Did you see anything else happen
24 between -- when you say Ms. House you are talking
25 about the girl you later found out her name?

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1 A. Yes, sir.

2 Q. Her name is Kelly Mae House?

3 A. Yes, sir.

4 Q. And did you see anything else happen
5 between her and Britney?

6 A. Out of the corner of my eye it appeared
7 that Britney's arm came back. I was not sure, but I
8 found out later on through --

9 MS. HODGES: I object.

10 COMMISSIONER BECK: I'm going to
11 sustain it.

12 BY MR. SAMUELS:

13 Q. You said after what you saw out of the
14 corner of your eye happened, what happened next?

15 A. I went on to the dish table and put the
16 dishes up. Ms. House and Britney continued to have
17 words, but as soon as she started -- as soon as I
18 saw trouble starting I called 911.

19 Q. Did anybody tell you to call 911?

20 A. No, sir.

21 Q. Did anybody train you to call 911?

22 A. No, sir.

23 Q. Did anybody who is in charge of the store
24 call 911?

25 A. No, sir.

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1 MR. SAMUELS: Your Honor, I would
2 like to play the audio of the 911 call and have my
3 client authenticate it.

4 COMMISSIONER BECK: Ms. Hodges?

5 MS. HODGES: We would just object to
6 the admission of the 911 call because we have no
7 independent verification of whether it is an
8 accurate transcription. I'm not doubting Mr.
9 Samuels. I'm just saying there is nothing from 911
10 verifying this call or that it hasn't been doctored
11 in any way from the way it came in.

12 COMMISSIONER BECK: Ms. Miles, have
13 you heard this recording?

14 THE WITNESS: Yes, sir.

15 COMMISSIONER BECK: Is it you on the
16 recording?

17 THE WITNESS: Yes, sir.

18 COMMISSIONER BECK: All right. I'm
19 going to overrule the objection. Please proceed,
20 Mr. Samuels.

21 MR. SAMUELS: Thank you, Your Honor.
22 I'm going to move this a little closer. I'm a
23 little technologically changed, so bear with me.

24 COMMISSIONER BECK: I can definitely
25 relate to that.

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1 MR. SAMUELS: That is how we know
2 that I didn't doctor it.

3 MS. HODGES: I'm definitely not
4 accusing you, and I'm just as technology impaired
5 so --

6 (911 call was played.)

7 BY MR. SAMUELS:

8 Q. Ginny, was that you making that call?

9 A. Yes, sir.

10 Q. Okay. What was going through your mind
11 when you were doing that?

12 COURT REPORTER: I'm sorry. No, sir?
13 Yes, sir?

14 THE WITNESS: Yes, sir.

15 MR. SAMUELS: Yes, sir.

16 THE WITNESS: What was going through
17 my mind?

18 BY MR. SAMUELS:

19 Q. Yes, ma'am.

20 A. The girl was starting to vandalize. She
21 was causing trouble and starting to vandalize the
22 Waffle House.

23 Q. What was she doing to vandalize the Waffle
24 House?

25 A. Taking her arm and just raking our

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1 condiments off, throwing the picante sauce bottles.
2 She did that in three different areas.

3 Q. And why did you feel it was your
4 responsibility to deal with that situation?

5 A. I just knew that whenever trouble started
6 common sense told me to call the police.

7 Q. Now, what happened right after that call
8 ended?

9 A. I ran outside after she -- she started
10 leaving. And I ran outside after her.

11 Q. What happened when you got outside?

12 A. I stood behind her car.

13 Q. What were you doing behind her car?

14 A. Trying to keep her until the police got
15 there.

16 Q. Why were you doing that?

17 A. I wasn't thinking. I just thought that
18 she would not move.

19 Q. Did she move?

20 A. Yes, sir.

21 Q. Did the car back up?

22 A. Yes, sir.

23 Q. What happened when it backed up?

24 A. She bumped me out of the way with her car.

25 Q. Where did you end up after she bumped you

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1 out of the way?

2 A. On the side of the car.

3 Q. And then what happened?

4 A. I walked around to the front of the car.

5 Q. What happened after that?

6 A. She did not look me in the eyes. I stared
7 her in the eyes. She did not look me in the eyes,
8 but put the car in drive and pressed the gas.

9 Q. What happened after that?

10 A. The car hit my calves.

11 Q. What did you do?

12 A. I jumped on the hood of the car. I didn't
13 have any choice.

14 Q. Did it ever occur to you that she was
15 going to do that?

16 A. No, sir.

17 Q. Okay. What happened next?

18 A. She left the parking lot.

19 Q. Were you on the hood?

20 A. When I got on the hood she still
21 accelerated and left the Waffle House parking lot,
22 pulled out on Broad River Road.

23 Q. How far did she go?

24 A. About a block and a half.

25 Q. And then what happened?

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1 A. I knew that the interstate was up the
2 street. I mean, just the interstate was like a mile
3 away. My thought then was -- is that she could have
4 possibly been going to the interstate. So I
5 hollered at her to stop the car. And she pulled
6 into the Burger King parking lot, slammed on brakes.
7 And I fell off the car, and then she took off.

8 Q. Did she -- anybody come to you after that?

9 A. Mike and Britney.

10 Q. Mike and Britney, your two coworkers?

11 A. Mike and Britney and one customer.

12 Q. They came to you at the Burger King
13 parking lot?

14 A. Yes, sir.

15 Q. Were you taken to the hospital?

16 A. Yes, sir.

17 Q. Now, I'm going to show you some
18 photographs just real quick.

19 MR. SAMUELS: And, Commissioner, you
20 already have these. I think they may be Claimant's
21 Exhibit 1.

22 BY MR. SAMUELS:

23 Q. Let me show you first off, down at the
24 bottom they are marked with page numbers like P-1.
25 This top one, is that the Waffle House?

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1 A. Yes, sir.

2 Q. And have you seen these pictures?

3 A. No, sir.

4 Q. Is that you in these pictures?

5 A. Yes, sir.

6 Q. Looking at Page 5, do you see anything on
7 your arm?

8 A. I scraped my elbow.

9 Q. Did you scrape anything else?

10 A. Both my knees, my head, my foot was
11 injured. I did not know it was broken at the time.
12 And my shoulder. I told them my shoulder hurt.

13 Q. Are you still under a doctor's care?

14 A. Yes, sir.

15 Q. Who is your treating doctor?

16 A. Dr. Boyer.

17 Q. Do you know what condition he's treating
18 you for?

19 A. R.S.D.

20 Q. And where is the R.S.D. located?

21 A. In my foot. And also Dr. McIntosh has
22 told me that --

23 MS. HODGES: Objection.

24 COMMISSIONER BECK: Sustained.

25 MS. HODGES: And we'll just make a

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1 running objection.

2 BY MR. SAMUELS:

3 Q. You won't be allowed to say what your
4 doctors told you.

5 A. Oh, I'm sorry.

6 Q. You can say what they are treating you
7 for.

8 A. I may have to have cortisone shots in my
9 shoulder.

10 MS. HODGES: I'm going to object
11 unless it's in the records.

12 COMMISSIONER BECK: I'm going to let
13 her testify on personal knowledge.

14 BY MR. SAMUELS:

15 Q. What sort of problems are you having in
16 your shoulder?

17 A. A burning sensation and bone chips.

18 Q. Where is the burning sensation?

19 A. Towards the back of my shoulder, cuff --
20 rotary cuff or back of my shoulder.

21 Q. Does it go anywhere else?

22 A. Well, my arm was going numb.

23 Q. Is it still going numb?

24 A. No, sir.

25 Q. Do you have any problems with your head?

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1 A. Yes, sir.

2 Q. What problems are you having with your
3 head?

4 A. Dizziness.

5 Q. Anything else?

6 A. More headaches than I used to have.

7 Q. Did you have any problems with dizziness
8 before?

9 A. No, sir.

10 Q. When did the dizziness start?

11 A. After this incident.

12 Q. When do you first remember being dizzy?

13 A. When the ambulance took off.

14 Q. Were you dizzy in the emergency room?

15 A. Very much so.

16 Q. You were then referred to a neurologist?

17 A. Yes, sir.

18 Q. Have you been able to go see the
19 neurologist?

20 A. No, sir.

21 Q. Were you walking on crutches for a time?

22 A. Yes, sir.

23 Q. Are you off the crutches now?

24 A. Yes, sir.

25 Q. Do you feel you need more medical

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1 treatment?

2 A. Yes, sir.

3 Q. Ginny, let me ask you to stand up. And if
4 you would just take a walk over to that door and
5 then back and show the Commissioner how you walk
6 normally now?

7 A. (Witness complied.)

8 COMMISSIONER BECK: Are you having a
9 problem with your left leg?

10 THE WITNESS: Yes, sir.

11 COMMISSIONER BECK: All right. It
12 appears from her gait that her left leg is much more
13 stiff than the right.

14 BY MR. SAMUELS:

15 Q. Ginny, did you try to go back to work?

16 A. Yes, sir.

17 Q. Did you actually work at all?

18 A. One day.

19 Q. How long did you work?

20 A. From 2:00 to 9:00. 2:00 p.m. to 9:00 p.m.

21 Q. Do you remember what date that was?

22 A. I have it in my calendar book in my
23 pocketbook. It was April --

24 Q. Sometime in April?

25 A. (Non-verbal response.)

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1 Q. Were you wearing anything other than your
2 normal clothes when you were at work that day?

3 A. I had to have a cast put on my foot to
4 cover my toes so that I could work.

5 Q. And after that attempt to work, did you go
6 back to work again?

7 A. No, sir.

8 Q. Why not?

9 A. Because I woke up the next morning and I
10 could not walk.

11 Q. Did you have any conversation with James
12 Kearse about returning to work after that day?

13 A. Yes, sir.

14 Q. What did he tell you?

15 A. I was told -- James Kearse told me that
16 the Waffle House lawyers had told me -- had told him
17 that I was not allowed to come back to work until
18 I'm completely released from the doctor.

19 Q. Ginny, do you believe that you violated
20 any Waffle House company policies on March 14th,
21 2010?

22 A. No, sir.

23 Q. Did you have a chance to think about any
24 policies that night?

25 A. No, sir.

Virginia Miles - Cross Examination

Miles vs. Waffle House

1 Q. Were you ever written up or disciplined
2 for anything that you did that night?

3 A. No, sir.

4 MR. SAMUELS: I have no further
5 questions. Please answer any questions Ms. Hodges
6 has for you.

7 COMMISSIONER BECK: Ms. Hodges?

8 CROSS EXAMINATION

9 BY MS. HODGES:

10 Q. Ms. Miles, just a couple of -- some
11 background information. You are 47, correct?

12 A. Yes, ma'am.

13 Q. And you currently live alone?

14 A. Yes, ma'am.

15 Q. And no one is dependent on you for
16 support?

17 A. No, ma'am.

18 Q. You have two grown kids?

19 A. Yes, ma'am.

20 Q. And you are not currently married. And
21 Miles is your married name?

22 A. Yes, ma'am.

23 Q. And in the past you've gone by four other
24 names due to marriages?

25 A. Yes, ma'am.

Miles vs. Waffle House

1 Q. The first was Mr. Davis?

2 A. Yes, ma'am.

3 Q. And you said -- I think that was just a
4 marriage so you wouldn't have to go back home?

5 A. Yes, ma'am.

6 Q. And you got -- that is a divorce, right?

7 A. Yes, ma'am.

8 Q. And then Mr. Butler?

9 A. Yes, ma'am.

10 Q. And that was also -- there has been a
11 divorce on that?

12 A. Yes, ma'am.

13 Q. Due to his being accused of some
14 molestation?

15 A. Yes, ma'am.

16 MR. SAMUELS: I'll object to
17 relevance.

18 BY MS. HODGES:

19 Q. And then Mr. Register --

20 COMMISSIONER BECK: Ms. Hodges, what
21 is the relevance?

22 MS. HODGES: We think that it's
23 relevant to mental state.

24 COMMISSIONER BECK: Pardon?

25 MS. HODGES: He's claiming that she

Miles vs. Waffle House

1 is having some kind of problems with mental state is
2 my understanding.

3 COMMISSIONER BECK: I don't think
4 there is a claim for that, is there?

5 MS. HODGES: Dizziness and panic
6 and -- you are not claiming that has anything to do
7 with this?

8 MR. SAMUELS: We are not claiming the
9 panic disorder. The panic disorder was preexisting.
10 We are not claiming that was aggravated by this
11 other than she was panicked at the time, but not
12 aggravated by her injuries. We are contending she
13 has a head injury causing dizziness that requires a
14 work-up by a neurologist. We are requesting the
15 treatment by the neurologist, but, again, we are not
16 saying that her previous mental state, psychological
17 condition has been aggravated. We are not claiming
18 that.

19 We are just claiming that her mental
20 condition is a factor in this case in that she is
21 prone to panic disorders. This was an extreme
22 panicky situation. And she panicked.

23 COMMISSIONER BECK: All right. Ms.
24 Hodges?

25 MS. HODGES: Go forward?

Miles vs. Waffle House

1 Q. You also worked for Equifax?

2 A. Yes, ma'am.

3 Q. As a telephone investigative reporter?

4 A. Yes, ma'am.

5 Q. And you quit there because of a
6 misunderstanding over something that was said to a
7 client?

8 A. Yes, ma'am.

9 Q. And you have worked for Tripps Cleaners as
10 a seamstress?

11 A. Yes, ma'am.

12 Q. Also worked for Twin Peaks and
13 Heartbreakers as an entertainer or dancer?

14 A. Yes, ma'am.

15 Q. And you've worked several times for
16 different family members when they were ill or you
17 worked for your brother basically kind of running
18 his household for awhile?

19 A. Yes, ma'am.

20 Q. And when you came to Waffle House, James
21 Kearse, who is sitting beside me, he was your
22 supervisor, right?

23 A. Yes, ma'am.

24 Q. Okay. And in your deposition you
25 indicated and I think here today said you think you

Miles vs. Waffle House

1 were trained that if you were in a robbery situation
2 you were supposed to give them all the money and
3 back away, correct?

4 A. Yes, ma'am.

5 Q. And that you were also trained that you
6 were not supposed to follow them or do anything like
7 help the police arrest them? You were just supposed
8 to get out of the way; is that correct?

9 A. Just get out of the way.

10 Q. Okay. And also supposed to give them
11 whatever they wanted and just back off?

12 A. Yes, ma'am.

13 Q. Okay. And stay inside the store in that
14 situation?

15 A. That was never clearly --

16 Q. Okay. Isn't that what you said in your
17 deposition?

18 MR. SAMUELS: I'm going to object to
19 some extent to the relevance of this. This was not
20 a robbery.

21 COMMISSIONER BECK: I'm going to
22 allow her to proceed. Go ahead, Ms. Hodges.

23 BY MS. HODGES:

24 Q. In your deposition I asked you were you
25 ever supposed to follow them or try to help the

Miles vs. Waffle House

1 police arrest them or anything like that. And you
2 said, oh, no. No. No. We were just told to give
3 them all the money. If they wanted a steak or
4 something, I assume you gave them anything they
5 wanted and you backed off. And I said, just stay
6 inside the store? And you said, yes, ma'am.

7 A. During training that is what they told us
8 in the case of a robbery.

9 Q. Okay. And then I asked you about what
10 kind of training you were given if there were any
11 sort of violence going on in the store. And you
12 asked violence? And I said, you know, like people
13 getting in arguments or getting in a fight or
14 anything like that inside the store. And you
15 answered, we are supposed to try to stay calm, and
16 just we weren't given a lot of training on that.
17 And I said, were you supposed to intervene or call
18 the police. And you said that was natural common
19 sense if you saw trouble starting is that you call
20 911?

21 A. Yes, ma'am.

22 Q. And that is what you did, right?

23 A. Yes, ma'am.

24 MR. SAMUELS: I'm going to have to
25 object to this form of questioning in that she is

Miles vs. Waffle House

1 reading from the deposition. I think she should
2 be -- she certainly can ask any question.

3 MS. HODGES: I can ask it in a direct
4 fashion.

5 MR. SAMUELS: She should ask a
6 question, but she should not -- she should allow my
7 client to answer rather than sort of impeaching her
8 from the get-go.

9 MS. HODGES: That is fine.

10 COMMISSIONER BECK: All right.

11 MS. HODGES: I'll change the way I'm
12 asking.

13 BY MS. HODGES:

14 Q. Isn't it true you testified at other
15 restaurants where you worked you were told to read
16 posters and other postings on the back wall where
17 you clocked in?

18 A. Yes, ma'am.

19 Q. So that is something that you had done in
20 the past?

21 A. Yes, ma'am.

22 Q. Okay. And then we talked about -- let me
23 rephrase that. Isn't it true you testified in your
24 deposition that James Kearse told you that you could
25 follow the customer only if they -- you saw them

Miles vs. Waffle House

1 before they got in their car?

2 A. If we could catch them before they left
3 the parking lot.

4 Q. Didn't you testify in your deposition
5 before they got in their car?

6 A. I don't recall.

7 Q. Is that correct, that you were told before
8 they got in their car is when you were supposed
9 to --

10 A. Just that we waived the ticket. Whether
11 they were getting in the car and just let them know,
12 hey, you need to pay this ticket.

13 Q. Okay. And that is your testimony as to --

14 A. Yes.

15 Q. -- what he said? Okay. And isn't it true
16 you testified that once they got in the car you were
17 suppose to just let them go?

18 A. I don't recall saying that.

19 Q. Okay. Just to refresh your memory I asked
20 on Page 31 of the deposition, were you supposed to
21 try to prevent them from leaving or once they got to
22 the car were you supposed to turn around and come
23 back inside or -- and you answered let them go.
24 Just let them go. And I said once they got in their
25 car? And you said, yes, ma'am.

Miles vs. Waffle House

1 A. Well, yeah. Most of the time if they were
2 dashing and dining, yes.

3 Q. So that is your testimony --

4 A. Or dining and dashing, yes.

5 Q. If they left, you are supposed to hand
6 over their -- without paying you were supposed to
7 hand over their ticket to the main cook. And they
8 initial it as being a walk-out?

9 A. Yes, ma'am.

10 Q. And, again, you weren't supposed to chase
11 them down or keep them from leaving once they were
12 in their car?

13 A. No, ma'am.

14 Q. No, you weren't supposed to do that?

15 A. No, ma'am.

16 MR. SAMUELS: Object to that
17 question. That is a compound question. She asked
18 if she was supposed to try to chase them or keep
19 them from leaving. Those are two different
20 questions.

21 COMMISSIONER BECK: Okay. Break it
22 into two questions, Ms. Hodges.

23 MS. HODGES: Okay.

24 BY MS. HODGES:

25 Q. You weren't supposed to chase them down?

Miles vs. Waffle House

1 A. No, ma'am.

2 Q. Okay. And you weren't supposed to try to
3 keep them from leaving once they were in their car,
4 were you?

5 A. In this situation I just was not thinking.

6 Q. Okay. But just to answer my question --

7 A. I guess common sense would say, no.

8 Q. Okay. And you weren't told to try to keep
9 them from leaving once they were in their car, were
10 you?

11 A. No.

12 Q. And in this situation you didn't walk out
13 behind this girl because she hadn't paid her ticket,
14 did you?

15 A. No, ma'am.

16 Q. And you weren't ever told in any kind of
17 Waffle House training that you should go outside and
18 keep them from leaving, were you?

19 A. No, ma'am.

20 Q. In this situation the girl that you were
21 dealing with, she got in the passenger seat, right?

22 A. Yes, ma'am.

23 Q. And she and the driver then had a
24 conversation. And then they traded places?

25 A. Yes, ma'am.

Miles vs. Waffle House

1 Q. And then the girl that you originally
2 followed started driving?

3 A. Yes, ma'am.

4 Q. Okay. So this wasn't an immediate
5 situation where she got in and she was driving and
6 she started backing up immediately?

7 A. No, but they traded places very fast.

8 Q. Okay. But they had a conversation and
9 then they traded places?

10 A. No conversation.

11 Q. Okay. I thought you just testified and
12 didn't you also testify in the deposition --

13 A. I'm looking through the back window. And
14 I -- I'm pretty sure Kelly Mae House told the other
15 girl get out and let me drive.

16 Q. But you weren't in there and you didn't
17 hear anything they said, but they had some sort of
18 conversation. Is that what you are saying?

19 A. Like I said, common sense would tell you
20 that Kelly Mae House told the other girl to get out
21 and let her drive because the other girl did not
22 move. The other girl did not back up over me.

23 Q. But then you saw them having a
24 conversation, and then they switched places?

25 A. I would say a three-second conversation.

Miles vs. Waffle House

1 Q. Okay. And in your deposition you said it
2 was about a 10-second conversation, right?

3 A. Three seconds, 10 seconds.

4 Q. So at that point you were still behind the
5 car though?

6 A. Yes, ma'am.

7 Q. And I believe you testified that the
8 driver bumped you out of the way?

9 A. Yes, ma'am.

10 Q. And then you were on the side of the car,
11 but you walked around to the front of the car and
12 stood in front of it?

13 A. Yes, ma'am.

14 Q. As far as your problems with headaches, I
15 believe you testified in your deposition that you
16 have them a couple of times a week and if they are
17 really bad you take Goody Powders?

18 A. Yes, ma'am.

19 THE WITNESS: Your Honor?

20 COMMISSIONER BECK: Yes, ma'am?

21 THE WITNESS: May I add something to
22 that also?

23 COMMISSIONER BECK: You just need to
24 respond to Ms. Hodges' questioning, ma'am. You can
25 elaborate if you would like to with any question

Virginia Miles - Redirect Examination

Miles vs. Waffle House

1 tax return last year?

2 A. Yes, ma'am.

3 Q. And the wages you claim are basically in
4 line with what was revealed on our Form 20?

5 A. Yes, ma'am.

6 MS. HODGES: I have nothing further.

7 COMMISSIONER BECK: Mr. Samuels,
8 anything further?

9 MR. SAMUELS: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. SAMUELS:

12 Q. Ginny, do you still want to work?

13 A. Yes, sir.

14 Q. If you were able, would you go back to
15 work at the Waffle House?

16 A. I don't know about going back to the
17 Waffle House.

18 Q. You wouldn't mind going back to something
19 similar if you physically could?

20 A. I need money back in my checking account.
21 I need to pay my own bills, yes. I need a job.

22 Q. How much did you have in your checking
23 account the day you got hurt?

24 A. I had about 1,500 in my checking account
25 and I had 700 stashed at my house.

Miles vs. Waffle House

1 Q. How much do you have now?

2 A. 1.88.

3 Q. Are you looking for work?

4 A. A friend of mine told me that he has a
5 friend that will hire me at Subway.

6 Q. Do you know if you will be able to do that
7 kind of work with your leg?

8 A. It possibly will swell. I know it will
9 because when I stay on it for several hours it
10 swells up to my calf. And it hurts.

11 Q. Ms. Hodges had asked you some questions
12 about the time, how quickly things happened on the
13 night of March 14th, 2010. Did things happen
14 quickly?

15 A. Extremely quick, yes, sir.

16 Q. Have you heard the second 911 call?

17 A. Yes, sir.

18 Q. Are you able to identify the person in
19 that 911 call?

20 A. Yes, sir.

21 Q. Who is that person?

22 A. Britney Musilu.

23 Q. Is she a Waffle House employee?

24 A. Yes, sir.

25 MR. SAMUELS: Your Honor, I would

Miles vs. Waffle House

1 like to play the second 911 call.

2 COMMISSIONER BECK: Ms. Hodges?

3 MS. HODGES: I would object to her
4 qualifications to judge whether the recording is
5 actually Ms. Musilu or not. Basically the same
6 objection as to --

7 COMMISSIONER BECK: Her name is
8 Musilu?

9 MR. SAMUELS: Musilu.

10 COMMISSIONER BECK: Musilu?

11 MR. SAMUELS: She's another waitress,
12 Your Honor.

13 COMMISSIONER BECK: Ms. Miles, how
14 long have you known Ms. Musilu?

15 THE WITNESS: For a year and a half.

16 COMMISSIONER BECK: You work with her
17 regularly?

18 THE WITNESS: Yes, sir.

19 COMMISSIONER BECK: All right. I'm
20 going to overrule the objection. Please play the
21 recording.

22 (Second 911 call was played.)

23 MR. SAMUELS: Your Honor, if I may I
24 would like to offer the C.D. into evidence that
25 contains those two calls.

Miles vs. Waffle House

1 COMMISSIONER BECK: I note Ms.
2 Hodges' objection. And I'll allow it in.

3 MR. SAMUELS: Do we hand it up or do
4 you want to take it back.

5 COMMISSIONER BECK: Pardon?

6 MR. SAMUELS: I'm not sure where it
7 went.

8 COURT REPORTER: You took it back.
9 Look under that file in the corner right here.

10 MR. SAMUELS: That one?

11 COURT REPORTER: Sorry. You did take
12 it back.

13 MR. SAMUELS: I beg your indulgence.

14 COMMISSIONER BECK: Yes, sir.

15 MR. SAMUELS: I'm going to just give
16 you the one that we played. I'm sure I'll find the
17 other one at the end of the hearing.

18 COMMISSIONER BECK: Anything further,
19 Mr. Samuels?

20 MR. SAMUELS: Yes, Your Honor. Just
21 a moment.

22 (MARKED CLAIMANT'S EXHIBIT NO. 3.)

23 BY MR. SAMUELS:

24 Q. Ginny, was this a robbery situation like
25 you had talked about and trained for?

Virginia Miles - Recross Examination

Miles vs. Waffle House

1 A. No, sir.

2 Q. Were you ever told what to do one way or
3 another in this kind of situation?

4 A. No, sir.

5 Q. Were you cautioned or instructed after
6 this about the way you handled it?

7 A. No, sir.

8 Q. Were you ever written up on this?

9 A. No, sir.

10 Q. Were you ever suspended or terminated
11 because of what happened that night?

12 A. No, sir.

13 MR. SAMUELS: Thank you. I have no
14 further questions, Your Honor.

15 COMMISSIONER BECK: Ms. Hodges,
16 anything further, ma'am?

17 RECROSS EXAMINATION

18 BY MS. HODGES:

19 Q. Your attorney asked if you were ever told
20 what to do one way or another in this situation, but
21 to follow-up you were told that if somebody was in
22 the car you weren't supposed to follow them outside,
23 correct?

24 A. I don't recall.

25 Q. Didn't you just testify that you weren't

Miles vs. Waffle House

1 supposed to chase people down or keep them from
2 leaving once they were in their car?

3 A. Well, most of the time when they had put
4 the car in drive they were already going to leave
5 and you couldn't chase them down.

6 Q. Okay. But didn't you testify that you
7 weren't supposed to chase down people or keep them
8 from leaving once they were in their car?

9 A. No, ma'am.

10 Q. You weren't supposed to do that?

11 A. We were never told we were not supposed to
12 keep people from leaving.

13 Q. Okay. In your deposition on Page 32 I
14 asked, you weren't supposed to try to chase them
15 down or keep them from leaving or anything like that
16 once they were in their car. And you said no?

17 MR. SAMUELS: Your Honor, if I may, I
18 would like to object. I believe she misread that in
19 an important way I'm sure inadvertently. The
20 question in the deposition is, quote, but I mean you
21 weren't supposed to try to chase them down or keep
22 them from leaving or anything like that once they
23 were in the car. Ms. Miles answered no, but it's a
24 compound question.

25 If it's an or, you weren't suppose to do

Miles vs. Waffle House

1 try to chase them down once they are in the car.
2 You don't chase them to the car. That is the reason
3 for the answer to the question. It's an inartfully
4 asked question, but her answer is correct to say,
5 no, if they are in the car you are not supposed to
6 chase them down.

7 COMMISSIONER BECK: Wasn't that the
8 point you were trying to get to, Ms. Hodges?

9 MS. HODGES: Yes, sir. And I believe
10 we actually broke up that question in our previous
11 examination.

12 COMMISSIONER BECK: Previously you
13 did, yes, ma'am. All right. Please proceed.

14 MS. HODGES: I have nothing further.

15 COMMISSIONER BECK: All right,
16 anything further, Mr. Samuels?

17 MR. SAMUELS: Your Honor, I would
18 just like to call your attention to Exhibit 71 of
19 the Claimant's A.P.A. submissions which is the
20 supplemental, the skinny one. And this is a
21 timeline from the police department. I just wanted
22 to call your attention that with the two 911 calls,
23 the second one was Britney Musilu was initiated only
24 13 seconds after the first one, just to give Your
25 Honor an understanding that this entire incident

Miles vs. Waffle House

1 took maybe a minute to a minute and a half.

2 COMMISSIONER BECK: Yes, sir. Okay.

3 Anything further of this witness?

4 MR. SAMUELS: Not from the Claimant,
5 Your Honor.

6 COMMISSIONER BECK: Ms. Hodges?

7 MS. HODGES: Nothing from the
8 Defendants, Your Honor.

9 COMMISSIONER BECK: Ms. Miles, you
10 may step down, ma'am. Thank you very much. Mr.
11 Samuels, any other witnesses, sir?

12 MR. SAMUELS: Yes, sir. The Claimant
13 calls Michael Strong.

14 COMMISSIONER BECK: Strong?

15 MR. SAMUELS: Yes, sir.

16 COMMISSIONER BECK: Please, have a
17 seat right over there.

18 MR. STRONG: Yes, sir.

19 COMMISSIONER BECK: Mr. Strong, would
20 you raise your right hand, please. Do you swear or
21 eye firm that the testimony you are about to give
22 today is the truth, the whole truth, and nothing but
23 the truth, sir?

24 MR. STRONG: Yes, sir.

25 COMMISSIONER BECK: Please state your

Michael Strong - Direct Examination

Miles vs. Waffle House

1 full name for the record.

2 MR. STRONG: Michael Strong.

3 COMMISSIONER BECK: You may put your
4 hand down. Mr. Samuels?

5 MR. SAMUELS: Thank you, Your Honor.

6 WHEREUPON:

7 MICHAEL STRONG, being duly sworn and
8 cautioned to speak the truth, the whole truth and
9 nothing but the truth, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. SAMUELS:

12 Q. Mr. Strong, are you employed with Waffle
13 House?

14 A. Yes.

15 Q. Been there a year and a half?

16 A. Yes.

17 Q. You work in Store 1198 --

18 A. Yes.

19 Q. -- on Broad River Road? Now, before this
20 hearing -- immediately before this hearing, did you
21 and a group of your coworkers meet with Ms. Hodges?

22 A. Yes.

23 Q. To talk about your testimony?

24 A. Yes.

25 Q. Did you agree what your testimony was

Miles vs. Waffle House

1 going to be?

2 A. Yes.

3 MS. HODGES: Object to the phrasing
4 of that question. That sounds as if I gave him his
5 testimony. I guess it was inartfully asked, but --

6 COMMISSIONER BECK: I'll give you an
7 opportunity to clear that up --

8 MS. HODGES: Okay.

9 COMMISSIONER BECK: On cross
10 examination.

11 MS. HODGES: Okay.

12 BY MR. SAMUELS:

13 Q. Mr. Strong, what do you do for Waffle
14 House?

15 A. I'm a grill op.

16 Q. Who hired you?

17 A. James.

18 Q. Would that be James Kearse?

19 A. Yes.

20 Q. This gentleman sitting right here next to
21 Ms. Hodges?

22 A. Yes.

23 Q. And what shift do you usually work?

24 A. Third.

25 Q. What hours is third shift?

Miles vs. Waffle House

1 A. 9:00 to 7:00.

2 Q. Are there any managers on third shift?

3 A. No.

4 Q. Who runs the shore?

5 A. The grill op. We all do.

6 Q. In other words, you --

7 A. It's me and three other servers unless
8 it's a week night, it's me and two other servers.

9 Q. As the grill op, you are maybe not a
10 manager, but you are the person in charge, right?

11 A. I suppose.

12 Q. Either that or nobody is in charge, so
13 which is it?

14 MS. HODGES: Object to the form of
15 the question.

16 COMMISSIONER BECK: Rephrase, Mr.
17 Samuels.

18 BY MR. SAMUELS:

19 Q. Are you in charge or is nobody in charge?

20 A. I suppose I would be in charge, I guess.

21 Q. Were you in charge on the third shift on
22 March 14th, 2010?

23 A. I suppose. I mean, I was working that
24 third shift.

25 Q. Was this the weekend of St. Patrick's Day?

Miles vs. Waffle House

1 A. I really can't remember.

2 Q. How was that shift? Was it busy?

3 A. It was pretty regular. Pretty all right
4 night.

5 Q. Was it rowdy?

6 A. Every third shift is rowdy at Waffle
7 House.

8 Q. Does Waffle House have a security guard
9 some nights?

10 A. Now we have one on Friday nights.

11 Q. Did you have one that Saturday?

12 A. Friday nights.

13 Q. Yes, sir, I understand. Did you have one
14 on that Saturday night?

15 A. We only have one Friday nights.

16 Q. Okay. Have you ever seen any of the
17 employees who work third shift go outside?

18 A. Yes.

19 MS. HODGES: I object to the
20 relevance of this.

21 COMMISSIONER BECK: I'm going to
22 allow it. Let's move along, Mr. Samuels.

23 BY MR. SAMUELS:

24 Q. Let me ask you who was working that
25 particular third shift?

Miles vs. Waffle House

1 A. Huh?

2 Q. On March 14th, 2010, who was working?

3 A. I believe it was me, Britney, Lori, Mary,
4 Ginny. I believe that was it.

5 Q. On that particular night, even before
6 there was a disturbance, various people had gone
7 outside already, hadn't they?

8 A. Not that I recall.

9 Q. People go outside to smoke all the time,
10 don't they?

11 A. I suppose. It's a non-smoking restaurant.

12 Q. To be more specific, you go outside when
13 you need to take a smoke break, don't you?

14 A. I mean, it doesn't matter what I do, but,
15 yeah.

16 Q. You go out several times a night, don't
17 you?

18 A. If I get the chance to. It depends how
19 busy I am.

20 Q. If there is a break though you feel that
21 you are allowed to go outside and smoke a cigarette,
22 don't you?

23 A. If there is a long enough break.

24 Q. And as the grill operator running the
25 store, if there is a break, you also let the

Miles vs. Waffle House

1 waitresses go outside and smoke a cigarette, too,
2 don't they?

3 A. If they have their stuff done.

4 Q. And people also sometimes, you've seen
5 them go over to the convenience store next door and
6 get lottery tickets, candy, drinks, and what have
7 you, haven't they?

8 A. I don't know.

9 Q. You don't know?

10 A. Do not know.

11 Q. You've seen people go outside for more
12 than a cigarette break though, haven't you?

13 A. If they say they are going outside for a
14 cigarette break, all I know is they are going
15 outside for a cigarette break.

16 Q. The point is you don't stop employees from
17 going outside, do you?

18 A. I'm not a manager. I'm not supposed to
19 stop anybody. You are grown. I can't stop them
20 from doing what they want to do.

21 Q. Do you remember in your deposition we
22 asked you how many times do people go outside on
23 third shift? And your answer was plenty of times.
24 You've got to go outside to smoke?

25 A. Hey, if you have to go outside to smoke

Miles vs. Waffle House

1 plenty of times, you go outside plenty of times. If
2 you go outside just couple times to smoke, you go
3 outside a couple times.. It's on you. It's your
4 write-up, not mine.

5 Q. You are not aware of anybody ever being
6 written up by Waffle House for going outside to
7 smoke, are you?

8 MS. HODGES: I object. He's not a
9 manager. I object to his qualifications to even
10 answer that question.

11 COMMISSIONER BECK: As long as he can
12 speak from personal knowledge I'll allow it. If
13 it's going to be speculation then I'm going to
14 overrule or sustain the objection. Mr. Samuels?

15 BY MR. SAMUELS:

16 Q. You've never been written up for going
17 outside for a smoke break; isn't that true?

18 A. You just go outside for a smoke, I guess
19 not. I don't know. I've been written up for going
20 outside before.

21 Q. You were written up one time for going
22 outside because you got into an altercation outside,
23 right?

24 A. If that is what you figured out, I guess
25 so.

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1 Q. That is the only time --

2 COMMISSIONER BECK: Hang on a second.

3 Let's go off the record for a moment.

4 (Discussion off the record.)

5 BY MR. SAMUELS:

6 Q. Do you remember the question I just asked
7 you?

8 A. No. Repeat the question.

9 Q. You were written up once for going
10 outside, but you were written up because you caused
11 an altercation, correct?

12 A. Correction. No, I did not cause an
13 altercation.

14 Q. You were involved in an altercation?

15 A. Uh-huh.

16 Q. Is that a yes?

17 A. Yes.

18 Q. And you were written up for that?

19 A. Yes.

20 Q. That is the only time that you've been
21 written up for going outside, correct?

22 A. I suppose so.

23 Q. Is that a yes?

24 A. That I recall.

25 Q. Mr. Strong, remember an incident happening

Miles vs. Waffle House

1 on March 14th, 2010, involving Ginny Miles?

2 A. Yeah.

3 Q. Can you tell us what happened on that
4 night?

5 A. Like I said, we had some disgruntled
6 customers. Told them to leave. They wanted to
7 start talking to her all trashy, I told them they
8 had to go. A guy goes outside, proceeds to get me
9 to come outside and fight. I went no. And his
10 girl -- the girl inside says something to me. I
11 said something back -- back to her.

12 She said something to one of the
13 waitresses. She got up, went to hit the waitress.
14 The waitress hit her before she could hit her. So,
15 I mean -- and then all of a sudden Ginny goes
16 outside and says she's getting the license plate
17 number. For what?

18 Q. First off, to clarify, you are talking
19 about a waitress, that wasn't Ginny Miles. A
20 waitress --

21 MR. SAMUELS: I'm sorry, Your Honor.

22 BY MR. SAMUELS:

23 Q. You talked about a waitress taking a swing
24 at a customer; is that right?

25 A. A customer taking a swing at a waitress.

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1 Q. Okay. And the waitress swung back?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes.

5 Q. And that waitress was Britney Musilu,
6 correct?

7 A. Okay.

8 Q. Is that a yes?

9 A. Yes.

10 Q. Was it Britney Musilu?

11 A. Yes.

12 Q. Now, when Ginny went outside, what did you
13 see?

14 A. I saw Ginny go outside and stand behind
15 the car.

16 Q. What happened after that?

17 A. The young lady that was driving wouldn't
18 back up. A couple waitresses came outside and tried
19 to get Ginny from behind the car, but she wouldn't
20 move. The girl switched seats. And the girl
21 proceeded to back up over her.

22 COMMISSIONER BECK: Would you say
23 that again, sir? Say that again.

24 THE WITNESS: About?

25 COMMISSIONER BECK: What you just

Miles vs. Waffle House

1 testified to.

2 THE WITNESS: A couple waitresses
3 came outside to get Ginny from behind the car, but
4 she would not move. And the girls changed seats,
5 and they began to back up over her.

6 COMMISSIONER BECK: Okay. Thank you,
7 sir.

8 BY MR. SAMUELS:

9 Q. Mr. Strong, do you remember having your
10 deposition taken?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes.

14 Q. A couple days ago?

15 A. Yes.

16 Q. You weren't real happy about it, were you?

17 A. No.

18 Q. And do you remember whether you gave the
19 same testimony in that deposition that you just gave
20 now?

21 A. Yeah.

22 Q. Did you give the same testimony?

23 A. Yeah.

24 MR. SAMUELS: Your Honor, I would
25 like to submit Mr. Strong's deposition into the

Miles vs. Waffle House

1 record.

2 COMMISSIONER BECK: Ms. Hodges?

3 MS. HODGES: That is fine as long as
4 he is only submitting it as to impeach him. I don't
5 think it's something that should be submitted as to
6 the scope of the deposition because it was purely
7 discovery on his part. And I didn't do many cross
8 examination or clarifications.

9 COMMISSIONER BECK: All right. It's
10 admitted with that understanding.

11 (MARKED CLAIMANT'S EXHIBIT NO. 4.)

12 MR. SAMUELS: I'm going to hand it to
13 him, Your Honor, if I may.

14 COMMISSIONER BECK: Yes, sir.

15 BY MR. SAMUELS:

16 Q. Mr. Strong, I've handed you your sealed
17 deposition. I opened it. Now, let me ask you to
18 turn to Page 7. If you look at that, there are page
19 numbers in the top right corner of each page. On
20 the left there are line numbers. Would you read
21 your testimony from Line 10 through 17? Page 10,
22 start reading -- Page 7, start reading at Line 10?

23 A. Went outside to get a license plate
24 number. She tried to back over her. The girl that
25 was in the driver's seat wasn't going to back up.

Miles vs. Waffle House

1 So another girl in the driver's seat tried to back
2 up over Ginny. She got from behind the car, walked
3 around the front, and was walking in. The girl
4 mashed the gas and was hit.

5 Q. Keep reading.

6 A. So she jumped on the hood. The girl took
7 off out of the parking lot.

8 Q. Now, were you giving me a complete version
9 of what you saw that night?

10 A. From what I recall.

11 Q. Okay.

12 A. What you were asking, yeah.

13 Q. What I asked you --

14 A. Yeah. Did she go outside to get a license
15 plate number.

16 Q. -- was do you remember what happened on
17 March 14th. I'm sorry, sir. Tell me what
18 happened -- I asked you tell me what happened on
19 March 14th, 2010. Did you give me a complete story
20 at that time when I took your deposition?

21 A. Uh-huh.

22 Q. Is that a yes?

23 A. Yes.

24 Q. All right. Now today after meeting with
25 your coworkers right before this hearing now you are

Miles vs. Waffle House

1 adding an extra detail of other people went out?

2 A. Am I adding? You asked me yesterday if
3 other people went out and I say, yeah. I mean, so
4 what is the difference?

5 Q. Let's talk about it. Who went outside
6 that night?

7 A. I don't recall. I know other people went
8 outside to get her back in.

9 Q. You don't know why they went outside, do
10 you?

11 A. I don't even know when she went outside.
12 She said to get a license plate number.

13 Q. Right. You don't know why they went
14 outside, do you?

15 A. Evidently not. I guess so.

16 Q. And you weren't outside at that point in
17 time, were you?

18 A. Was I outside?

19 Q. Yes, sir.

20 A. Uh-uh.

21 Q. Is that a no?

22 A. No.

23 Q. You did go out later though, didn't you?

24 A. Yeah.

25 Q. In fact, you went out and you got in your

Miles vs. Waffle House

1 truck. And you and Britney Musilu drove off --

2 A. Wrong. No. I got in the truck and I
3 drove off.

4 Q. Okay. Just you?

5 A. Just me.

6 Q. You got in your truck and you drove off,
7 And you drove off to find what happened to Ginny?

8 A. Yeah.

9 Q. To chase down these people, right?

10 A. Yeah. Was I not suppose to?

11 Q. I didn't ask you that, sir.

12 A. Okay.

13 Q. But you did that, didn't you?

14 A. Yeah.

15 Q. You felt that was the appropriate thing to
16 do in the situation, wasn't it?

17 A. I mean some -- if one of my servers gets
18 taken off on the hood of a car, what, just don't
19 worry about it?

20 Q. Because this whole thing was an emergency
21 situation, right?

22 A. Hey, if you look at it like that.

23 Q. Well, do you look at it like that?

24 A. Nope.

25 Q. All right. So you didn't leave the scene

Miles vs. Waffle House

1 to go after one of your waitresses on the hood of
2 the car because you thought it was not an emergency?

3 A. That part, yeah.

4 Q. The store was being vandalized, wasn't it?

5 A. Yeah.

6 Q. One of your waitresses was in a fight with
7 a customer, wasn't she?

8 A. I suppose.

9 Q. In fact, that girl was your girlfriend,
10 wasn't it, Britney Musilu?

11 A. It has nothing to do with it.

12 COMMISSIONER BECK: Answer the
13 question, please.

14 THE WITNESS: Yeah.

15 BY MR. SAMUELS:

16 Q. And you were the guy running the store,
17 right?

18 MS. HODGES: He's already testified
19 that he's not a manager.

20 COMMISSIONER BECK: We've been
21 through this one time, Mr. Samuels. Let's move on.

22 BY MR. SAMUELS:

23 Q. As the man in charge, what did you do to
24 try to control the situation?

25 MS. HODGES: I object to his

Miles vs. Waffle House

1 characterization.

2 THE WITNESS: All I can do is ask you
3 to leave.

4 COMMISSIONER BECK: Mr. Samuels,
5 let's make it a point of clarification. I think
6 he's already testified he is not a manager.

7 MR. SAMUELS: I agree with that, but
8 he has testified also that he was the individual
9 running the store at the time. Therefore --

10 THE WITNESS: It's in your handbook.
11 It tells you third shift grill op is like a manager.
12 You run the store. You have to keep everything
13 calm.

14 COMMISSIONER BECK: All right.
15 Please proceed.

16 BY MR. SAMUELS:

17 Q. Now, I asked you in your deposition as the
18 man in charge what did you do to try to control the
19 situation. And do you remember what your answer
20 was?

21 A. I'm sure you are going to tell me.

22 COMMISSIONER BECK: Sir, we had this
23 discussion off the record. Just please answer the
24 question. Okay. Ask the question again.

25 THE WITNESS: No, I don't remember

Miles vs. Waffle House

1 it.

2 BY MR. SAMUELS:

3 Q. Okay. Let me ask you to turn to Page 8 of
4 your deposition. If you would look at Page 5 --

5 A. You said Page 8.

6 Q. Page 8, I'm sorry, Line 5. And I asked
7 you a question. And I'm going to ask you the
8 question and ask you to read the answer. Okay? I
9 asked you what did you try to do to control the
10 situation?

11 A. Tried to keep everybody in.

12 Q. Keep reading.

13 A. But they had to go get a license plate
14 number. And they got the license plate number.
15 That is when the girl tried to back up over her.

16 Q. Okay. They were supposed to go and get
17 the license plate number. Read your next answer at
18 Line 13?

19 A. On 13? Someone does not pay their ticket,
20 but tries to walk out on their tab, you get their
21 license plate number.

22 Q. Keep reading.

23 A. Other than that, they have nothing but
24 unpaid food.

25 Q. And who told you that you were suppose to

Miles vs. Waffle House

1 get the license plate numbers?

2 A. Managers.

3 Q. Would that include James Kearse?

4 A. I suppose. He's a manager.

5 Q. Yes, sir. Well, what was your answer in
6 your deposition, Line 20, when I asked you --

7 A. That includes Veronica and Jeff.

8 Q. And on the third shift it's dark in the
9 parking lot, right?

10 A. I believe it's third shift.

11 Q. I mean, there are lights, but it's still
12 night, right?

13 A. Yeah.

14 Q. And you've got to go outside to get the
15 tag number, don't you?

16 MS. HODGES: I object to the
17 testimony. This is --

18 COMMISSIONER BECK: Let's move on,
19 Mr. Samuels.

20 BY MR. SAMUELS:

21 Q. Wouldn't you agree that everybody went
22 outside, including Ginny, to control the situation
23 and get the license plate number?

24 A. No, everybody didn't go outside until
25 Ginny went outside.

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1 Q. All right. Let me ask you to turn to
2 Page 9 of your deposition.

3 A. Oh, my God, man.

4 Q. Please ask you to start reading your
5 answer, read the whole paragraph starting at Line 16
6 on Page 9.

7 A. Starting at line what, 16?

8 Q. Yes, sir.

9 A. Let me say I know you are not trying to
10 get me in trouble, but it really don't matter how
11 many times I went outside. I don't remember saying
12 that, but we went outside to control the situation
13 to get a license plate number. That is what
14 happened. The girl proceeded to back up over Ginny.
15 Ginny walked around the front. I mean, I don't see
16 how you are going to walk around the back of a car
17 that is backing up. So she walked around the front,
18 and the girl mashed the gas.

19 Q. All right. So let's make it clear. Your
20 testimony was that, quote, we went outside to
21 control the situation and get the license plate
22 number?

23 A. Uh-huh.

24 Q. Correct?

25 A. Yes. That is when the situation moved

Miles vs. Waffle House

1 from inside to outside. And Ginny followed outside.
2 Leave her outside by herself with two crazy people?

3 Q. And everybody else went outside -- well,
4 several other people went outside as well in a
5 group, correct?

6 A. Not in a group. You're trying to make it
7 look like a mob or something. No, it wasn't like
8 that.

9 Q. Lori and Britney also went outside,
10 correct?

11 A. Okay.

12 Q. All right. Lori, Ginny, and Britney were
13 all outside at the same time in the parking lot;
14 isn't that true?

15 A. No.

16 Q. Okay. Lori --

17 A. No.

18 Q. -- and Ginny were in the parking lot at
19 the same time?

20 A. No. No one went into the parking lot
21 until Ginny went into the parking lot.

22 Q. That is not my question, sir. All three
23 of them were out in the parking lot --

24 A. At one point in time, yeah.

25 Q. -- before the girl took off?

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1 A. At one point in time, yeah.

2 Q. Things happened really fast that night,
3 didn't they?

4 A. For some people.

5 Q. It looked like people were panicking,
6 didn't it?

7 MS. HODGES: I object to him
8 testifying as to what it looked like.

9 THE WITNESS: I mean, he's not
10 understanding.

11 COMMISSIONER BECK: Hang on a second.

12 MS. HODGES: What it looked like
13 people's internal states were, I think is what he's
14 asking. I don't see how he can testify to that.

15 MR. SAMUELS: He can speak to his
16 personal observations and personal common sense is
17 able to tell if it's a panic situation.

18 COMMISSIONER BECK: I'll allow him to
19 speak to his personal observations as long as he
20 doesn't get into the minds of anybody else.

21 THE WITNESS: As I understand it,
22 nobody went outside until she was on the hood of
23 that car, boom. That is when Britney came outside
24 because I had already hopped in the truck. Once the
25 girl left the parking lot, I hopped in the truck.

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1 Lori was already inside by about then.

2 BY MR. SAMUELS:

3 Q. You would agree it was pretty hectic,
4 wouldn't you?

5 A. Hey, I mean, some people would in that
6 situation. It wasn't for me.

7 Q. All right, sir. Please turn to Page 13 of
8 your deposition. I'm sorry. Page 14. All right.
9 I asked you at Line 13, it was pretty hectic, would
10 you agree with that. What was your answer?

11 A. And I say, yeah.

12 Q. Everything happened really fast, didn't
13 it?

14 A. You asked that. I said yeah, for some.
15 That would be Line 7, Page 14.

16 Q. All right. Let me ask you while you are
17 on Page 13, I'm going to ask you to read line 14.
18 The question I asked you was why does Waffle House
19 want you to get the tag number. What was your
20 answer?

21 A. Goddamn.

22 COMMISSIONER BECK: Excuse me?

23 THE WITNESS: Because it's a rule,
24 man. Line 13, because the food has to be paid for
25 somehow.

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1 BY MR. SAMUELS:

2 Q. Keep on reading.

3 A. Or they just come in and you are the one
4 getting the write up because you now have a
5 walk-out.

6 Q. Keep reading, sir.

7 A. If they watch the tape and all the other,
8 blah, blah, blah, but it doesn't matter.

9 Q. Keep reading?

10 A. Either way, somebody has to pay for the
11 food. So you either get a tag number or you are
12 just stuck.

13 Q. And what did you say after that?

14 A. But in that case you need the tag number
15 anyway way because she tore the whole restaurant up.

16 Q. So to put it another way, even if this
17 wasn't a dine-and-dash situation, you still had to
18 get the tag number because this lady had torn up the
19 restaurant, right?

20 A. Yeah.

21 Q. Because you, as the man in charge, wanted
22 to make sure that that lady got caught and arrested
23 by the police, right?

24 A. Yeah.

25 Q. All right. Speaking of which, did you

Miles vs. Waffle House

1 give a statement to the police?

2 A. We had to do written statements that
3 night.

4 Q. Did you tell the police that other Waffle
5 House people had gone out to try to bring Ginny back
6 in?

7 A. Honestly I would not remember, man.

8 Q. Well, I'll show it to you. Remember
9 giving that statement to the police?

10 A. Yeah.

11 Q. Is that your handwriting?

12 A. Yeah.

13 Q. You gave that at 5:47 a.m. on March 13th,
14 2010?

15 A. Yeah.

16 Q. Have you ever seen anybody try to run
17 somebody over before?

18 A. Yeah.

19 Q. You have?

20 A. Yeah.

21 Q. At Waffle House?

22 A. No.

23 MR. SAMUELS: Your Honor, I would
24 like this police statement marked and submitted into
25 evidence.

1 COMMISSIONER BECK: Ms. Hodges?

2 MS. HODGES: I have no objection.

3 COMMISSIONER BECK: Without

4 objection.

5 (MARKED CLAIMANT'S EXHIBIT NO. 5.)

6 MR. SAMUELS: Your Honor, I'm handing

7 the exhibits up to you. I have no further

8 questions.

9 COMMISSIONER BECK: Ms. Hodges?

10 MS. HODGES: Yes, Your Honor? Oh, I

11 thought you were asking me --

12 COMMISSIONER BECK: Questions?

13 MS. HODGES: I'm sorry.

14 COMMISSIONER BECK: Do you have any

15 questions of this witness?

16 MS. HODGES: Oh, I'm sorry. Yes,

17 Your Honor. I'm sorry.

18 CROSS EXAMINATION

19 BY MS. HODGES:

20 Q. Mr. Strong, first of all, the Claimant's
21 attorney first question to you was did we, quote,
22 did we agree on what your testimony would be. Did I
23 tell you what your testimony should be?

24 A. No, ma'am.

25 Q. Did I tell you that you had a

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1 question about whether or not you let waitresses go
2 out to smoke or do any other activities outside, you
3 are not in charge of them. So it's not up to you
4 whether they go or don't go. It's their choice?

5 A. Yes, ma'am.

6 Q. And it's not your job to give permission
7 or not to people to go outside?

8 A. No, ma'am.

9 Q. Waffle House has a policy about going
10 outside during third shift. It's against the rules,
11 isn't it?

12 MR. SAMUELS: Object to leading him.

13 MS. HODGES: It's on cross
14 examination.

15 COMMISSIONER BECK: I'm going to
16 allow it. Go ahead, Ms. Hodges.

17 BY MR. SAMUELS:

18 Q. What is Waffle House's policy about going
19 outside on third shift?

20 A. Don't go outside after dark.

21 Q. Okay. And you mentioned a couple of times
22 where you and maybe some other people have gone out,
23 but if you get caught going out you get in trouble,
24 don't you?

25 A. It's on you, yes, ma'am.

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1 Q. Okay. So you can make a choice to go out,
2 but you are going to get written up for it?

3 A. Yes, ma'am.

4 Q. And that is in the handbook?

5 A. Yes, ma'am.

6 MR. SAMUELS: Object to hearsay, Your
7 Honor.

8 COMMISSIONER BECK: I'll allow it.
9 Please proceed.

10 BY MS. HODGES:

11 Q. Have you been told by your supervisors
12 also?

13 A. Yes, ma'am.

14 Q. And, in fact, Mr. Kearse has told you not
15 to go outside?

16 A. Yes, ma'am.

17 Q. And in your deposition I believe you
18 testified that everybody knows that you are not
19 suppose to go outside on third shift?

20 A. Yes, ma'am.

21 Q. Do you ever recall Ms. Miles being present
22 when James Kearse was talking about that it's
23 against Waffle House policy for you to go outside on
24 third shift?

25 A. Yes, ma'am.

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1 Q. As far as Waffle House policy about people
2 walking out without paying, you are suppose to get
3 the tag number if you can?

4 A. Yes, ma'am.

5 Q. Are you suppose to stop people from
6 leaving?

7 A. No, ma'am.

8 Q. Are you suppose to run outside and stand
9 in back of their car to keep them from leaving?

10 A. No, ma'am.

11 Q. If you are caught doing that would you get
12 in trouble?

13 A. Yes, ma'am.

14 Q. And potentially get a write-up from Waffle
15 House?

16 A. Yes, ma'am.

17 Q. In this situation you were asked about
18 trying to control the situation. Isn't it true the
19 situation was created by Ginny going outside?

20 A. Yes, ma'am.

21 MR. SAMUELS: Object, Your Honor.
22 That calls for a conclusion.

23 COMMISSIONER BECK: Rephrase, Ms.
24 Hodges.

25 BY MS. HODGES:

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1 Q. What situation were you talking about when
2 you were saying to control the situation?

3 A. The situation where Ginny goes outside.

4 Q. Okay. So when the other people went
5 outside, they were trying to control Ginny, not
6 handle the person that was backing up?

7 A. Yes, ma'am.

8 Q. Isn't it true that one of the waitresses
9 actually got the license plate number and then Ginny
10 walked around to the front, but that waitress came
11 back in?

12 A. Yes, ma'am.

13 Q. So before she was on the hood of the car,
14 somebody already had the license plate number?

15 A. Yes, ma'am.

16 Q. In your observation the people that did go
17 outside, the waitresses, were trying to get Ginny to
18 move from behind the car, but she wouldn't do it?

19 A. Yes, ma'am.

20 Q. And as far as this situation being an
21 emergency, the emergency was caused by Ginny making
22 the decision to go outside?

23 MR. SAMUELS: Object, Your Honor, it
24 calls for a conclusion. He has no way of knowing
25 that. Mischaracterization of the evidence.

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1 COMMISSIONER BECK: Sustained.

2 BY MS. HODGES:

3 Q. Until -- if it's construed that this
4 situation was characterized by you as an emergency,
5 what did you consider the emergency to be? Was it
6 the problem inside or outside at the Waffle House?

7 A. The problem outside.

8 Q. Okay. And that situation was caused by
9 Ginny going outside?

10 A. Yes, ma'am.

11 Q. And nobody ever told her to go outside and
12 get the license plate number?

13 A. Not us physically, no, ma'am.

14 Q. In fact, before she ever ended up on the
15 hood of the car, somebody actually already had the
16 license plate number?

17 A. Yes, ma'am.

18 Q. In your experience in working with Ms.
19 Miles have you seen other situations where Ms. Miles
20 acts without thinking?

21 A. Yes, ma'am.

22 MS. HODGES: I have nothing further.

23 COMMISSIONER BECK: Anything further,

24 Mr. Samuels?

25 MR. SAMUELS: Yes, Your Honor.

Michael Strong - Redirect Examination

Miles vs. Waffle House

REDIRECT EXAMINATION

BY MR. SAMUELS:

Q. Mr. Strong, you would agree that actually the emergency situation was caused by the customers; isn't that true?

A. No.

Q. You had rowdy customers, didn't you?

A. Like I said, Waffle House always has rowdy customers.

Q. In this situation you had rowdy customers who were throwing picante sauce bottles and ketchup bottle and taking stuff off the tables and throwing it on the floor, weren't they?

A. I guess.

Q. And that happens before Ginny Miles went outside, didn't it?

A. Yeah.

Q. In fact, Ginny Miles, when that was happening, was on the telephone calling the cops, wasn't she?

A. I don't know.

Q. What were you doing when this was happening?

A. I was sitting down.

Q. Was this before or after you had the near

Miles vs. Waffle House

1 fight with the two men?

2 A. I was sitting down the whole time.

3 Q. You never stood up to take charge of
4 things even though you were, as you characterized in
5 the handbook, like a manager on third shift?

6 A. No, not until she started getting up
7 swinging.

8 Q. Okay. When she was swinging at your girl
9 friend Britney Musilu, right?

10 A. Yeah.

11 Q. Okay. Who was the girl that went outside
12 first and got the tag number?

13 A. The girl that went outside first was
14 Ginny. The girl that went outside after Ginny was
15 Lori.

16 Q. I guess I'm a little bit confused by your
17 testimony. If I heard you correctly on cross,
18 didn't you testify that somebody had already gone
19 out and gotten the tag number and that is why Ginny
20 didn't need to go out?

21 A. Bro, I said when they went outside, they
22 went outside after Ginny. When she was standing
23 behind the car, one of them wrote down the tag
24 number and came back in.

25 Q. Really? Which one?

Miles vs. Waffle House

1 A. That was Lori.

2 Q. Britney actually was the first one
3 outside, wasn't she?

4 A. Nope.

5 Q. Didn't Ginny actually go outside
6 because --

7 A. Nope.

8 Q. Britney had gone outside --

9 A. Nope.

10 Q. -- with a chair --

11 COMMISSIONER BECK: Let him finish
12 the question, sir.

13 BY MR. SAMUELS:

14 Q. Didn't Britney go outside with a chair?

15 A. I do not recall, but, no, Britney did not
16 go outside first.

17 Q. You don't recall because you were just
18 sitting down, right?

19 A. Hey.

20 Q. You talked -- this was an emergency, but
21 in fact didn't you already testify in your
22 deposition that this is something that had to be
23 done because they tore up the store?

24 A. Okay. If I come in your house and tear up
25 your house, you are going to come outside and try to

Miles vs. Waffle House

1 get my license plate number, right?

2 Q. Yes, sir, I probably would.

3 A. Okay.

4 Q. Wouldn't you agree in that situation that
5 that emergency is caused by the person tearing up
6 the house or in this case the store, right?

7 A. Hey..

8 Q. And somebody has got to control the
9 situation and deal with it, don't they?

10 A. Hey, somebody has got to control the
11 situation. All I'm required to do is get them
12 outside. I got them outside. She chose to follow
13 them. That is not my problem.

14 Q. You are not controlling the situation.
15 You are not calling the cops. And somebody has got
16 to. She did the right thing doing that, didn't she?

17 A. I don't remember her calling the cops, to
18 be honest.

19 Q. Let's assume she did call the cops. If
20 she called the cops --

21 A. When could she have called the cops if she
22 was arguing with somebody and following them
23 outside, when could she have called the cops?

24 COMMISSIONER BECK: Mr. Strong, the
25 way this process works is Mr. Samuels asks the

Miles vs. Waffle House

1 questions and you answer them. You can elaborate on
2 your answer if you choose, but the process doesn't
3 include you asking him questions. Okay?

4 THE WITNESS: All right.

5 BY MR. SAMUELS:

6 Q. I'm going to ask you to trust me and
7 presume that she called the cops. We've got
8 evidence she called the cops. Let's assume she
9 called the cops. Would you agree that that was the
10 right, responsible thing to do?

11 A. Yeah.

12 Q. Help take control of the situation and get
13 the cops out there, isn't it?

14 A. The cops didn't even show up until after
15 they left with her on the hood, but hey.

16 Q. But they got there, didn't they?

17 A. I guess so. They got there.

18 Q. Things happened too fast for them to get
19 there in time to take control, didn't it? Answer
20 the question, please.

21 A. Yeah, if you say so.

22 Q. Mr. Strong, when you had this conversation
23 outside with Ms. Hodges and the other Waffle House
24 employees other than Ginny, was it a little calmer
25 and pleasanter and less hostile than the

Miles vs. Waffle House

1 conversation you are having with me on the witness
2 stand?

3 A. Pretty much.

4 Q. You would agree you are being rather
5 hostile to me?

6 A. If that is how you take it.

7 Q. Would you agree that you were being rather
8 hostile at your deposition too, the same kind of
9 attitude you've got here?

10 A. If that is how you take it.

11 Q. You didn't give that attitude to Ms.
12 Hodges earlier, did you?

13 A. No.

14 Q. You are testifying here to try to help
15 Waffle House, aren't you?

16 A. Really I don't know why I'm here.

17 Q. Because you care about your job, don't
18 you? Do you care about your job, Mr. Strong?

19 A. I guess so.

20 Q. Now, nobody was written up for going
21 outside that night, were they?

22 A. I don't recall.

23 MS. HODGES: I object to his
24 knowledge of this --

25 COMMISSIONER BECK: Only if he has

Miles vs. Waffle House

1 knowledge, Mr. Samuels. I don't want any
2 speculation.

3 BY MR. SAMUELS:

4 Q. You weren't written up for going outside
5 that night, were you?

6 A. Not that I recall. I don't think so.

7 Q. And you went outside on third shift, got
8 in your car, and went down the street, didn't you?

9 A. Yeah.

10 Q. And the rule actually is on third shift
11 don't go out if there is a yellow tag on the back
12 door. Then you don't go out the back door, correct?

13 A. Correct.

14 Q. There is no written rule that nobody can
15 go outside on third shift, is there?

16 A. Yes, there is, man. I believe so, sir.
17 It's in your handbook. You don't go outside after
18 dark. That is any restaurant business.

19 Q. You didn't bring the handbook with you,
20 did you?

21 A. I don't carry a handbook with me.

22 Q. And you don't know if Ginny Miles had ever
23 been given an employee handbook, do you?

24 A. Every -- if you are hired you are given an
25 employee handbook.

Michael Strong - Recross Examination

Miles vs. Waffle House

1 Q. You may have been, but you don't know if
2 she was or not, do you?

3 A. Oh, man.

4 MS. HODGES: He's testified as to his
5 knowledge of the situation.

6 COMMISSIONER BECK: Let's move the
7 process along, Mr. Samuels.

8 MR. SAMUELS: I don't have any more
9 questions, Your Honor.

10 COMMISSIONER BECK: Anything further,
11 Ms. Hodges?

12 MS. HODGES: Just a couple
13 clarifications.

14 RECROSS EXAMINATION

15 BY MS. HODGES:

16 Q. Did you consider the situation controlled
17 once the people that were causing the problem were
18 out of the restaurant?

19 A. Yes.

20 Q. Did Ginny help control the situation by
21 going outside or did it make it worse?

22 A. It made it worse.

23 Q. Did anybody tell her she had to go outside
24 and get that tag number?

25 A. No, ma'am.

Miles vs. Waffle House

1 Q. And you've been told, and you testified I
2 believe earlier, that you and others including Ginny
3 had been told by the supervisor James Kearse you are
4 not to go outside on third shift?

5 A. Yes, ma'am.

6 Q. And I believe you've also just testified
7 that that is common sense in the restaurant
8 situation at night?

9 A. Yes, ma'am.

10 Q. And as far as your -- the attitude toward
11 this proceeding, you didn't want to be here today,
12 did you?

13 A. No, ma'am.

14 Q. And we've had a lot of trouble contacting
15 you because you don't want to talk to us?

16 A. Yes, ma'am.

17 Q. Okay. So it's not like you are doing me
18 any favors either, right?

19 A. No, ma'am.

20 Q. And I spoke to you in a polite manner and
21 you've answered me in a polite manner?

22 A. Yes, ma'am.

23 Q. Okay. But I told you that you needed to
24 tell the truth to whatever questions any of us asked
25 you whether it helped or hurt the company?

Michael Strong - Redirect Examination

Miles vs. Waffle House

1 A. Yes, ma'am.

2 Q. Is that what you've done today?

3 A. Yes, ma'am.

4 Q. And you are sure that Ginny went out
5 first?

6 A. Yes, ma'am.

7 Q. And as far as getting the tag number,
8 nobody has ever said you have to go outside to get
9 the tag number if you can't get it, you can't get it
10 from the inside; is that correct?

11 A. Yes, ma'am.

12 MS. HODGES: Okay. I have nothing
13 further.

14 COMMISSIONER BECK: Mr. Samuels,
15 anything further?

16 MR. SAMUELS: About two or three
17 questions, Your Honor.

18 COMMISSIONER BECK: All right. Let's
19 make sure we are not continuing to beat dead horses
20 here.

21 MR. SAMUELS: I understand.

22 REDIRECT EXAMINATION

23 BY MR. SAMUELS:

24 Q. This car was parked facing the store;
25 isn't that true?

Miles vs. Waffle House

1 A. Yeah.

2 Q. The tag number was in the back, right?

3 A. Uh-huh.

4 Q. Was that a yes?

5 A. Yes.

6 Q. The only way anybody could have gotten the
7 tag number was by going outside, correct?

8 A. Correct.

9 Q. And --

10 A. Unless you wait for it to pull off.

11 Q. I beg your pardon?

12 A. Unless you wait for it to pull off.

13 Q. Lori went outside and got tag number,
14 right?

15 A. Uh-huh. Amidst all the commotion, yeah.

16 Q. She had to stand behind the car and get
17 it, right?

18 A. Actually she just stayed off to the side,
19 but all right.

20 Q. The point being in this particular
21 situation that night you, Lori, Britney, and Ginny
22 all went outside the store, correct?

23 A. You can look at it like that.

24 Q. I mean, is it true or not? Did --

25 A. I mean, you tell me like all of us went

Miles vs. Waffle House

1 out there at one time, and we did not.

2 Q. All four people went outside --

3 A. Our four people went outside, yes. All
4 four people did not go outside at the same time.

5 Q. And this policy about never going outside
6 on third shift was never enforced by any manager,
7 was it?

8 A. Yeah, they always try to enforce it.

9 Q. The only time it was in forced was to you
10 one time, but you got written up not for going
11 outside, but because of an altercation, right?

12 A. Yeah.

13 Q. You never got written up for any of the
14 other times that you went outside, did you?

15 A. I might not have gotten written up, but I
16 got reprimanded.

17 Q. And you never -- when other people went
18 outside for smoke breaks and what have you, you
19 never called the manager and said we've got a
20 problem here, write this person up, did you?

21 A. No. It's not my job.

22 MR. SAMUELS: Okay. No further
23 questions, Your Honor.

24 COMMISSIONER BECK: Ms. Hodges?

25 RECROSS EXAMINATION

Michael Strong - Recross Examination

Miles vs. Waffle House

1 BY MS. HODGES:

2 Q. As far as going outside, when you are
3 caught you've either been written up or you've been
4 reprimanded; is that correct?

5 A. You either get written up or you get
6 reprimanded, yes, ma'am.

7 Q. Okay. It's not like anybody ever said,
8 that is fine. Feel free to go outside?

9 A. No, ma'am.

10 Q. Okay. And as far as getting the tag
11 number, the tag number can be obtained when they
12 drive off out of the parking lot?

13 A. Yes, ma'am.

14 Q. You don't have to go out and stand behind
15 the car?

16 A. No, ma'am.

17 Q. Because they are going to have to turn
18 around and go out of the parking lot?

19 A. Yes, ma'am.

20 Q. They are not going to back into that busy
21 street, correct?

22 A. Correct.

23 MS. HODGES: Okay. I have nothing
24 further.

25 COMMISSIONER BECK: All right. You

Lori Green - Direct Examination 111

Miles vs. Waffle House

DIRECT EXAMINATION

BY MS. HODGES:

Q. Ms. Green, where do you work?

A. Waffle House.

Q. And what is your position there?

A. Server.

Q. And about how long have you been there?

A. A year.

Q. What is Waffle House's policy on employees going outside on third shift?

A. Do not go outside no matter what.

Q. Okay. What are you supposed to do if somebody walks out without paying?

A. If you can get the license plate from the window, do so. If you cannot, call Irmo or just let them go on and don't worry about it. Just tell the manager in the morning.

Q. Okay. When you say call Irmo, you mean the police?

A. Yeah, the police.

Q. Okay. Or in the alternative call the manager and report it as --

A. In the morning that somebody walked out, yeah.

Q. Okay. Is this something that happens

Miles vs. Waffle House

1 fairly frequently?

2 A. Once -- well, not a lot, but sometimes.

3 Q. Okay. Are you ever suppose to chase a
4 customer?

5 A. No.

6 Q. No matter what they've done inside?

7 A. No.

8 Q. Okay. And in your experience has that
9 policy been made -- been made clear to employees?

10 A. Yes.

11 MR. SAMUELS: I object generally to
12 leading.

13 COMMISSIONER BECK: I'm going to
14 allow it. Please proceed, Ms. Hodges.

15 BY MS. HODGES:

16 Q. How do you know about that policy?

17 A. The Waffle House book that we get at
18 orientation and having conversations in the back
19 room with supervisors about not going outside.
20 Third shift is not supposed to go outside after
21 dark.

22 Q. If you need to get a tag number for any
23 reason, are you supposed to get it from the window?

24 A. Yeah. You can -- if you can see it from
25 the window, if there is one on the front, then you

Miles vs. Waffle House

1 can get it. If you can get it when they are pulling
2 off, if you can see that good and get it, you should
3 get it from the window.

4 Q. Okay. And if you can't get it one of
5 those two ways are you --

6 A. Just forget about it and just chalk it up
7 as a loss. Tell the manager in the morning.

8 Q. Okay. Were you there the night of
9 March 14th?

10 A. Yes, ma'am.

11 Q. Who -- when all of this situation happened
12 inside of the restaurant, who went outside the
13 restaurant first?

14 A. Ginny.

15 Q. Did anyone go outside to try to get her to
16 come back in?

17 A. I did.

18 MR. SAMUELS: Object, Your Honor.
19 That's fine. I'll withdraw.

20 COMMISSIONER BECK: Please proceed.

21 THE WITNESS: I did.

22 BY MS. HODGES:

23 Q. Okay. Who went out first, Ms. Miles or
24 Britney?

25 A. Ms. Miles.

Miles vs. Waffle House

1 Q. Did you get the license plate number?

2 A. I did. I was trying to get Ginny to come
3 back inside, I had glanced down and got it real
4 quick and then went back inside.

5 Q. Okay. Did she agree to come back inside?

6 A. No.

7 Q. What was your conversation with her?

8 A. I said come back inside. I got the
9 license plat number. She said, no, I'm not coming
10 back inside.

11 Q. Okay.. Did you touch her in any way to try
12 to get her to come in?

13 A. Yeah, I had grabbed her arm and told her
14 to come on.

15 Q. And at this point was she still standing
16 in back of the car?

17 A. Yes.

18 Q. After that point did she go around the
19 side and then to the front of the car?

20 A. I can't tell you that because I was
21 already inside and my back was to the window as I
22 was going inside.

23 Q. Okay. Are you ever supposed to go outside
24 to get a customer to pay a ticket or to get a
25 license plate number?

Lori Green - Cross Examination 115

Miles vs. Waffle House

1 A. No.

2 Q. In your experience working with Ms. Miles
3 have there been times when Ms. Miles has acted
4 without thinking or acted --

5 A. Yeah.

6 Q. -- in a way that was not beneficial to
7 Waffle House's interests?

8 A. Yeah. Yes.

9 Q. Can you just give me an example?

10 A. Arguing with people in front of customers
11 or throwing a cup from the Coke machine to the dish
12 table, getting water all over the customer.

13 MS. HODGES: Okay. I have nothing
14 further. Please answer any questions Mr. Samuels
15 may have.

16 COMMISSIONER BECK: Mr. Samuels?

17 CROSS EXAMINATION

18 BY MR. SAMUELS:

19 Q. Ms. Green, you are a waitress, correct?

20 A. Yes, sir.

21 Q. You are not a manager, correct?

22 A. No.

23 Q. You have no authority over your coworkers,
24 do you?

25 A. No.

Miles vs. Waffle House

1 Q. You generally work third shift, correct?

2 A. Yes.

3 Q. And you would agree that it's a very
4 common thing for people to go outside during third
5 shift, isn't it?

6 A. To go to the store.

7 Q. You've gone to the store yourself, haven't
8 you?

9 A. I've gone to the store, yes.

10 Q. To get candy, cigarettes, drink, whatever?

11 A. I don't smoke, but, yeah.

12 Q. Get candy and stuff?

13 A. A bag of chips or minutes for my phone.
14 That is about it.

15 Q. And you will do this on third shift even
16 though apparently somebody has said that it's
17 against the rules?

18 A. It's against the rules to chase somebody
19 outside for not paying a check. You can go to the
20 store if you need to, but you cannot go outside to
21 chase somebody down for money.

22 Q. Okay. And you went outside on March 14th,
23 2010, while this was going on, didn't you?

24 A. Yes. To get Ginny to come back inside.

25 Q. Now, this happened real fast, didn't it?

Miles vs. Waffle House

1 A. Yeah. Yep.

2 Q. In fact, in your deposition you said it
3 was like movie fast, right?

4 A. Yeah, that is how it happened fast.

5 Q. This was like an emergency, crazy,
6 freak-out situation, right?

7 A. Yeah, because every --

8 MS. HODGES: Object to the
9 characterization of the situation.

10 MR. SAMUELS: It's cross, Your Honor.

11 COMMISSIONER BECK: Go ahead, Mr.

12 Samuels.

13 BY MR. SAMUELS:

14 Q. This was like an emergency, crazy,
15 freak-out kind of situation, wasn't it?

16 A. Yeah. It happened fast.

17 Q. And it started because two customers were
18 getting rowdy, weren't they?

19 A. They were about to fight each other. And
20 they were getting loud.

21 Q. And then one of the girls pretty much got
22 in a fight with Britney Musilu, didn't she?

23 A. Yes, but that doesn't have anything to do
24 with Ginny at all. Ginny went over there to calm
25 the two guys down because they were yelling and

Miles vs. Waffle House

1 cursing. Then they called her names. Then somebody
2 says something to Britney's boyfriend. And that is
3 a different story. That is totally different.

4 Q. So what Ginny was actually doing was
5 trying to calm the situation down, wasn't she?

6 A. Yeah.

7 Q. And Ginny was the one who called the
8 police, called 911, wasn't she?

9 A. I don't know. I don't know. I just know
10 that Britney handed me the phone when the police
11 were on the phone. I don't know if Ginny called or
12 not. I don't know. I was at the other end of the
13 restaurant.

14 Q. Okay. And one of the reasons that
15 somebody else had to call the police was because the
16 cook, Mike Strong, was actually getting in a fight
17 with one of the customers; is that true?

18 A. No. No. He was sitting down. He didn't
19 move.

20 Q. He already had an argument with some
21 customers, didn't he?

22 A. No. He did not. He turned around and
23 told them to be quiet and then shut his mouth. He
24 didn't have no argument. He didn't move out of his
25 seat.

Miles vs. Waffle House

1 Q. And then the customers tried to come back
2 in, didn't they?

3 A. Yes. And I made them -- I made one of
4 them leave.

5 Q. Mike Strong, he was running the store at
6 the time, wasn't he?

7 A. Mary and Mike. Both of them. They are
8 both -- Mary and Mike were both cooking that night.

9 Q. Okay. And the cooks run the store?

10 A. Yeah.

11 Q. There are no managers?

12 A. Basically, no.

13 Q. The cooks are the ones who are in charge?

14 A. Yes.

15 Q. The cooks have the responsibility of
16 taking control of the situation?

17 A. Yes, but sometimes it gets out of control
18 and he can't.

19 Q. Yeah. Nobody could take control of that
20 situation, could they?

21 A. No, not really.

22 Q. That wasn't something that you were
23 trained for, was it?

24 A. No. Who is trained for that as a server?

25 Q. Were you written up for going outside that

Miles vs. Waffle House

1 night?

2 A. No.

3 Q. Have you ever been written up for going
4 outside?

5 A. Nope.

6 Q. Even on third shift?

7 A. No. Going to the store, that is different
8 from chasing somebody outside to pay you some money.
9 That is a big difference. You are making a scene
10 running out the door than just going to the store.

11 Q. Well, scenes aren't that unusual at Waffle
12 House, are they?

13 A. Yeah, they are because it's not like that
14 all the time.

15 Q. All right. So that night was a really
16 special --

17 A. It was St. Patrick's Day. They were
18 drunk, party people.

19 Q. Unlike any other night before, right?

20 A. No, holidays are like that. Sometimes
21 people get drunk. I mean, what are you going to do?
22 You can't control -- some people don't know how to
23 drink. That is all that is.

24 Q. You had never seen a situation before
25 where somebody is fighting with one of the

Miles vs. Waffle House

1 waitresses and throwing stuff and messing up the
2 tables before, have you?

3 A. Not like that, no.

4 Q. A one-time, unique, special night, right?

5 A. Uh-huh.

6 MS. HODGES: I object to the
7 characterization of this situation.

8 COMMISSIONER BECK: Let's move on Mr.
9 Samuels.

10 BY MR. SAMUELS:

11 Q. Was that a yes?

12 MS. HODGES: I again object. She's
13 described the situation. She's said --

14 COMMISSIONER BECK: I'm going to
15 allow her to answer the question and then let's move
16 on, please.

17 MR. SAMUELS: I just want to clarify
18 the answer, Your Honor. That was my last question.

19 COMMISSIONER BECK: All right.

20 MR. SAMUELS: If I could get --

21 THE WITNESS: What do you mean? Can
22 you repeat it? That was the only time it got --
23 that was the only time we had an outburst like that,
24 yes.

25 MR. SAMUELS: Thank you. I have no

Lori Green - Redirect Examination

Miles vs. Waffle House

1 further questions.

2 COMMISSIONER BECK: Anything further,
3 Ms. Hodges?

4 MS. HODGES: Just real briefly.

5 REDIRECT EXAMINATION

6 BY MS. HODGES:

7 Q. Once the customer is out of the building
8 was the situation out of control?

9 A. No.

10 Q. What caused it to get out of control
11 again? When Ginny went outside?

12 A. Yeah. She went outside and she just
13 wouldn't come back inside. And she was demanding
14 that they do whatever they needed to do, but she
15 just wouldn't leave the back of the car.

16 Q. Okay. So the out of control part of the
17 situation, once the customers were out of the store,
18 was caused by Ginny going outside?

19 A. Yeah, basically.

20 Q. And as far as the situation with --
21 situations where things have been thrown within that
22 Waffle House, there has been situations caused by
23 Ginny where she has thrown things in the Waffle
24 House; correct?

25 A. As a matter of fact, the Coke was thrown

Miles vs. Waffle House

1 because she was angry at the Coke machine, but the
2 fork was thrown because she was angry at me.

3 Q. Okay. So this wasn't a special and unique
4 situation where nothing had ever been thrown in this
5 Waffle House before, was it?

6 MR. SAMUELS: Object to leading.

7 COMMISSIONER BECK: I'm going to
8 allow it. Go ahead.

9 THE WITNESS: No.

10 BY MS. HODGES:

11 Q. Okay. And if you go outside of the
12 building and are caught by management, which would
13 not include the cooks, they are not part of
14 management, right?

15 A. No.

16 Q. But if you are caught by James Kearse
17 going outside of the building you get in trouble,
18 right?

19 A. Basically, yes.

20 Q. You get either written up or reprimanded,
21 right?

22 A. Yeah.

23 MS. HODGES: Okay. I have nothing
24 further.

25 COMMISSIONER BECK: Mr. Samuels,

Lori Green · Recross Examination ¹²⁴

Miles vs. Waffle House

1 anything further?

2 MR. SAMUELS: Yes, Your Honor.

3 RECROSS EXAMINATION

4 BY MR. SAMUELS:

5 Q. That situation started though with these
6 rowdy customers, correct?

7 A. Yes.

8 Q. That is why it got out of control, didn't
9 it?

10 A. Yeah.

11 Q. Even though Ginny was trying to keep it
12 under control, wasn't she?

13 A. Yes, but when they got louder, she got
14 louder.

15 Q. And the situation continued out of
16 control, didn't it?

17 A. Outside, yeah.

18 Q. It never got under control, did it?

19 A. Yes, it did, but it got -- it got out of
20 control outside, too, because Ginny was following
21 them outside.

22 Q. It was still --

23 A. The whole situation was just out of
24 control. It was a mess.

25 Q. It never got under control, did it?

Miles vs. Waffle House

1 A. Yes, it did.

2 Q. After the police arrived it was final
3 under control, right?

4 A. The police took forever to get there. By
5 that time Ginny was on the ambulance when the police
6 came.

7 Q. And that is when it finally got under
8 control, right?

9 A. No, because the girls were gone. Well,
10 yeah. Basically, yeah.

11 Q. And even though Ms. Hodges asked you about
12 getting in trouble, if you would get in trouble for
13 going outside, you've never been written up or
14 reprimanded for going outside on third shift ever in
15 your career, have you?

16 A. Not the whole year I've been there, no.

17 MR. SAMUELS: Thank you. No further
18 questions.

19 COMMISSIONER BECK: Ms. Hodges?

20 MS. HODGES: One final question just
21 to clarify.

22 COMMISSIONER BECK: I'm going to give
23 each of you one more pass at this and then we are
24 going to move on. Go ahead.

25 MS. HODGES: Thank you, Your Honor.

Lori Green - Redirect Examination¹²⁶

Miles vs. Waffle House

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REDIRECT EXAMINATION

BY MS. HODGES:

Q. Once the people were out of the store until Ginny went outside was the situation under control once they went out of the store?

MR. SAMUELS: I'm going to object, Your Honor, asked and answered.

COMMISSIONER BECK: I'm going to allow her to answer it again.

THE WITNESS: Oh, I can answer it? It was not under control until Ginny was in the Burger King parking lot on the ground.

BY MS. HODGES:

Q. Okay. But what caused it to continue out of control was the fact that she went outside?

A. Yes.

MR. SAMUELS: Object to leading, Your Honor.

MS. HODGES: I have nothing further.

COMMISSIONER BECK: Mr. Samuels, anything further?

MR. SAMUELS: No.

COMMISSIONER BECK: All right. You may step down, ma'am. Thank you very much.

THE WITNESS: Thank you.

James Kearse - Direct Examination¹²⁸

Miles vs. Waffle House

1 full name for the record.

2 MR. KEARSE: James Preston Kearse.

3 COMMISSIONER BECK: Okay. Ms.

4 Hodges?

5 WHEREUPON:

6 JAMES KEARSE, being duly sworn and
7 cautioned to speak the truth, the whole truth and
8 nothing but the truth, testifies as follows:

9 DIRECT EXAMINATION

10 BY MS. HODGES:

11 Q. Mr. Kearse, where do you work?

12 A. For Waffle House.

13 Q. What is your position there?

14 A. I am currently a district manager.

15 Q. Okay. At the time of this incident on
16 3/14/10 what was your position?

17 A. The unit manager of that store.

18 Q. Okay. What is Waffle House's policy on
19 going outside on third shift?

20 A. Not supposed to go outside after dark.

21 Q. Why not?

22 A. Because there is potential dangers
23 outside.

24 Q. And how is that communicated to the
25 employees?

Miles vs. Waffle House

1 A. Verbally. It's posted in the back room.

2 MR. SAMUELS: I object to hearsay
3 regarding posted in the back room.

4 COMMISSIONER BECK: Clarify how he
5 knows that, Ms. Hodges.

6 BY MS. HODGES:

7 Q. How do you know it's posted in the back
8 room?

9 A. It should be posted at every Waffle House
10 in every back room.

11 Q. Was it posted in that Waffle House because
12 you were the unit manager?

13 A. Yes, sir. I mean, yes, ma'am. I'm sorry.

14 MR. SAMUELS: I still maintain that
15 that is hearsay.

16 COMMISSIONER BECK: How is it hearsay
17 if he has personal knowledge that it's there?

18 MR. SAMUELS: He may have personal
19 knowledge of it. But if he's saying it's posted in
20 the back room, then he needs to bring a poster or a
21 photograph or something that actually demonstrates
22 what it says --

23 COMMISSIONER BECK: I'm going to
24 overrule --

25 MR. SAMUELS: Otherwise it's not

Miles vs. Waffle House

1 credible.

2 COMMISSIONER BECK: -- the objection.

3 Please proceed, Ms. Hodges.

4 BY MS. HODGES:

5 Q. Was this policy communicated to Ms. Miles
6 before March 14th, 2010?

7 A. Yes, ma'am.

8 Q. How is it communicated to her?

9 A. We had an incident with her and Mike
10 Strong who left earlier. And I had, you can call it
11 a meeting if you want to, but my normal third shift
12 people, we talked in the back room about how you are
13 not supposed to go outside.

14 Q. Okay. Has she ever been disciplined in my
15 way for going outside?

16 A. That was a verbal warning in that
17 incident.

18 Q. Okay. What is the policy if a customer
19 leaves without paying? Are they supposed to chase
20 them down?

21 A. No, ma'am.

22 Q. Why not?

23 A. Because it's dangerous.

24 Q. Okay. So that is not something that
25 Waffle House considers to be a benefit to them, if a

Miles vs. Waffle House

1 person were to go outside and --

2 A. It's not worth it.

3 Q. Are you familiar with Ms. Miles' payroll
4 history in your position?

5 A. Yes, ma'am.

6 Q. And is this a copy of her payroll history?

7 A. Yes, ma'am.

8 Q. Can you very briefly explain what is shown
9 here. One second. I'm sorry?

10 MS. HODGES: Do you have any
11 objection to me submitting that?

12 MR. SAMUELS: No objection.

13 MS. HODGES: That would be
14 Defendant's 1, I guess.

15 (MARKED DEFENDANT'S EXHIBIT NO. 1.)

16 THE WITNESS: This would be paycheck
17 stubs pretty much all summed up. We have the number
18 of hours you worked, your regular pay, I guess that
19 would be your gross pay before taxes. We take a
20 meal credit out depending on how many hours you
21 work. Taxes right here. And your net pay is all
22 the way to the right.

23 BY MS. HODGES:

24 Q. And what about tips, are they reflected?

25 A. Tips are right here. This was in her

Miles vs. Waffle House

1 think.

2 Q. Okay. And from what you observed on the
3 tape, the men that were with these women that were
4 involved in the incident paid tickets?

5 A. I know for a fact that they got up, two of
6 them, and came to the register, and walked away.

7 Q. Okay.

8 A. Whether they paid for it at the register
9 or not, you can't really see, but they came to the
10 register with a ticket.

11 Q. Okay. What happened to the people who
12 went outside during this incident as far as any
13 disciplinary action?

14 A. I wrote all of them up, everybody who went
15 outside, except for Ms. Mary. She didn't exit the
16 building.

17 Q. Okay.

18 A. But I wrote them up.

19 Q. Okay. And did you actually deliver Ms.
20 Miles write-up to her?

21 A. I don't think so because she was gone for
22 so long.

23 Q. Okay.

24 A. I don't know if she ever saw it. I know
25 she probably didn't sign it.

Miles vs. Waffle House

1 Q. Okay. And you didn't actually have the
2 payroll history in front of you when you filled that
3 out?

4 A. That's correct.

5 Q. Okay. She has testified that you told her
6 to go outside to get tag numbers; is that correct?

7 A. No, ma'am.

8 Q. And what training have they been given
9 about calling the police?

10 MR. SAMUELS: Object, Your Honor.
11 It's only relevance would be specific training given
12 to Ms. Miles.

13 BY MS. HODGES:

14 Q. What training are you aware of or what
15 conversation are you aware of with Ms. Miles as far
16 as handling situations like this?

17 COMMISSIONER BECK: Ms. Hodges?

18 THE WITNESS: The conversation we had
19 in the back room with everyone was -- there is no
20 sense in going outside, period. There is no sense
21 in fighting customers. There is no sense in arguing
22 with customers. If there is a major problem like
23 that, call the cops. That is what their job is.
24 And Irmo has a very small town. And it shouldn't
25 take them long to get up there at all. That is what

James Kearse - Cross Examination

Miles vs. Waffle House

1 the exact conversation was.

2 BY MS. HODGES:

3 Q. So you know for a fact that you yourself
4 have talked to her about going outside on third
5 shift?

6 A. Yes, ma'am.

7 Q. And that it's prohibited under Waffle
8 House policy?

9 A. That's right.

10 Q. And is it to Waffle House's benefit to
11 have arguments or altercations with customers such
12 as this situation?

13 A. No, ma'am.

14 Q. I'm going to show you a poster that has
15 been submitted under Defendant's A.P.A. Number 7.
16 Are you familiar with that?

17 A. Yes, ma'am.

18 Q. Is that something that is posted in the
19 back room or where they clock in in that restaurant?

20 A. It may not be where they clock in, but it
21 is somewhere in the back room.

22 Q. Okay. And that is something that is
23 posted there for them to read it and be aware of it?

24 A. Right. We post -- we get mail sent to us
25 from corporate once a week. And we have what we

Miles vs. Waffle House

1 call an action center where things like that get
2 posted.

3 Q. Okay. And you are aware of this because
4 you were the unit manager there at the time that
5 this occurred?

6 A. Right.

7 MS. HODGES: I have nothing further.
8 Please answer any questions that Mr. Samuels has.

9 COMMISSIONER BECK: Mr. Samuels?

10 MR. SAMUELS: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. SAMUELS:

13 Q. Mr. Kearse, you are the store manager of
14 Store 1198 or were on March 14th, 2010, the store
15 manager of Store 1198 on Broad River Road in Irmo;
16 is that right?

17 A. Yes, sir.

18 Q. You hired Ginny, but you did not train
19 her, did you?

20 A. That's right.

21 Q. Waitresses are trained by other people.
22 You only train the cooks, correct?

23 A. That's right. But we always train -- what
24 we call coaching as opposed to training any time a
25 situation comes up, let them know about it, how it

Miles vs. Waffle House

1 should be handled. So if you want to consider that
2 training --

3 Q. Do you document this coaching or training?

4 A. Not always.

5 Q. Did you document any verbal warnings that
6 you may have given Ginny Miles?

7 A. No, sir. They are just verbal.

8 Q. You don't even make a note to the file?

9 A. Just verbal warning.

10 Q. Which means it's pretty minor, whatever it
11 is, doesn't it?

12 A. Not necessarily.

13 Q. Well, it were more serious you would give
14 them a written warning, wouldn't you?

15 A. For a first time offense we do a verbal
16 warning.

17 Q. Ginny was a good employee, wasn't she?

18 A. She was good for me, yes, sir.

19 Q. Very dependable and a good worker, wasn't
20 she?

21 A. She was a hard worker, dependable, and
22 punctual.

23 Q. And you are familiar your waitresses,
24 aren't you?

25 A. Pretty familiar.

Miles vs. Waffle House

1 that since --

2 COMMISSIONER BECK: All right.

3 BY MR. SAMUELS:

4 Q. I will though show you Claimant's Exhibit
5 Page 51. Is this a document that you filled out?

6 A. Yes, it is.

7 Q. And you understood that was an official
8 government document that you were reporting to a
9 state agency?

10 A. Yes, sir.

11 Q. And you were -- you would not have filled
12 it out if it were not true and accurate to the best
13 of your knowledge, would you?

14 A. No. No, sir.

15 Q. And you wrote in that Ginny Miles' gross
16 pay including tips was 275 to \$375 a week, correct?

17 A. Yes, sir.

18 Q. You did that based on your personal
19 knowledge of what she made, didn't you?

20 A. From what I estimated, that is what I
21 filled out right there.

22 Q. Now, when people are trained the company
23 is supposed to go through some training documents,
24 correct?

25 A. Yes, sir.

Miles vs. Waffle House

1 Q. And when you train somebody you go over
2 the documents with them step-by-step, don't you?

3 A. No, sir.

4 Q. You don't?

5 A. I do not.

6 Q. Let me show you --

7 MR. SAMUELS: If I may, Your Honor.
8 I think it's up here.

9 COMMISSIONER BECK: What you are
10 looking for?

11 MR. SAMUELS: This right here.

12 BY MR. SAMUELS:

13 Q. Mr. Kearse, I'm showing you Claimant's
14 Exhibit 2. Do you recognize that document?

15 A. Yes, sir.

16 Q. That is a unit manager's safety checklist,
17 isn't it?

18 A. Yes, sir.

19 Q. And this is the checklist that Waffle
20 House uses to make sure its employees are trained in
21 various procedures including safety and security,
22 isn't it?

23 A. Yes, sir.

24 Q. And is the manager supposed to go over
25 with the employee and explain each one of those

Miles vs. Waffle House

1 things?

2 A. These are actually done at orientation
3 before they even come to the store that they work
4 at. They go through orientation to take care of a
5 lot of paperwork for us because the managers are
6 more hands-on. So this -- even though it says unit
7 manager safety check, yes, I probably should have
8 done it, but it was usually done by the human
9 resource specialist who holds the orientations.

10 Q. Okay. So even though -- where it says
11 unit manager will explain each item below to the
12 associate and both initial within the brackets, that
13 statement just means nothing?

14 A. It means I was supposed to go back and
15 fill it out, however I didn't. It should have been
16 taken care of by the human resource specialist.

17 Q. And the statement about the unit manager,
18 this policy isn't even followed then, is it?

19 A. It's not followed?

20 Q. Not followed. It wasn't followed in this
21 case, was it?

22 A. Not in this case.

23 Q. And no manager signed off on that, did
24 they?

25 A. No.

Miles vs. Waffle House

1 Q. So from what we can tell from this
2 document, no manager went over with Ginny Miles what
3 the security policy is, did they?

4 A. It doesn't look like it was.

5 Q. Because if a manager had, it would have
6 been signed off and initialed by a manager, wouldn't
7 it?

8 MS. HODGES: I object to him
9 testifying about anything than what he knows.

10 THE WITNESS: Or either they just
11 didn't sign it.

12 COMMISSIONER BECK: Keep it to his
13 personal knowledge, Mr. Samuels.

14 MR. SAMUELS: If he can testify to
15 Waffle House policies, Your Honor, you can testify
16 about that particular policy.

17 COMMISSIONER BECK: All right.
18 Please proceed.

19 THE WITNESS: My personal knowledge
20 is I didn't go over this checklist with her.
21 Someone else should have and may have.

22 BY MR. SAMUELS:

23 Q. May have, but the indication is they
24 didn't because whoever that person was didn't sign
25 off on it, right?

Miles vs. Waffle House

1 MS. HODGES: Object to the --

2 COMMISSIONER BECK: I think you are
3 getting into speculation at that point, Mr. Samuels.
4 I'm going to sustain that objection. Please move
5 on.

6 BY MR. SAMUELS:

7 Q. All right, sir. Let me show you some
8 other documents that Waffle House's attorney showed
9 you. Let's take a look at A.P.A. Page 64. Now,
10 you've seen that document before, correct?

11 A. Yes, sir.

12 Q. Now, there is something similar as what is
13 posted in the store in the back room; isn't that
14 right?

15 A. They should be the same thing.

16 Q. You would agree there is no specific rule
17 on there about never going outside, is there?

18 A. I don't think on this one there is. There
19 is nothing that says do not go outside on third
20 shift, no.

21 Q. There is no specific rule anywhere on
22 there that covers the situation your store was faced
23 with on the night of March 14th, 2010, is there?

24 A. Violence in the workplace. I think that
25 would -- can be considered.

Miles vs. Waffle House

1 Q. Okay. Is there anything specific about
2 violent -- violence in the workplace that would have
3 told Ginny Miles and the other employees what they
4 were suppose to do that night?

5 A. Remain calm and polite. Maintain a safe
6 distance so that you are out of the range of
7 physical attack. Don't try to be a hero by
8 overpowering the person or make any physical
9 contact.

10 Q. And you would agree that Ginny Miles did
11 none of those or complied with every one of those
12 things, didn't she?

13 A. I would not agree to that.

14 Q. Okay.

15 A. I felt like she was trying to be the hero
16 trying to stop them and save the day and get the
17 money for the check which is what was --

18 Q. What are the exact words it says about
19 don't be a hero?

20 A. Don't try to be a hero by overpowering the
21 person or making any physical contact.

22 Q. Okay. She didn't make any physical
23 contact with anybody, did she?

24 A. Not that I know of. I wasn't there.

25 Q. The only person who made physical contact

Miles vs. Waffle House

1 was Britney Musilu, wasn't she? She actually hit
2 one of your customers?

3 A. I wasn't there.

4 Q. You saw the video though, right?

5 A. Yeah, but like I said, you couldn't -- you
6 can't really tell on the video because it's frame by
7 frame.

8 Q. Okay. So Ginny Miles didn't overpower
9 anybody or attempt to. You would agree that there
10 is nothing else on there that you can see that she
11 violated, correct?

12 A. No, sir.

13 Q. All right. Now, let's move on to the next
14 page, if you would flip it over.

15 A. Right here?

16 Q. Yes, sir. This is A.P.A. Page 65. All
17 right. Now first off just to make -- that page and
18 the next two pages, 66 and 67, those are basically
19 the same documents, right?

20 A. 66 and 67?

21 Q. Yes, sir.

22 A. Or 65 and 66? Actually that is on all
23 three pages.

24 Q. Yeah. But 65 and -- it says the same
25 things as 66 and 67, right?

Miles vs. Waffle House

1 A. Right. Under rowdy customers, rowdy
2 customers --

3 Q. Okay.

4 A. Yes, sir. That is pretty much the same.

5 Q. All right. Now, these documents didn't
6 come out of any sort of employee handbook, did they?

7 A. Not in the employee handbook per se.

8 Q. They are actually in the safety and
9 security manual, correct?

10 A. Right.

11 Q. And that manual stays on the shelf in the
12 manager's office, doesn't it?

13 A. No, sir. It stays on the shelf next to
14 the coaching and training manual.

15 Q. Okay. In other words, it's on the shelf.
16 It's not something the employee has possession of,
17 right?

18 A. Yes. It's in the back room, unlocked at
19 all times.

20 Q. These are documents that Waffle House uses
21 so that you, the manager, can train the employees,
22 right?

23 A. Not exactly.

24 Q. There is no requirement that the employee
25 read the manual that is used to train the managers,

Miles vs. Waffle House

1 right?

2 A. It is required. Whether they get around
3 to doing it or not is -- it's pretty much up to
4 them, I guess.

5 Q. Now, let's make something clear. All
6 right? These are not hard and fast policies, are
7 they?

8 A. I'm sorry?

9 Q. These are not policies -- these are not
10 rules that employees must follow, are they?

11 A. Yes. That is why they are written.

12 Q. Aren't they, in fact, safety tips?

13 A. Tips, rules, however you want to say it.

14 Q. Well, how does Waffle House say it? What
15 did it say on there?

16 A. To help handle out-of-control customers,
17 here are a few tips.

18 Q. Right. To help handle out-of-control
19 customers, here are a few tips. That is what it
20 says, doesn't it?

21 A. Yes, that is what it says.

22 Q. You will agree it doesn't say, here are
23 Waffle House's mandatory security policies that you
24 must follow. It doesn't say that, does it?

25 A. It does not say that.

Miles vs. Waffle House

1 Q. All right. Now, you would also agree that
2 there is no written policy saying do not go outside
3 on third shift in any of these documents, is there?

4 A. It doesn't say third shift.

5 Q. It doesn't say do not go outside at all,
6 does it?

7 A. Not in these.

8 Q. All right. That basically is a policy
9 that you say is the policy, correct?

10 A. No, it's standard at all Waffle Houses.
11 After dark you are not supposed to go outside,
12 period.

13 Q. It's not written down, is it?

14 A. It is written down.

15 Q. You have not produced one document where
16 it's written down, have you?

17 A. I haven't.

18 Q. Okay. Now, in fact, on third shift people
19 go outside all the time; isn't that true?

20 A. I'm sure they do.

21 Q. Okay. They don't get written up for it,
22 do they?

23 A. But sometimes they do.

24 Q. People go out and take cigarette breaks
25 all the time on third shift, don't they?

Miles vs. Waffle House

1 A. Well, considering Irmo is the last
2 non-smoking Waffle House in Columbia, South
3 Carolina, they shouldn't have no reason to go
4 outside to smoke. They sit at the low counter and
5 smoke, but, yes, they do go outside and smoke. I'm
6 sure of it.

7 Q. And they go across the street to the
8 convenience store -- go next door to the convenience
9 store and get candy and what have you as well, don't
10 they?

11 A. If we run out of milk and they went over
12 to get some, yeah.

13 Q. So even if there is a policy that you
14 described as never go outside on third shift, people
15 go outside all the time both for personal reasons
16 and for getting additional supplies for the store,
17 aren't they?

18 A. Yes, they are.

19 Q. That policy is just not enforced, is it?

20 A. It is enforced, but you can't not go
21 outside to go buy some milk if we are out of milk.
22 Why would we want to treat our customers like that?

23 Q. Well, on third shift there is no manager
24 generally, is there?

25 A. Generally, no.

Miles vs. Waffle House

1 Q. There is a grill operator who is in charge
2 of the store, right?

3 A. They would be the person in charge.

4 Q. And on that night, March 14th, 2010, that
5 person was Michael Strong, correct?

6 A. It would actually be Mary Summers because
7 she's worked there for 15 years. Mike Strong has
8 been there for one. So Mary would have been the
9 person in charge.

10 Q. Well, would they share that
11 responsibility?

12 A. She would be my go-to person considering
13 she's worked at that one store longer than I've
14 worked in my whole career.

15 Q. How old is she?

16 A. She is about 65.

17 Q. How tall is she?

18 A. Probably not even 5'.

19 Q. So a very little, diminutive, soft-spoken,
20 somewhat elderly lady, isn't she?

21 A. I'd take about the soft-spoken part.

22 Q. All right. Small stature though. Not
23 much natural authority, is there?

24 A. Dynamite comes in small packages. That is
25 all I can tell you.

Miles vs. Waffle House

1 Q. Well, you would agree that from what
2 you've seen on the video and from what you've heard
3 about that situation, it was a pretty wild and
4 woolly situation, wasn't it?

5 A. I've seen some wild situations working for
6 Waffle House. And that was considered one of them,
7 yes.

8 Q. Unusually -- unusual situation, wasn't it?

9 A. It's not unusual believe it or not. Third
10 shift is crazy. Stuff gets broken all the time.
11 Customers get kicked out.

12 Q. And people have to take control of the
13 situation as best they can, don't they?

14 A. Yes, sir.

15 Q. And when there is no manager, that applies
16 to everybody, doesn't it?

17 A. That's right.

18 Q. Including the waitresses?

19 A. Yeah. They should first go to the grill
20 op or whoever would be considered the person in
21 charge and take some advice or just however they
22 handle the situation.

23 Q. And if the grill operator doesn't give
24 them instructions, they've kind of got to make it up
25 on their own, don't they?

Miles vs. Waffle House

1 A. I guess that is what they do.

2 Q. Well, that is the only option, isn't it?

3 A. Yeah. I mean, they are going to do what
4 they want to do any way because there is no one in
5 charge there.

6 Q. And Ginny Miles tried to calm down the
7 customers at first, didn't she?

8 A. As far as I can tell on the video. I
9 wasn't there. I'm all visual.

10 Q. And that was -- that was a benefit to
11 Waffle House, wasn't it?

12 A. From what I saw. When the customers
13 walked out of the building everything was good to
14 go.

15 Q. And in keeping -- getting the police
16 there, that was a benefit to Waffle House, too,
17 wasn't it?

18 A. Yeah, when they finally showed up.

19 Q. And getting -- getting tag numbers is a
20 benefit to Waffle House, too, isn't it?

21 A. Yeah.

22 Q. And if you are able to collect money from
23 people rather than having them walk out without
24 paying, that is a benefit to Waffle House, too,
25 isn't it?

Miles vs. Waffle House

1 A. Of course.

2 Q. And ensuring that people who vandalize the
3 store are apprehended by law enforcement, that is a
4 benefit to Waffle House, too, isn't it?

5 A. Yes, sir.

6 Q. Now, you, in fact, didn't write anybody up
7 for any conduct that anybody did on March 14th,
8 2010, did you?

9 A. Everyone got wrote up.

10 Q. Including Ginny Miles?

11 A. Everyone that went outside got wrote up.

12 Q. You understand that those records were
13 subpoenaed and no written warnings were provided?

14 MS. HODGES: I object to this
15 question in the sense that he only subpoenaed
16 records relating to Ms. Miles.

17 COMMISSIONER BECK: Limit it to the
18 scope of the subpoena.

19 BY MR. SAMUELS:

20 Q. You would agree that Ms. Miles' personnel
21 file was subpoenaed, wasn't it?

22 A. Yes, I would.

23 Q. Okay. And you've not provided any
24 warnings in response to that subpoena, have you?

25 A. No, sir.

Miles vs. Waffle House

1 Q. Okay. And did Ginny ever come back to
2 work?

3 A. She came back one time. Well, she came
4 back a couple times, but she came back one time so
5 we could try to see if she could work.

6 Q. Was she able to work?

7 A. I mean, she was doing it, but I could tell
8 she was having trouble with it. She was moving too
9 slow which wasn't going to work.

10 Q. And you don't have any work for her until
11 she can work full duty, correct?

12 A. Well, I'm not in charge of that store
13 anymore. So I'm sure she's welcome back, but I was
14 told until she was released. She couldn't come back
15 to work until she was released.

16 Q. Now, even though you never wrote Ginny up,
17 you actually did a performance review after this
18 incident; isn't that true?

19 A. After?

20 Q. Yes, sir.

21 A. I don't remember. If the date is on
22 there, I guess so.

23 Q. Okay. Let me show you. Maybe this will
24 refresh your memory.

25 MR. SAMUELS: Mark this, please.

Miles vs. Waffle House

(MARKED CLAIMANT'S EXHIBIT NO. 6.)

BY MR. SAMUELS:

Q. Mr. Kearse, do you recognize that document?

A. Yes, sir.

Q. What is that document?

A. This is a performance review we do on hourly associates.

Q. Did you personally do this one?

A. Yes, I did.

Q. And what date was it done?

A. It says 3/18.

Q. 3/18 of what year?

A. 2010.

Q. You did a performance review on Ginny Miles four days after her injuries, didn't you?

A. I actually probably dated it the 18th because that is the day it was due. So I could not tell you exactly when I filled it out.

Q. Are you saying you falsified the date?

A. They had to be turned in on the 18th, so I pre-dated them on the 18th so it would remind me that they need to be turned in on that day.

Q. Well, did you get Ginny's signature on it?

A. Not when I turned hers in.

Miles vs. Waffle House

1 Q. Did you get her signature later?

2 A. Yes.

3 Q. When did she sign it?

4 A. It might have been that day she worked or,
5 like I say, she had been to the restaurant a few
6 times --

7 Q. Well --

8 A. -- since the incident.

9 Q. -- do you see where her signature is with
10 the date March 26th, 2010?

11 A. Yes, sir.

12 Q. All right. And when you evaluated her,
13 you evaluated her as meeting all expectations,
14 didn't you?

15 A. Yes, sir.

16 Q. Nowhere on here did you say that she had
17 any kind of problem with her temper or any problem
18 with anything that she may have done on March 14th,
19 2010, correct?

20 A. Don't forget to keep thoughts to yourself.
21 Don't speak them out loud so others can hear.
22 Remember that customers are more important than the
23 dish table.

24 Q. And was that a reference to what had
25 happened on March 14th, 2010?

Miles vs. Waffle House

1 A. No, sir, because I probably filled it out
2 before then.

3 Q. All right. You would agree that you dated
4 it March 18th, 2010, right?

5 A. Yes.

6 MS. HODGES: I think he's already
7 explained why he dated it that day. It's been asked
8 and answered.

9 COMMISSIONER BECK: I think we got
10 the answer to that, Mr. Samuels. Let's move on.
11 BY MR. SAMUELS:

12 Q. And you had the opportunity to change this
13 and add anything as well, didn't you, when you dated
14 it?

15 A. I mean, I could have gone back and changed
16 it, but --

17 Q. But you didn't because there wasn't a
18 problem, was there?

19 A. A problem with what?

20 Q. With her performance?

21 A. Her performance is fine.

22 Q. When you dated this on March 18th, 2010,
23 she still met all expectations, correct?

24 A. Yeah. She did a good job for me.

25 Q. Didn't do anything that warranted a bad

Miles vs. Waffle House

1 review, correct?

2 A. Not at that time that I filled this out.

3 Q. And the time that you dated it either,
4 correct?

5 A. Sir, I put the date on there probably
6 before the 18th and probably before the 14th because
7 that is when it was due. We get these things three,
8 four months before they are supposed to be turned
9 in.

10 Q. But you turned it in on the date you dated
11 it, March 18th, 2010. That is what you said, right?

12 A. That is when they were supposed to be due,
13 supposed to be turned in. I probably didn't turn
14 hers in until the 26th, I guess, if she signed it.

15 Q. Okay. And the point I'm trying to make,
16 and I haven't gotten an answer is, you had the
17 opportunity to write on here anything wrong she had
18 done on March 14th, 2010, and you chose not to,
19 correct?

20 A. That could be correct, yes.

21 Q. And that is because she hadn't done
22 anything wrong on March 14th, 2010, that would have
23 warranted changing in her performance review, would
24 it?

25 A. She went out of the building on third

Miles vs. Waffle House

1 shift. Did I put it on here? No. But does that
2 make it better? No.

3 Q. And you also haven't produced a write-up
4 form, haven't you?

5 A. Well, I don't work at that store anymore.
6 So I'm pretty sure her file does not exist
7 considering she doesn't work there anymore. A new
8 manager is there. He cleaned the office out. I'm
9 pretty sure he threw a bunch of stuff away.

10 Q. All right. So you are saying the reason
11 this doesn't exist is because somebody destroyed the
12 files?

13 A. I'm not saying that for certain because I
14 don't know, sir, but I've gone back and looked and I
15 can't find her file there. There is another manager
16 there who arranges the office the way he wants it,
17 not the way I had it.

18 Q. All right. And if she had been written
19 up, just like this performance review, you would
20 have given her a copy of it to sign, wouldn't you?

21 A. Yes. There are three copies.

22 Q. All right. And the fact that she was
23 never given a copy to sign also shows that this
24 document never existed because you never wrote her
25 up, right?

James Kearse - Redirect Examination

Miles vs. Waffle House

1 A. Not right.

2 MS. HODGES: Again, this has been
3 asked and answered about 10 times now.

4 COMMISSIONER BECK: Anything further,
5 Mr. Samuels?

6 MR. SAMUELS: No, Your Honor.

7 COMMISSIONER BECK: Anything further,
8 Ms. Hodges?

9 MS. HODGES: Just a couple of
10 follow-ups.

11 REDIRECT EXAMINATION

12 BY MS. HODGES:

13 Q. Regardless of whatever a unit manager
14 checklist is, you specifically had a conversation
15 her and told her not to go outside on third shift,
16 didn't you?

17 A. Yes, ma'am, with her and other associates.

18 Q. Okay. And as far as people going outside
19 on third shift, they get reprimanded or written up
20 if you catch them going outside?

21 A. Right.

22 Q. But they may go outside, and if you don't
23 catch them, they don't get written up?

24 A. Right. We can't work 24 hours a day.

25 MR. SAMUELS: Objection.

Miles vs. Waffle House

1 COMMISSIONER BECK: I'm going to
2 allow it.

3 BY MS. HODGES:

4 Q. Does controlling a situation include going
5 outside and standing in front of a car in the
6 parking lot?

7 A. No, ma'am.

8 Q. Would that -- would what Ms. Miles did
9 that night be considered of any benefit whatsoever
10 to Waffle House?

11 A. No, ma'am.

12 Q. Was it actually to Waffle House's
13 detriment?

14 A. Yes, because it caused my other employees
15 to go outside.

16 Q. Okay. And did it also violate you all's
17 principles about how you interact with customers?

18 A. Yes.

19 Q. Okay. And as far as performance reviews,
20 do you necessarily write down every single thing
21 that somebody might have done wrong?

22 A. No.

23 Q. Does someone have to be perfect to meet
24 expectations?

25 A. No, ma'am.

Miles vs. Waffle House

1 Q. Do they have to be -- to meet expectations
2 do they have to have never gotten a reprimand of any
3 kind?

4 A. No, ma'am.

5 Q. If they are just generally showing up for
6 work and generally doing a good job is that
7 considered meeting expectations even if they've
8 gotten reprimanded for things in the past?

9 A. That's right.

10 Q. Is there any situation where a Waffle
11 House employee is supposed to or it's a benefit to
12 Waffle House for them to go outside and get a tag
13 number?

14 A. No, ma'am. We encourage them to get it
15 from inside the building.

16 Q. And if they can't, what is Waffle House's
17 position on what should be done?

18 A. Just let it go. Call the cops.

19 Q. And why is it Waffle House's position that
20 that is what should be done?

21 A. Because we don't want them outside on
22 third shift.

23 Q. Why not?

24 A. Ninety percent of the people that come up
25 there is under the influence of something.

James Kearse - Recross Examination

Miles vs. Waffle House

1 Q. Okay. So it's not safe for them?

2 A. Right.

3 Q. And that is why it's not Waffle House's
4 benefit for them to go outside --

5 A. Right.

6 Q. -- and take actions like this?

7 A. Right.

8 MS. HODGES: Okay. I have nothing
9 further.

10 COMMISSIONER BECK: Anything further,
11 Mr. Samuels?

12 RECROSS EXAMINATION

13 BY MR. SAMUELS:

14 Q. If she had gone outside on first shift or
15 second shift then there wouldn't have been a
16 problem, right?

17 A. I'm sorry?

18 Q. If she had gone -- if Ginny Miles had gone
19 outside on first or second shift there would not
20 have been a problem, correct?

21 A. It depends on what she went out for.

22 Q. Well, there would have been no prohibition
23 according to your rule, correct?

24 A. I mean, if she went outside without my
25 permission, I would have reprimanded her.

Miles vs. Waffle House

1 where it's appropriate under Waffle House policy for
2 someone to take actions that Ms. Miles took in going
3 out to stop a car from leaving?

4 COMMISSIONER BECK: I believe that
5 has been asked and answered once already. Is there
6 anything further?

7 MS. HODGES: Nothing further.

8 COMMISSIONER BECK: Anything further,
9 Mr. Samuels?

10 MR. SAMUELS: Nothing further.

11 COMMISSIONER BECK: All right. You
12 may step down, sir. Thank you very much. Any other
13 witnesses, Ms. Hodges?

14 MS. HODGES: One more very brief one
15 and then we are done.

16 COMMISSIONER BECK: That stays with
17 me. I'm not sure who that belongs to. That stays
18 with me and I'm not sure who that belongs to. What
19 is your name, ma'am? What is your name, ma'am?

20 MS. SUMMERS: Mary Summers.

21 COMMISSIONER BECK: S-u-m-m-e-r-s?

22 MS. SUMMERS: S-u-m-m-e-r-s.

23 COMMISSIONER BECK: Please have a
24 seat, ma'am.

25 MR. SAMUELS: Your Honor, I object to

Miles vs. Waffle House

1 this witness testifying. She was subpoenaed to a
2 deposition two days ago and she did not appear.

3 COMMISSIONER BECK: Ms. Hodges?

4 MS. HODGES: That is true. She did
5 not appear. I've offered him an opportunity to get
6 her some other time and, I mean, the ball kind of
7 stopped there.

8 COMMISSIONER BECK: But she was
9 subpoenaed to a deposition yesterday.

10 MR. SAMUELS: The day before
11 yesterday.

12 MS. HODGES: The day before
13 yesterday.

14 COMMISSIONER BECK: I mean, what
15 other time would he have had to do it?

16 MS. HODGES: Well, I mean I was happy
17 to be available. And, I mean, we could talk to her
18 by phone. We could do whatever he wanted to do.

19 COMMISSIONER BECK: What is her
20 rationale for not being there?

21 MS. HODGES: I don't know.

22 COMMISSIONER BECK: Ma'am, why didn't
23 you appear for the deposition?

24 THE WITNESS: I didn't get -- anybody
25 told me.

Miles vs. Waffle House

1 COMMISSIONER BECK: What kind of
2 service was affected?

3 THE WITNESS: I just got one --

4 MR. SAMUELS: Ms. Hodges agreed to
5 accept service for all of the Waffle House employees
6 and make them available.

7 COMMISSIONER BECK: Did you make
8 contact with her?

9 MS. HODGES: I personally could not
10 get in contact with her. We gave the subpoenas to a
11 manager to distribute. And I'm not sure exactly
12 what happened, but we did not track her down.

13 COMMISSIONER BECK: All right. I
14 will sustain Mr. Samuels' objection. Anything
15 further?

16 MR. SAMUELS: Not from me, Your
17 Honor.

18 COMMISSIONER BECK: Ms. Hodges?

19 MS. HODGES: Nothing, Your Honor.

20 COMMISSIONER BECK: All right. That
21 will conclude this proceed. Thank you all very
22 much.

23 (Whereupon, the hearing
24 was concluded at 1:25 p.m.)
25

STATE OF SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1004913

VIRGINIA ANN MILES,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
WAFFLE HOUSE, INC.,	)	
	)	MICHAEL STRONG
EMPLOYER,	)	
	)	
AND	)	
	)	
BRENTWOOD SERVICES, INC.,	)	
	)	
CARRIER/DEFENDANTS.	)	

DEPOSITION OF MICHAEL STRONG, TAKEN BEFORE WENDY SHANNON SULLIVAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 3:04 P.M., MONDAY, THE 26TH OF JULY, 2010, AT THE OFFICES OF MCANGUS, GOUDELOCK & COURIE, LLC, 700 GERVAIS STREET, SUITE 300, COLUMBIA, SOUTH CAROLINA 29201.

COPY

APPEARANCES

FOR THE PLAINTIFF

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REPORTED BY

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 VERBATIM, INC.
 POST OFFICE BOX 7123
 COLUMBIA, SOUTH CAROLINA 29202

ALSO PRESENT

VIRGINIA ANN MILES

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EXHIBITS

NO EXHIBITS MARKED FOR THIS DEPOSITION

*DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS
 FROM DATE OF CERTIFICATION.

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STIPULATIONS

IT IS STIPULATED BY AND BETWEEN COUNSEL FOR
THE RESPECTIVE PARTIES THAT ALL OBJECTIONS ARE RESERVED
UNTIL THE TIME OF TRIAL, EXCEPT AS TO THE FORM OF THE
QUESTIONS.

THIS DEPOSITION IS BEING TAKEN PURSUANT TO
THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

THE READING AND SIGNING OF THIS DEPOSITION IS
WAIVED BY THE DEPONENT AND COUNSEL FOR THE RESPECTIVE
PARTIES.

WHEREUPON, MICHAEL STRONG, BEING DULY SWORN
AND CAUTIONED TO SPEAK THE TRUTH, THE WHOLE TRUTH, AND
NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED AS
FOLLOWS:

EXAMINATION

BY MR. SAMUELS:

Q Mr. Strong, I'm Stephen Samuels. I represent Ginny Miles in a Workers' Comp case involving your employer, Waffle House. I'm here to take your deposition today because I believe you may have some knowledge of what happened this particular night. Have you ever had your deposition taken before?

A Yep.

Q Can I ask you what circumstances?



1 A Unrelated circumstances. But yeah, I've done all this
2 before.

3 Q An actual deposition under oath like this?

4 A Yeah.

5 Q Was that in a case of your own? Or were you a witness
6 in another case?

7 A Two others. Yeah.

8 Q All right. Well, then you're familiar with the rules.
9 I'll run by it real quick. This lady is a court
10 reporter. She's taking down every word we say. And
11 just to make sure we get a good record of what
12 everybody says, just make sure you give verbal answers
13 like a yes or a no.

14 A All right.

15 Q And if you know where I'm going, still try to let me
16 answer my question before you answer it. That way, we
17 won't talk over each other. Fair enough?

18 A Okay.

19 Q Now, did you review any documents in preparation for
20 your deposition?

21 A No. I didn't receive no paperwork. Nobody never told
22 me anything. I didn't find out I had to be here until
23 last night.

24 Q Okay. Did anybody talk to you about your deposition?

25 A No.

- 1 Q Who told you you were supposed to be here?
- 2 A Brittany.
- 3 Q Brittany Massalou?
- 4 A Uh-huh.
- 5 Q Is that a yes?
- 6 A Yes.
- 7 Q All right. You work at Waffle House?
- 8 A Yes.
- 9 Q What do you do there?
- 10 A Cook.
- 11 Q How long have you worked at Waffle House?
- 12 A About a year and a half now.
- 13 Q What store do you work in?
- 14 A 1198, Irmo store.
- 15 Q Have you always worked in that same store?
- 16 A Yes, sir.
- 17 Q Who hired you?
- 18 A James.
- 19 Q James Kearse?
- 20 A Yes, sir.
- 21 Q Did he also train you?
- 22 A Yes, sir.
- 23 Q Let me ask you real quick: What is your home address?
- 24 A 218 Kirkstone Road.
- 25 Q That's Irmo, 29063?

- 1 A Yes, sir.
- 2 Q You have a cell phone, 463-1240?
- 3 A No.
- 4 Q Do you have another cell phone?
- 5 A Yeah.
- 6 Q What's the number?
- 7 A 463-3707.
- 8 Q What's your date of birth?
- 9 A 4-8-85.
- 10 Q All right. As a cook, what are your responsibilities?
- 11 A Cook. Well, on third shift, I'm supposed to keep
- 12 everything intact.
- 13 Q All right. So specifically, March 14th, 2010, you were
- 14 working third shift?
- 15 A Yeah.
- 16 Q Okay. Were you the one who was supposed to keep things
- 17 intact then?
- 18 A Yeah.
- 19 Q Are you considered a manager?
- 20 A No.
- 21 Q All right. Tell me what happened on March 14th, 2010.
- 22 A Had some disgruntled customers. They got mad about
- 23 something with Ginny. One dude call her a B. I told
- 24 them, get out, ain't going -- I mean, Ginny already
- 25 knows. On third shift, ain't nobody going to talk to

1 my ladies like that. Not going to come in and start
2 trouble. So I put them out.

3 And the guy was outside exciting me to come out
4 and fight, blah, blah, blah. And a girl was in there.
5 She said something to me. My fiancé said something to
6 her. She said something back to my fiancé. She got up
7 and acted like she was going to hit her. She swung.
8 She swung the same time. She got hit first. She threw
9 everything in the restaurant.

10 They went outside to get the license plate number.
11 She tried to back up over -- the girl that was in the
12 driver's seat wasn't going to back up. So another girl
13 got in the driver's seat and tried to back up over
14 Ginny. She got from behind the car, walked around the
15 front, was walking back in, and the girl mashed the gas
16 and went to hit her. So she jumped on the hood. The
17 girl took out of the parking lot.

18 Q Let me break that down a little bit. All right. You
19 mentioned your fiancé. Is that Brittany?

20 A Brittany.

21 Q Brittany Massalou? Did anybody call the cops?

22 A Yeah.

23 Q Who called the cops?

24 A I believe Mary did, or Lori did. Or a customer might
25 have called.

- 1 Q Is it possible Ginny did?
- 2 A I guess so. I mean, I don't know if she did or not.
- 3 Q You didn't call the cops?
- 4 A I called the ambulance. Yeah.
- 5 Q All right. What did you do to try to control the
- 6 situation?
- 7 A Oh, I tried to keep everybody in. But they had to go
- 8 get the license plate number. And they got the license
- 9 plate number, that's when the girl tried to back up
- 10 over her.
- 11 Q Okay. They were supposed to go and try to get the
- 12 license plate number?
- 13 A Someone does not pay their ticket, or tried to walk out
- 14 on their tab, you get their license plate number.
- 15 Other than that you have nothing but unpaid food.
- 16 Q And who told you that you're supposed to get the
- 17 license plate number?
- 18 A Managers.
- 19 Q Would that include James Kearse?
- 20 A That includes Veronica too, and Jeff.
- 21 Q Okay. And how do you get the license plate number?
- 22 A I guess you have to go outside, unless you can get it
- 23 from the window. Half the time it's third shift, you
- 24 can't get it from the window.
- 25 Q So it wouldn't be unusual at all for people to go

1 outside to get a license plate number in a situation
2 like that?

3 MS. HODGES: Object to the form of the
4 question.

5 BY MR. SAMUELS:

6 Q You can go ahead and answer the question.

7 A I mean, hey, unless you've got good eyes, I guess so.

8 Q How many times do people go outside on third shift?

9 A Plenty of times. You've got to go outside to smoke.

10 Q So on that particular night, for example, how many
11 times did you go outside, if you remember?

12 A I mean, it doesn't matter. It really doesn't matter
13 how many times I went outside.

14 Q I'm not trying to get you in trouble. I'm just asking
15 if you remember -- let me ask you --

16 A I know you're not trying to get me in trouble, but it
17 really doesn't matter how many times I went outside.
18 We went outside to control the situation and get the
19 license plate number. That's what happened. The girl
20 proceeded to back up over Ginny. Ginny walked around
21 the front. I mean, I don't see why you're going to
22 walk around the back of a car that's backing up. So
23 she walked around the front and the girl mashed the gas
24 on her.

25 Q Do you know if anybody was written up for going outside

1 that night?

2 A I really couldn't tell you.

3 Q It's pretty normal, when it's slow, if somebody takes a
4 smoke break, for them to go outside, even on third
5 shift, right?

6 A Yeah.

7 MS. HODGES: Object to the form.

8 THE WITNESS: I mean, hey, when you've got a
9 law saying you can't smoke inside the restaurant,
10 where else are you going to smoke at?

11 BY MR. SAMUELS:

12 Q And you've seen that happen many, many times?

13 A I guess so.

14 MS. HODGES: Again, object to the form.

15 BY MR. SAMUELS:

16 Q Nobody has ever been written up for it as far as --

17 MS. HODGES: Again, object to the form.

18 BY MR. SAMUELS:

19 Q You need to go ahead and answer that if you can.

20 A I guess so.

21 Q Has anyone ever told you it's against the rules to go
22 outside on third shift?

23 A They say that anytime. It's against the rules to do a
24 lot of stuff at Waffle House. It doesn't matter if
25 they tell you or not. All you've got to do is read

1 your book. Half the time you don't read your handbook.

2 All right? Okay.

3 Q Has James Kearse ever told you that it's against the
4 rules to go outside for any purpose on the third shift?

5 A In my case, yes, because I've gone outside to fight a
6 couple times. He told me I can't go outside to fight.
7 That's it. It has nothing to do with this situation.

8 Q Okay. But he has only told you that, specifically?

9 A Man, everybody knows. It doesn't matter. It has
10 nothing to do with this situation. Just get to what --
11 what are you trying to find out?

12 MS. HODGES: Just answer his questions.

13 Okay? His question was --

14 MR. SAMUELS: Wait a minute.

15 MS. HODGES: Rephrase your question so he can
16 answer it.

17 MR. SAMUELS: I'll talk to him, because I'm
18 taking the deposition.

19 MS. HODGES: Okay. I'm just trying to --

20 MR. SAMUELS: And you don't represent him.

21 MS. HODGES: I know. I'm trying to get him
22 to cooperate.

23 MR. SAMUELS: But let's sort of agree.

24 BY MR. SAMUELS:

25 Q Mr. Strong, here's the situation. All right. Waffle

1 House is denying Ginny Workers' Comp benefits because
2 they take the position that she violated company policy
3 by going outside. Earlier today, Mr. Kearse testifies
4 that he tells all the employees that there is a firm
5 policy that you are not to ever go outside during third
6 shift, for any purpose. And what I'm trying to figure
7 out, is what your personal knowledge is of whether that
8 is actually the policy, and whether or not people
9 actually follow that policy.

10 A And I told you, yes, it is the policy. But you have to
11 go outside to smoke on your smoke breaks now. I mean,
12 it doesn't get any plainer.

13 Q Do you have the authority, when you are running the
14 store, to write up people?

15 A Me? No.

16 Q You've never? Okay.

17 A Even if I did, they already know I wouldn't write up my
18 third shift anyway. It's my crew.

19 Q And if somebody goes out to take a smoke break, you
20 don't tell that person, no, you can't do that, that's
21 against the rules?

22 A No. Because ain't nobody going to tell me I can't go
23 outside and have a smoke break.

24 Q And specifically, on that night, March 14, 2010, if
25 somebody is trying to leave without paying, you're

1 supposed to try to get the tag number?

2 A Yeah.

3 Q Even if that's --

4 A I mean, you don't stop them from leaving, but you try
5 to get the tag number. If you stand behind them to get
6 the tag number, you tell them you're not stopping them
7 from leaving. You're getting their tag number. If
8 they choose to back up over you, that's their choice.

9 Q Okay. Why does Waffle House want you to get the tag
10 number?

11 A I already said that.

12 Q Indulge me. Tell me again. Why does Waffle House want
13 you to get the tag number?

14 A Because the food has to be paid for somehow. Or they
15 just come in, and you're the one getting the write-up,
16 because you know, they walk out, if they watch the tape
17 and all the other blah, blah, blah. But it doesn't
18 matter. Either way, somebody has to pay for this food.
19 So you either get the tag number or you're just stuck.
20 But in that case we needed that tag number anyway. I
21 mean, she tore up the whole restaurant.

22 Q So Ginny did a thing that was a benefit to Waffle House
23 by going out there and --

24 MS. HODGES: Object to the form of the
25 question.

1 MR. SAMUELS: -- trying to get the tag
2 number?

3 THE WITNESS: Look at it how you want to look
4 at it.

5 BY MR. SAMUELS:

6 Q Did things happen really fast that night?

7 A I guess too fast for some, but not too fast for me.

8 Q Well, were you able to take control of the situation?

9 A Yeah, once everything got calmed down. I mean, I can't
10 put my hands on anybody. I can't grab anybody. All I
11 can say is, get out. On her way out, she threw
12 everything in her hands, everything in her path.

13 Q It was pretty hectic. Would you agree with that?

14 A Yeah.

15 Q People freaking out? Not you, but other people, the
16 waitresses?

17 A No.

18 MS. HODGES: Object to the form of the
19 question.

20 THE WITNESS: I mean, would you freak out if
21 somebody starts throwing salsa, and hot sauce, and
22 steak sauce, and napkin holders, sugar shakers?

23 BY MR. SAMUELS:

24 Q Yeah, I might. I think a lot of people would. Would
25 you agree a lot of people would?

1 MS. HODGES: Again, object to the form.

2 THE WITNESS: It depends on how people handle
3 situations.

4 BY MR. SAMUELS:

5 Q And some people are more inclined to panic than others,
6 aren't they?

7 A I guess so.

8 Q Mr. Strong, are you scheduled to work on July 29th?

9 A What?

10 Q Are you scheduled to work on July 29th?

11 A I don't know. I haven't looked at the schedule yet.

12 Q If you were scheduled to work, would you be working
13 third shift?

14 A Most likely.

15 Q I think that's all the questions I have. Ms. Hodges
16 might have some questions for you.

17 MS. HODGES: I don't have any questions.

18 MR. SAMUELS: You're all done. Thanks for
19 coming.

20 (WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION
21 WAS CONCLUDED AT 3:19 P.M.)

22 (DEPONENT HAS WAIVED READING AND SIGNING.)

23

24

25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING DEPOSITION
 OF MICHAEL STRONG;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND
 FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THAT BY VIRTUE THEREOF I WAS DULY AUTHORIZED TO
 ADMINISTER AN OATH;

THAT THE WITNESS WAS BY ME FIRST DULY SWORN TO
 TESTIFY THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE
 TRUTH, CONCERNING THE MATTER IN CONTROVERSY AFORESAID;

THE FOREGOING TRANSCRIPT OF 15 TYPEWRITTEN PAGES
 REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPTION OF
 THE TESTIMONY SO GIVEN AT THE TIME AND PLACE AFORESAID TO
 THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF
 THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY
 ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR
 INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 27TH DAY OF JULY,
 2010.



 WENDY SHANNON SULLIVAN

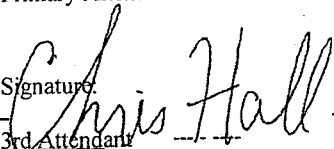
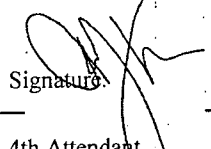
NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES FEBRUARY 4, 2018

*THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

5/6/2010
12:43:55PM

South Carolina Department of Health and Environmental Control
Patient Care Form

04422-3/14/2010-10-01-005561-1

Patient Identification		Incident Location		Time Record	
Name: VIRGINIA A MILES	Sex: Female	7803 BROAD RIVER RD	Cnty	Call Received:	05:12
Addr: [REDACTED]	Race: White	IRMO SC 29063	32	Call Dispatched:	05:19
Addr: COLUMBIA, SC 29210	Age: 47 Yrs.	Site of Incident: 7 Trade/Service		Departed Base:	05:21
SSN: [REDACTED]	DOB: [REDACTED]			Arrive Scene:	05:29
Disposition: Treated, Transported by EMS Receiving Agency: 2011 Lexington Medical Center Safety Equipment: Incident: 4 Pedestrian		Patient Status		Departed Scene:	05:43
		To Scene Emergency	On Scene Non-Urgent	From Scene Non-Urgent	Arrive Destination:
Impressions Primary: 959.90- Traumatic injury Preliminary		Site of Trauma Head Hip/Pelvis Face Upper Extremity Neck Lower Extremity Chest Back Abdomen		Cause of Delay:	
				HCFA Codes	
Treatment Procedures Dressing Applied Antishock Trousers Limb Splinted Airway Maintained X Spine Immobilized Antishock Treatment Neck Immobilized Artificial Respiration OB Assistance Cardiac Massage Oral Airway Used Bleeding Controlled X Oxygen Given Cold Application Suction Used Patient Restrained X Other (See Comments) Ventilator		Advanced Procedures			
		EKG Monitored Rhythm: Time: 1st Defib Attempted Watt Sec: Rhythm: 2nd Defib Attempted Watt Sec: Rhythm: 3rd Defib Attempted Watt Sec: Rhythm: Intubated Method: Size: External Pacing Blood Drawn Dextrose BGL: Intraosseous Infusion Automatic Defib IV Started Gauge: Sol: Rate: Time: IV Started Gauge: Sol: Rate: Time: Pleural Decompression Patient Assisted Meds # IV Times: 0 Ordering Physician: ☐			
Drugs Used Drug Code and Name Dose Time		Revised Trauma Score		Anatomical Injuries ? No	
		GCS: Eyes: SBP: Verbal: RR: Motor: RTS GLASCOW: Exposure to Pt's Body Fluids? No 1st		Pene Head, Neck Limb Paralysis Flail Chest Amputation Trauma With Burns Long Bones Fract. Pelvic Fractures	
		Vital Signs			
		BP Pulse Respiration Level of Pupils Time Rate R/I Rate R/I Consc. 155/101 75 R 20 N Equal Alert 05:41 155/105 69 R 20 N Equal Alert 05:46 208/151 70 R 16 N Equal Alert 05:52 194/143 62 R 16 N Equal Alert 05:57			
Primary Attendant CHRIS A HALL		2nd Attendant SC009842 ASHLEY HIOTT		Permit Number: 04422 Run Date: 3/14/2010	
Signature: 		Signature: 		Trip Number: 10-01-005561 Sequence: 1	
3rd Attendant		4th Attendant		Form Left In:	
Signature:		Signature:		Receiving Nurse/Physician	
				Signature:	

P238

5/6/2010
12:43:55PM

South Carolina Department of Health and Environmental Control
Patient Care Form

04422-3/14/2010-10-01-005561-1

Comments:

CC: MULTIPLE ABRASIONS: LEFT ARM/ HAND. BILAT KNEES.
RIGHT HAND. PAIN TO LEFT SHOULDER AND LEFT ANKLE.
CONTUSION TO LEFT SIDE OF HEAD AT HAIR LINE, NEAR
TEMPLE. BACK PAIN.

HPI: The pt is a waitress at the Waffle House on Broad River Rd and
I-26. A group of patrons vandalized the restaurant. The pt tried to stop
them from leaving by standing in front of their car. When the group did
not stop she jumped on the hood to avoid being hit. The pt held onto
the windshield wipers to keep from falling. The pt fell off the car a
block away from the restaurant sustaining injuries.

PMH: HTN. DEPRESSION. ANXIETY. BULGING DISCS IN BACK.
DEGENERATIVE DISC DISEASE.

Med: LIST

Allg: LIST

PE: AOS to find a 47y/o female lying on her left side on the ground
covered by 3 coats. CAOx4. skin w/d. pearl. =+BBS and clear. MAE.
ABC's good. No loss of consciousness. Pt denies neck pain. Swelling
noted to outside of left ankle. Swelling noted to left elbow. Bleeding
controlled prior to EMS arrival on scene. Pt denied any other
complaints.

RX: Pt assessed. Pt to LSB to FSP to Stryker to unit. Pt given 2Lpm
O2. EKG placed on pt. V/S obtained. Pt has good PMSx4 before and
after immobilization. Contacted LMCED with 5 minute ETA. Pt
reassessed and monitored en route to the hospital. Pt care and report
given to staff in room 20.

Additional Comments:

SaO2 97% @ 05:41 SaO2 100% @ 05:46 SaO2 100% @ 05:52
SaO2 100% @ 05:57

ADDENDUM: 3/30/2010 Street Address '716 ZIMEL CREST APT
1816' changed to '716 ZIMELCREST DR APT 1816'

Primary Attendant CHRIS A HALL

2nd Attendant SC009842 ASHLEY HIOTT

Permit Number: 04422

Run Date: 3/14/2010

Signature:

Signature:

Trip Number: 10-01-005561

Sequence:

1

Form Left In:

3rd Attendant

4th Attendant

Receiving Nurse/Physician

Signature:

Signature:

Signature:

Patient Fact Sheet

Name and Address		Employer
MILES, VIRGINIA A		
[REDACTED]		
[REDACTED]		
Phone:	[REDACTED] SC 29210	Phone:
SS No:	[REDACTED] Sex: F	
Race:	[REDACTED] Marital Status S	
Birth Date:	[REDACTED] Religion NO	
	Occupation:	

Patient's Maiden Name:

Nearest Relative	
KIRBY, WILLIE	
[REDACTED]	
IRMO	SC 29063
Home Phone:	[REDACTED] Rel: OTH
Business Phone:	
KIRBY, WILLIE	
[REDACTED]	
IRMO	SC 29063
Home Phone:	[REDACTED] Rel: OTH
Business Phone:	
WAFFLE HOUSE	
BROAD RIVER RD	
IRMO	SC 29063
Home Phone:	Rel:
Business Phone:	

Admission Data		
Account Number	Unit Number	
H00044477560	M001114430	
Admit Date	Admit Time	ER MD
3/14/2010	6:04	
Triage Time	Prim Care MD	
	ONAND EM, 0	

Guarantor	
MILES, VIRGINIA A	
[REDACTED]	
[REDACTED]	
COLUMBIA	SC 29210
Home Phone	[REDACTED]
Business Phone	
Rel:	SP SS: [REDACTED]
Occ:	
Employer	

Emergency Contact	
KIRBY, WILLIE	
[REDACTED]	
IRMO	SC 29063
Home Phone:	[REDACTED] Rel: OTH
Business Phone:	
KIRBY, WILLIE	
[REDACTED]	
IRMO	SC 29063
Home Phone:	[REDACTED] Rel: OTH
Business Phone:	

Patient Fact Sheet

WAFFLE HOUSE
BROAD RIVER RD
IRMO SC 29063
Home Phone: Rel:
Business Phone: (803)732-1232

Insurance Information

Ins: SELF PAY Insured: MILES, VIRGINIA A
Policy Number: Group Number: Rel: SP

Phone Number FIN SP
Auth Number

Patient Name **MILES, VIRGINIA**Medical Record **M001114430**Account Number **H00044477560**Date **3/14/2010****Lexington Medical Center**

ID H00044477560

Emergency Department Record**History of Present Illness**

AD

47 Year Old Female Patient Presents with trauma for 1 day(s). The Onset is acute. The symptoms are Moderate. Additional Symptoms or Pertinent History also involve rolled off hood of car. Furthermore, the Patient/Family Denies LOC. PT with multiple areas of abrasion and primary c/o scalp hematoma to L frontoparietal, L ankle pain, bilat knee pain, and L clavicle pain. No abdom pain.

Review of Systems

(Symptoms and Signs not covered in the HPI)

GU Neg Neuro Neg ENT Neg Resp Neg Musculoskeletal Neg Hematologic/Lymphatic Neg
Skin Neg Psych Neg Heart Neg GI Neg Endocrine Neg Allergic/Immunologic Neg
☒ All other ROS negative Constitutional Sxs Neg Eyes Neg

☒ Vital Signs/Triage/Nursing Notes Reviewed and Agree ☐ Hx unobtainable due to Tx urgency or poor historian(s) ☒ Additional Information from Police, Ambulance, Nursing Home or Relatives ☒ Old Medical Records Reviewed

Past Medical History ☐ No Relevant PMHx ☐ Asthma ☐ COPD ☐ CAD ☐ Cancer ☐ CHF ☐ CVA
Other PMHx ☐ Diabetes ☒ HTN ☒ Psychiatric ☐ Renal ☐ Seizures
Depression

Social History ☒ No Relevant SoHx ☐ ETOH ☐ Drugs ☐ Smoking Additional Sx

Family History ☐ No Relevant FmHx

Physical ExamExam Time **6:05**

AD

General Appearance WD WN A&O in NAD cooperative c good affect
HEENT NC/AT, PERRL, EOMI, MMM, large L frontoparietal hematoma
Chest RRR s MRG Lungs CTA s tachypnea Chest wall NT
Abdomen Abd wall s hernias/abn findings NL BS s bruts Soft, NT s HSM/mass
GU
Extremities All Pulses Intact
Neuro CN2-12 intact, Motor (=) 5/5 Gross sensory intact
Skin No pallor/rashes/bruising/petechiae/edema/andice, W & D
Back NT, No CVAT, NL ROM, Spine unremarkable throughout
Neck NT, FROM, No abnormalities noted
Lymphatics

Repeat or Additional Clinical Notes

MD	Notes	Time	
AD	Donato MD-Primary ED Provider. Any lab test results, plain radiographs, ABG's, EKG's, and Pulse Oximetry were independently visualized and interpreted by this provider.	3/14/2010	8:06
AD	Both knees and hands with abrasions but no signs of fx. L ankle TTP in distribution of anterior talofib ligament. No laxity. L clavical mildly TTP. No deformity.	3/14/2010	8:06
AD	No Sx(s) or Objective findings that are life or limb threatening. Medically Screened and Stable for disposition(Transfer) from the ED.	3/14/2010	8:07

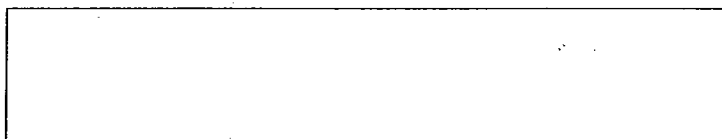
Patient Name **MILES, VIRGINIA**Medical Record: **M001114430**Account Number **H00044477560**Date **3/14/2010**

Diagnostics					Specimen Collected / ECG / Rad Ordered		
MD Initials	Time	Diagnostic Ordered	Result	Interpretation	Result Reviewed By	RN Initials	Time
AD	3/14/2010 6:19	C-Spine Three Views	Negative		AD	PAM	6:21
AD	3/14/2010 6:19	Ankle L X-Ray	Negative		AD	PAM	6:21
AD	3/14/2010 6:19	Head CT Absent Contrast	Negative		AD	VSB	7:16
AD	3/14/2010 6:21	LS-Spine X-Ray	Negative		AD	PAM	6:40
AD	3/14/2010 6:21	T-Spine X-Ray	Negative		AD	PAM	6:40
AD	3/14/2010 8:00	Chest X-ray PA/lateral	Negative		AD	MBR	8:24

Medical Orders							
MD Initials	Time	Order	RN Initials	Time	Location-Response-Quantity	RN Remarks	
AD	3/14/2010 8:08	Splint- Ankle Stirrup (fiberglas)	MBR	9:44			
AD	3/14/2010 8:08	Crutches c Instructions	MBR	9:44			
AD	3/14/2010 8:08	clean and dress all wounds please	MBR	9:44			
AD	3/14/2010 8:08	INT	VSB	8:47	20 Gauge Angio Antecubital L		
AD	3/14/2010 8:08	0.9NS 1000ml Bolus	VSB	8:47	Finish Time - 09:43~20 Gauge Angio Antecubital L		
AD	3/14/2010 8:08	Dilaudid 0.5mg IV	VSB	8:47	20 Gauge Angio Antecubital L		
AD	3/14/2010 8:08	Zofran 4mg IVP	VSB	8:47	20 Gauge Angio Antecubital L		

Recommended LOS/CPT/ICD-9 CodePhysician's LOS = **4 99284 CPT**Nurse's LOS = **5 612 APC**

Diagnoses	
trauma	959.9 ICD-9
Ankle Sprain	845.00 ICD-9
Scalp Contusion	920 ICD-9
Multiple Abrasions Extremities	919.0 ICD-9
Secondary Diagnoses	
Hypertension	401.9 ICD-9
Psychiatric	298.9 ICD-9



Patient Name **MILES, VIRGINIA**

Medical Record **M001114430**

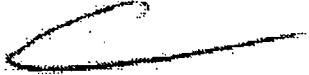
Account Number **H00044477560**

Date **3/14/2010**

	MD	MD Time		RN	RN Date/ Time	Admit to
Disposition	AD	8:32	Discharge Home	VSB	3/14/2010	9:43
Condition	AD	8:32	Good	VSB	9:43	

Physician (Print) **Donato, Andrew MD (AD)**

Physician Signature



Primary RN (Print) **Bradley, Valerie RN (VSB)**

Other Physicians

Donato, Andrew MD (AD)~Shennan, James MD (JS)~

Other Nurses

Mobley, Phillip A (PAM)~Johnston, Kirsten (RAD)~Kaminer-Burton, Linda US (L_K)~Goss, Susan Patricia RN (SPG)~Bradley, Valerie RN (VSB)~Aaron, Darlene K US (DKA)~Wooten, Kelly Rad Tech (RAD)~

This chart has been electronically signed via the Empower software.

Patient Name **MILES, VIRGINIA**Medical Record Number **M0044430**Account Number **H00044477560**Date **3/14/2010****Lexington Medical Center
Emergency Department****Discharge Instructions**Discharge Date/Time **3/14/2010 11:00:04 AM****Diagnoses**

trauma

Ankle Sprain

Scalp Contusion

Multiple Abrasions Extremities

Additional instructions were given on the following conditions:

☐ Abdominal Pain	☐ Neck Strain
☐ Allergic Reaction/ Rash	☐ Nose Bleed
☐ Asthma/ Wheezing/COPD	☐ Middle Ear Infection
☐ Back Pain	☐ PID/STD
☐ Chest Pain	☐ Sore Throat/Pharyngitis
☐ Conjunctivitis	☐ Threatened Abortion
☐ Corneal Abrasion/Eye Injury	☐ Toothache
☐ Fever	☐ Upper Respiratory Infection
☒ Fracture/Sprain/Contusion	☐ UTI/Kidney Infection
☐ Gastritis/Ulcer	☐ Vaginal Bleeding
☒ Head Injury	☐ Vomiting/Diarrhea
☐ Headache	☐ Wound Care/Sutures
☐ High Blood Pressure	
☐ Kidney Stone	

Other

You have been evaluated today by a healthcare provider practicing Emergency Medicine. In most cases follow-up care is recommended with your regular Doctor, HMO or Clinic.

Within 2 days ☐ Doctor ☐ HMO ☐ Clinic

Call for appointment as soon as possible. IDENTIFY Yourself as an ER Patient. If you don't have a doctor or need a specialist follow up with:

Physician/Specialist **LEXINGTON ORTHOPAEDICS - West Co**Address **146 North Hospital Drive Suite 140****West Columbia SC 29169**Phone **(803) 936-7230****Additional Instructions:**

If the symptoms worsen or new symptoms develop return to the Emergency Department (ED) immediately. Call your doctor for additional questions.

ED phone number: 803-791-2350

Use the splint and crutches until pain free. If not pain free in 3-5 days, follow with ortho. Return here sooner if any concerns.

Work/School Restriction:☐ You may return to work/school today.

You may return to work/school

This information may be released to my school or employer

☐ If you had x-rays or blood tests, please note that these don't always show what's wrong. Sometimes x-rays don't show broken bones. After review by a specialist you will be notified if there is an abnormality.

☐ You may not drive or operate heavy machinery because the medicines you have may make you sleepy.

Physician (Print)

Donato, Andrew MD (A7)

Nurse Signature:


X

Patient Signature

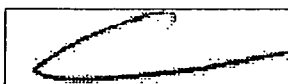
X**Lexington Medical Center****Emergency Department**Phone: **803-791-2350**Date Printed **3/14/2010**Patient Name **MILES, VIRGINIA**DOB **01/15/1963****Prescriptions**

Rx: **Percocet 5/325 1-2 p.o. q4h prn Pain #30** Refills **Zero**

This Prescription is VOID if submitted to a Pharmacy 72 hours after the Date and Time listed above.

Physician (Print)

Donato, Andrew MD (AD)

DEA# **BD3321801**

SUBSTITUTION PERMISSIBLE-IN ORDER FOR BRAND NAME TO BE DISPENSED, THE PRESCRIBER MUST HANDWRITE "BRAND MEDICALLY NECESSARY" ON PRESCRIPTION

Patient Name **MILES, VIRGINIA**Medical Record No. **M001114430**Account Number **H00044477560**Date **3/14/2010****Lexington Medical Center****Emergency Department Nursing Notes and Vital Sign**

Time Entered: 3/14/2010 8:04 Vitals Taken By: VSB

Temperature	Pulse	Blood Pressure	Respirations	Pulse Ox	Pain Scale
O	Right	R 141/98	18	100%	Moderate 5 - 6
T	Left 74	L			
R					

Time Entered: 3/14/2010 10:02 Vitals Taken By: VSB

Temperature	Pulse	Blood Pressure	Respirations	Pulse Ox	Pain Scale
O	Right 73	R 137/87	16	100%	Pain Level- Pt Accepts
T	Left	L			
R					

Nursing Notes

Time Note Entered	RN Initials	Note
3/14/2010	6:09 PAM	Gen App- Well Developed Well Nourished A&Ox3 FSP by EMS RTS12, GCS15; Skin- W/D without rash; HEENT- Contusion noted to l side of head; Cardiac- RRR No MR/G; Lungs- Lungs CTA w/o tachypnea; Chest Wall- Chest wall NT throughout; ABD-- Soft, nontender; ABD-- Bowel sounds present; ABD-- Normal; Neuro- Major Muscle Groups 5/5; Neuro- Gross Sensory Intact; Neuro-Deferred
3/14/2010	6:20 PAM	TO XRAY VIA STRETCHER
3/14/2010	7:16 VSB	Pt returned to room from CT.
3/14/2010	8:04 VSB	Police officer at bedside to take statement Pt complaining of dizziness when standing.
3/14/2010	8:47 VSB	INT placed in LAC. Police remains at bedside.
3/14/2010	9:41 VSB	Pt remains alert and oriented. Skin warm and dry. Abrasions cleaned by EDT Merdy. Noted bruising to tips of 3rd and fourth digit on left hand. MD aware. No new orders received. Pt talking on cell phone.
3/14/2010	10:02 VSB	Pt calling for ride home. States dizziness has improved. Able to sit upright with little dizziness. Pt remains tearful at times.
3/14/2010	10:19 VSB	INT removed intact. No redness or swelling at site. Pt states she has ride coming to get her.
3/14/2010	10:59 VSB	Discharge via W/C. D/C Instructions and Rx Given. Verbalizes Understanding; Discharged home with neighbors.

Primary Nurse Diagnosis	Primary Nurse Outcome	Achieved
comfort, Altered R/T shoulder/back pain/headache	Relates Increased Comfort	Yes

Primary RN (Print) Bracey, Valerie RN (VSB)

Lexington Medical Center Triage

Category **3 Potentially Un**

Arrival Date/Time	Triage Time	Waiting Rm Time	Exam Rm Time
3/14/2010	6:04	6:05	6:05

PCP Staff Status	Family Physician	Transported by	Mode
None		Ambulance	Stretcher

Historian	Police Dept	Notification	Beat #
Self	Custody		

Chief Complaint	Onset Time	Location

INJURY: HEAD/BACK/LEFT ARM PAIN

Associated Sxs / Pertinent History

PER REPORT ATTEMPTED TO STOP A CAR AND JUMPED UP ON HOOD. WAS THROWN OFF AFTER 1 BLOCK. C/O HEADACHE, L ANKLE, L SHOULDER, BILAT HANDS/KNEE, AND BACK PAIN.

Past Medical History Additional: Depression

☐ No Significant PMHx
☐ Asthma ☐ COPD ☐ CAD ☐ Cancer ☐ CHF ☐ CVA ☐ DM ☒ HTN ☒ Psych ☐ Renal ☐ Seizures ☒ Substance Abuse

Medications

☐ No Meds ☐ Unknown
Cymbalta; Klonopin; Seroquel

Allergies

Codeine

Immunizations UTD? UTD

TB Hx, PPD Pos or No
Infectious Exposures?

**If yes to TB or Infectious question take precautions*

Mental Status / Psychological Eval

Alert Oriented

Glasgow Coma Scale

Eye	Spontaneous
Verbal	Oriented
Motor	Obeys
Total	15

Skin

Color	Normal
Temp	Normal
Moist	Normal

OB/Gyn

LNMP 1wk	No		
G	P	Ab	Miscarriages
0	0	0	0

Extremities

Pulses	All Pulses Intact
ROM	

Lung Sounds

	R	L
Clear	☐	☐
Diminished	☐	☐
Wheezes	☐	☐
Rales	☐	☐
Rhunchi	☐	☐
Retractions	☐	☐

Eyes

	R	L
Equal	☒	☒
Reactive	☒	☒
Fixed	☐	☐
Constricted	☐	☐
Dilated	☐	☐
Caaract	☐	☐

Nutrition

Normal

Fall Risk Assessment

No Fall Risks Identified

Plan

2-20	Time	6:05
Triage Nurse: Mobley, Phillip A (PAM)		
Triage II: PAM		
Triage III: PAM		

Domestic Violence Assessment

Are you being hurt by someone you live with or who takes care of you?

Yes/No NA

* Mandatory completion of Domestic Violence Referral.

Functional D/C Planning

Daily Living	Independent
Living Conditions	Alone
Going Home with	Friend

Assessing Patient's, Child's or Parent's readiness to learn

Primary Language	English
Assessed Disability	No Disability
Communication Barrier	☐
Language Translator	☐
Motivation Level	Low
Knowledge Level	Low
Comprehension Ability	Low

Patient Name

MILES, VIRGINIA

Medical Record Number

M001114430

Account Number

H00044477580

DOB

Age 47 Years

Gender

Female

Vitals

Tem

Oral 98.1

Rectal

Tympanic

Pulse

Right

Left

59

Respirations

18

Blood Pressure

Right

Left

134/102

Pulse Ox

Weight (Kg)

52 Kg

Height Head Circumferenc

Pain Scal

Severe 7 - 8

☐ LWBS	☐ LW Completed Tx/ Elopod	☐ AMA	☐ AMA Refused	☒ Patient Rights and Responsibilities and Guide to Pain Management given to Patient, Family, and/or Caretaker

Patient Name **MILES, VIRGINIA**Medical Record # **M001114430**Account Number **H00044477560****3/14/2010****Emergency Department Pharmacy and Supply Charges**

Interventions		
Intervention Name	Comments	Charge Code
Splint- Ankle Stirrup (fiberglas)		
Crutches c Instructions		
clean and dress all wounds please		
INT	20 Gauge Angio Antecubital L	
0.9NS 1000ml Bolus	Finish Time - 09:43~20 Gauge Angio Antecubital L	
Dilaudid 0.5mg IV	20 Gauge Angio Antecubital L	
Zofran 4mg IVP	20 Gauge Angio Antecubital L	

Diagnostics	
Diagnostic Ordered	Charge Code
Ankle L X-Ray	0

Nurse LOS	5	612 APC	Charge Code	0

Lexington Medical Center

Medication Reconciliation

Patient Name **MILES, VIRGINIA**

Medical Record No. **M001114430**

Account Number **H00044477560**

Date of ED Visit **3/14/2010**

Allergies

Codeine

Home Medications

Cymbalta

Klonopin

Seroquel

Medications Administered in the Emergency Department

Zofran 4mg IVP

Dilaudid 0.5mg IV

Medication Prescription provided on Discharge

Percocet 5/325 1-2 p.o. q4h prn Pain #30

Medical Record Number: 100111443

Date 3/16/2010

**Lexington Medical Center
Emergency Department**

Discharge Instructions

Discharge Date/Time 5/14/2010 9:27:47 AM

Diagnoses

TABLE 1

Anke Spran

Scam Confusion

Multiple Abrasions Extremities

You have been evaluated today by a healthcare provider practicing Emergency Medicine. In most cases follow-up care is recommended with your regular Doctor, HMO or Clinic.

Within 7	days	Doctor	HMO	Clinic

Call for appointment as soon as possible. IDENTIFY yourself as an ER Patient. If you don't have a doctor or need a specialist follow up with:

Physician Specialties: LEXINGTON ORTHOPAEDICS - West Col

Address: 146 North Hospital Drive Suite 140

West Columbia SC 29169

Phone (803) 936-7230

Additional Instructions

If the symptoms worsen or new symptoms develop return to the Emergency Department (ED) immediately. Call your doctor for additional questions.

FD phone number 803-781-2350

Use the splint and crutches until pain free. If not pain free in 3-5 days, follow with ortho. Return here sooner if any concerns.

Additional instructions were given on the following conditions:

- ☐ Abdominal Pain
- ☐ Allergic Reaction
- ☐ Asthma
- ☐ Back Pain
- ☐ Chest Pain
- ☐ Conjunctivitis
- ☐ Corneal Abrasion/Eye Injury
- ☐ Fever
- ☒ Fracture/Spain/Strain
- ☒ Head Injury
- ☐ High Blood Pressure
- ☐ Kidney Stone
- ☐ Neck Strain
- ☐ Nose Bleed
- ☐ Middle Ear Infection
- ☐ PID/STD
- ☐ Sore Throat/Pharyngitis
- ☐ Threatened Abortion
- ☐ Toothache
- ☐ Upper Respiratory Infection
- ☐ UTI/Kidney Infection
- ☐ Vaginal Bleeding
- ☐ Vomiting/Diarrhea
- ☐ Wound Care/Sutures

Örnek:

Work/School Restriction:

You must return to work/school today.

You may return to work/school:

~~This information may be released to my sales or employer.~~

If you have x-rays or blood tests, please note that these don't always show what's wrong. Sometimes x-rays don't show broken bones. After review by a specialist you will be notified if there is an abnormality.

You may not drive or operate heavy machinery because the medicines you have may make you sleepy.

Prussian (Pru)

George Andrew King (AKA)

Nurse Signature: _____

पुस्तकालय संसाधन विभाग

Lexington Medical Center

Emergency Department

Phone: 803-731-2350

Date Printed 4/4/2010

Patient Name **MILES, VIRGINIA**

SECRET

Prescriptions

Rx: Percocet 5/325 1-2 p.o. q4h prn Pain #30 Refills Zero

This Prescription is VOID if submitted to a Pharmacy 72 hours after the Date and Time listed above.

အိန္ဒိယနိုင်ငံ (အိန္ဒိယ)

Donato, Andrew MD (AD)

SUBSTITUTION PERMISSIBLE IN ORDER FOR BRAND NAME TO BE DISPENSED.
THE PRESCRIBER MUST HANDWRITE "BRAND MEDICALLY NECESSARY" ON
PRESCRIPTION

3/15/2010
09:27:59AM

South Carolina Department of Health and Environmental Control
Patient Care Form

64422-3/14/2010-10-01-005561-7

Patient Identification Name: VIRGINIA A MILES Sex: Female Address: [REDACTED] Race: White Address: COLUMBIA, SC 29210 Age: 47 Yrs. SSN: [REDACTED] DOB: [REDACTED]			Incident Location 1801 BEGAD RIVER RT City: [REDACTED] IRMO SC 29063 Site of Incident: 7 Trade/Service			Time Record Call Received: 05:12 Call Dispatched: 05:19 Departed Home: 04:21 Arrive Scene: 04:29 Departed Scene: 04:43 Arrive Destination: 04:55 Provider Time: Cause of Delay:																																
Disposition: Treated, Transported by EMS Receiving Agency: 2011 Lexington Medical Center Safety Equipment: Incident: 4 Pedestrian			Patient Status To Scene: On Scene From Scene Emergency Non-Urgent Non-Urgent			HCFA Codes																																
Primary: 959.90- Trauma Injury Preliminary:			Site of Trauma Head Hip/Pelvis Face Upper Extremity Neck Lower Extremity Chest Back Abdomen			Transfer Agency:																																
Treatment Procedures Dressing Applied Antishock Trousers Limb Splinted Airway Maintained X Spine Immobilized Antishock Treatment Neck Immobilized Artificial Respiration OB Assistance Cardiac Massage Oral Airway Used Bleeding Controlled X Oxygen Given Cold Application Suction Used Patient Restrained X Other (See Comments) Ventilator			Advanced Procedures EKG Monitored Rhythm: Time: 1st Defib Attempted Wait Sec: Rhythm: 2nd Defib Attempted Wait Sec: Rhythm: 3rd Defib Attempted Wait Sec: Rhythm: Intubated Method: Size: External Pacing Blood Drawn Dextrose BGL: Intravenous Infusion Automatic Defib IV Started Gauge: Set Rate Time: IV Started Gauge: Set Rate Time: Pleural Decompression Patient Assisted Mech # IV Times: 0 Ordering Physician:																																			
Drugs Used Drug Code and Name Dose Time			Revised Trauma Score GCS: Eyes SHP: Verbal: RR: Motor: RTS GLASCOW:			Anatomical Injuries ? No Neck/Head Neck Limb Paralysis Head/Chest Amputation Trauma With Burns Long Bones Fract. Pelvic Fractures																																
Exposure to PC's Body Fluids? No 1st			Vital Signs <table border="1"> <thead> <tr> <th>BP</th> <th>Pulse Rate R/I</th> <th>Respiration Rate R/I</th> <th>Pupils</th> <th>Level of Consciousness</th> <th>Time</th> </tr> </thead> <tbody> <tr> <td>155/101</td> <td>78 R</td> <td>20 R</td> <td>Equal</td> <td>Alert</td> <td>05:41</td> </tr> <tr> <td>155/103</td> <td>68 R</td> <td>20 R</td> <td>Equal</td> <td>Alert</td> <td>05:46</td> </tr> <tr> <td>200/151</td> <td>70 R</td> <td>16 R</td> <td>Equal</td> <td>Alert</td> <td>05:52</td> </tr> <tr> <td>194/145</td> <td>62 R</td> <td>16 R</td> <td>Equal</td> <td>Alert</td> <td>05:53</td> </tr> </tbody> </table>						BP	Pulse Rate R/I	Respiration Rate R/I	Pupils	Level of Consciousness	Time	155/101	78 R	20 R	Equal	Alert	05:41	155/103	68 R	20 R	Equal	Alert	05:46	200/151	70 R	16 R	Equal	Alert	05:52	194/145	62 R	16 R	Equal	Alert	05:53
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200/151	70 R	16 R	Equal	Alert	05:52																																	
194/145	62 R	16 R	Equal	Alert	05:53																																	
Primary Attendant: CHRIS A HALL Signature:			2nd Attendant: SC000542 ASHLEY HIGHT Signature:			Form Number: 64422 Run Date: 3/14/2010 Trip Number: 10-01-005561 Sequence: 1 Form Left In:																																
Signature:			Signature:			Receiving Nurse/Physician Signature:																																

3/13/2010
09:27:59AM

South Carolina Department of Health and Environmental Control
Patient Care Form

04422-10-01-005581-1

CHIEF COMPLAINT:

CC: MULTIPLE ABRASIONS: LEFT ARM/HAND, BEAT KNEES, RIGHT HAND, PAIN TO LEFT SHOULDER AND LEFT ANKLE. CONTUSION TO LEFT SIDE OF HEAD AT HAIR LINE NEAR TEMPLE. BACK PAIN.

NP: The pt is a waitress at the Waffle House on Broad River Rd and I-26. A group of patrons vandalized the restaurant. The pt tried to stop them from leaving by standing in front of their car. When the group did not stop she jumped on the hood to avoid being hit. The pt held onto the windshield wipers to keep from falling. The pt fell off the car a block away from the restaurant sustaining injuries.

PMH: HTN, DEPRESSION, ANXIETY, BULGING DISCS IN BACK, DEGENERATIVE DISC DISEASE

Med: LIST

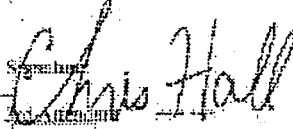
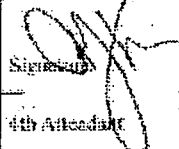
Allg: LIST

PE: AOS to face. 47yr female lying on her left side on the ground covered by 3 coats. CACx4, skin wld, pearl, ++BBS and clear. MAE. ABC's good. No loss of consciousness. Pt denies neck pain. Swelling noted to outside of left ankle. Swelling noted to left elbow. Bleeding controlled prior to EMS arrival on scene. Pt denied any other complaints.

RX: Pt assessed. Pt to LSB to FSP to Stryker to unit. Pt given 2Lpin O2. EKG placed on pt. V/S obtained. Pt has good PMSx4 before and after immobilization. Contacted UNCED with 5 minute ETA. Pt reassessed and monitored en route to the hospital. Pt care and report given to staff in room 20.

Additional Comments:

SaO2 97% @ 05:41 SaO2 100% @ 05:46 SaO2 100% @ 05:52
SaO2 100% @ 05:57

Primary Attendant: CHRIS A HALL	2nd Attendant: SC009042 ASHLEY HOTT	Permit Number: 04422	Run Date: 3/14/2010
Signature: 	Signature: 	Trip Number: 10-01-005581	Sequence: 1
3rd Attendant:	4th Attendant:	Form Left In:	Receiving Nurse/Physician
Signature:	Signature:	Signature:	Signature:

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: MILES,VIRGINIA A

AGE: 47
DCB:
SEX: F

UNIT/MR NO: M001114430
ACCT NO: H00044477560
SSN:
REQ NO: 10-0036417
REPORT NO: 0314-0188

ADMITTING DR:
ORDERING DR: ANDREW R DONATO MD

ROOM:
PT LOCATION: HED
DONAND EM

REPORT STATUS: Signed

ORDERED BY: ANDREW R DONATO MD
LOCATION: DEP ER HED
STUDY TYPE: 0314-0075 RAD/CHEST 2 VIEW - PA & LAT

DATE OF EXAM: 03/14/10

CLINICAL DATA: 47F, STATUS POST FALL FROM HOOD OF CAR

CHEST - PA AND LATERAL (2 VIEWS):

COMPARISON: 04/18/2009.

FINDINGS: Two views of the chest showed clear lung fields. The cardiac and mediastinal shadows appeared normal. The costophrenic angles were sharp. The bony structures were intact.

IMPRESSION: Negative chest. No significant change from previous examination.

MSC

CLARENCE S DAVIS MD

REPORT STATUS: Signed

DONATO,ANDREW R,MD

ORDER#/PROCEDURE: 0314-0075 RAD/CX2 (71020)

EXAM TECH: SDLEV

PT LOC/ROOM: HED/

REP RELEASED BY: DAVCLA RAD 03/15/10 1125

ADD RELEASED BY:

DISC DATE: 03/14/10

MILES,VIRGINIA A

ED DISC DIAG: ANKLE SPRAIN,SCALP CONTUSION,MULTIPLE ABRASIONS

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: MILES,VIRGINIA A

AGE: 47
DCB: [REDACTED]
SEX: F

UNIT/MR NO: M001114430
ACCT NO: H00044477560
SSN: [REDACTED]
REQ NO: 10-0036399
REPORT NO: 0314-0183

ADMITTING DR:
ORDERING DR: ANDREW R DONATO MD

ROOM:
PT LOCATION: HED
DONAND EM

REPORT STATUS: Signed

ORDERED BY: ANDREW R DONATO MD
LOCATION: DEP ER HED
STUDY TYPE: 0314-0067 RAD/THORACIC SPINE

DATE OF EXAM: 03/14/10

CLINICAL DATA: 47F, TRAUMA

THORACIC SPINE:

AP and lateral views of the thoracic spine are submitted with a cone lateral view of the cervicothoracic junction. There is minimal thoracic scoliosis convex right. The thoracic vertebral body heights and disc spaces are well maintained with no acute fracture or subluxation.

MSC

CLARENCE S DAVIS MD

REPORT STATUS: Signed

DONATO,ANDREW R,MD
ORDER#/PROCEDURE: 0314-0067 RAD/THOR (72070)
EXAM TECH: ANFAR
REP RELEASED BY: DAVCLA RAD 03/15/10 1125
ADD RELEASED BY:
DISC DATE: 03/14/10
ED DISC DIAG: ANKLE SPRAIN,SCALP CONTUSION,MULTIPLE ABRASIONS

PT LOC/ROOM: HED/

MILES,VIRGINIA A

**RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER**
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: MILES,VIRGINIA A

AGE: 47

DCB:

SEX: F

UNIT/MR NO: M001114430

ACCT NO: H00044477560

SSN:

REQ NO: 10-0036398

REPORT NO: 0314-0184

ADMITTING DR:

ORDERING DR: ANDREW R DONATO MD

ROOM:

PT LOCATION: HED

DONAND EM

REPORT STATUS: Signed

ORDERED BY: ANDREW R DONATO MD

LOCATION: DEP ER HED

STUDY TYPE: 0314-0066 RAD/LUMBAR SPINE - 2 or 3 VIEWS

DATE OF EXAM: 03/14/10

CLINICAL DATA: 47F, STATUS POST FALL FROM HOOD OF CAR,
NOW WITH LOW BACK PAIN

LUMBAR SPINE SERIES:

AP and lateral views of the lumbar spine were submitted along with a cone lateral view of the lumbosacral junction. There is mild lumbar scoliosis, convex left. The vertebral body heights are well maintained with no acute fracture or subluxation.

MSC

CLARENCE S DAVIS MD

REPORT STATUS: Signed

DONATO,ANDREW R,MD

ORDER#/PROCEDURE: 0314-0066 RAD/LUM (72100)

EXAM TECH: ANFAR

PT LOC/ROOM: HED/

REP RELEASED BY: DAVCLA RAD 03/15/10 1125

ADD RELEASED BY:

DISC DATE: 03/14/10

MILES,VIRGINIA A

ED DISC DIAG: ANKLE SPRAIN,SCALP CONTUSION,MULTIPLE ABRASIONS

**RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER**
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: MILES,VIRGINIA A

AGE: 47

DOB:

SEX: F

UNIT/MR NO: M001114430

ACCT NO: H00044477560

SSN:

REQ NO: 10-0036396

REPORT NO: 0314-0185

ADMITTING DR:

ORDERING DR: ANDREW R DONATO MD

ROOM:

PT LOCATION: HED

DONAND,EM

REPORT STATUS: Signed

ORDERED BY:

ANDREW R DONATO MD

LOCATION:

DEP ER HED

STUDY TYPE:

0314-0065 RAD/ANKLE-ROUTINE-3 VIEWS LEFT

DATE OF EXAM:

03/14/10

CLINICAL DATA:

47F, STATUS POST FALL FROM HOOD OF CAR,
NOW WITH PAIN

LEFT ANKLE:

AP, lateral, and oblique views of the left ankle demonstrate the ankle mortise to be well maintained. There is soft tissue swelling over the lateral malleolus. There is an acute fracture at the base of the left fifth metatarsal.

MSC

CLARENCE S DAVIS MD

REPORT STATUS: Signed

DONATO,ANDREW R,MD

ORDER#/PROCEDURE: 0314-0065 RAD/ANKC (73610)

EXAM TECH:

ANFAR

PT LOC/ROOM:

HED/

REP RELEASED BY: DAVCLA RAD 03/15/10 1125

ADD RELEASED BY:

DISC DATE:

03/14/10

MILES,VIRGINIA A

ED DISC DIAG:

ANKLE SPRAIN,SCALP CONTUSION,MULTIPLE ABRASIONS

**RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER**
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: MILES,VIRGINIA A

AGE: 47
DCB: [REDACTED]
SEX: F

UNIT/MR NO: M001114430
ACCT NO: H00044477560
SSN: [REDACTED]
REQ NO: 10-0036395
REPORT NO: 0314-0181

ADMITTING DR:
ORDERING DR: ANDREW R DONATO MD

ROOM:
PT LOCATION: HED
DONAND EM

REPORT STATUS: Signed

ORDERED BY: ANDREW R DONATO MD
LOCATION: DEP ER HED
STUDY TYPE: 0314-0064 RAD/CERV SP 2 OR 3 VIEWS OR TRAUMA

DATE OF EXAM: 03/14/10

CLINICAL DATA: 47F, TRAUMA

CERVICAL SPINE SERIES:

AP, crosstable lateral, and open-mouth odontoid views of the cervical spine are submitted. The lateral view of the cervicothoracic junction was also evaluated. There is normal alignment of C1 through C7. Vertebral body heights and disc spaces are well maintained. There is no acute fracture or subluxation.

IMPRESSION: Negative cervical spine.

MSC

CLARENCE S DAVIS MD

REPORT STATUS: Signed

DONATO,ANDREW R,MD

ORDER#/PROCEDURE: 0314-0064 RAD/CERVTRA (72040)

EXAM TECH: ANFAR

REP RELEASED BY: DAVCLA RAD 03/15/10 1125

ADD RELEASED BY:

DISC DATE: 03/14/10

ED DISC DIAG: ANKLE SPRAIN,SCALP CONTUSION,MULTIPLE ABRASIONS

PT LOC/ROOM: HED/

MILES,VIRGINIA A

**RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER**
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: MILES,VIRGINIA A

AGE: 47
DCB: [REDACTED]
SEX: F

UNIT/MR NO: M001114430
ACCT NO: H00044477560
SSN: [REDACTED]
REQ NO: 10-0036397
REPORT NO: 0314-0036

ADMITTING DR:
ORDERING DR: ANDREW R DONATO MD

ROOM: 20-A
PT LOCATION: HEDZ2
DONAND EM

REPORT STATUS: Signed

ORDERED BY: ANDREW R DONATO MD
LOCATION: REG ER HEDZ2 20
STUDY TYPE: 0314-0016 CAT/CT BRAIN WO/C

DATE OF EXAM: 03/14/10

CLINICAL DATA: 47F, PATIENT THROWN OFF OF CAR,
NOW WITH MULTIPLE ABRASIONS AND DIZZINESS

CT HEAD (WITHOUT CONTRAST):

TECHNIQUE: Noncontrasted CT scan of the head was performed consisting of contiguous 5 mm. cuts in the transaxial plane. Images were reviewed on both bone and soft tissue windows.

FINDINGS: The bony calvarium is intact and the paranasal sinuses are clear. There is a hematoma involving the scalp over the frontoparietal region.

The ventricular system and cortical sulci are within normal limits. There is no intra- or extracerebral hemorrhage and no shift of the midline structures.

IMPRESS ON: Large left frontoparietal scalp hematoma. Underlying bony calvarium is intact. No acute intracranial pathology is present.

A draft copy of this report was routed to print to HEDZ2 on 03/14/10, 0744.

MAS

CLARENCE S DAVIS MD

REPORT STATUS: Signed

DONATO,ANDREW R,MD
ORDER#/PROCEDURE: 0314-0016 CAT/BRAWO (70450)
EXAM TECH: LEBEL
HEDZ2/20
REP RELEASED BY: DAVCLA RAD 03/14/10 0845
ADD RELEASED BY:
DISC DATE:
ED DISC DIAG:

PT LOC/ROOM:

MILES,VIRGINIA A

Page 1 of 1

RECEIVED

Patient Name **MILES, VIRGINIA**

Medical Record Number **M00 4430**

Account Number **H00044477560**

Date **3/14/2010**

**Lexington Medical Center
Emergency Department**

Discharge Instructions

Discharge Date/Time **3/14/2010 9:27:48 AM**

Diagnoses

trauma

Ankle Sprain

Scalp Contusion

Multiple Abrasions Extremities

Additional instructions were given on the following conditions:

- Abdominal Pain - Allergic Reaction - Asthma - Back Pain - Chest Pain - Conjunctivitis - Corneal Abrasion/Eye Injury - Fever ✓ Fracture/Sprain/Strain ✓ Head Injury - High Blood Pressure - Kidney Stone	- Neck Strain - Nose Bleed - Middle Ear Infection - PID/STD - Sore Throat/Pharyngitis - Threatened Abortion - Toothache - Upper Respiratory Infection - UTI/Kidney Infection - Vaginal Bleeding - Vomiting/Diarrhea - Wound Care/Sutures

Other:

Work/School Restriction:

You may return to work/school today.

You may return to work/school

This information may be released to my school or employer

If you had x-rays or blood tests, please note that these don't always show what's wrong. Sometimes x-rays don't show broken bones. After review by a specialist you will be notified if there is an abnormality.

You may not drive or operate heavy machinery because the medicines you have may make you sleepy.

You have been evaluated today by a healthcare provider practicing Emergency Medicine. In most cases follow-up care is recommended with your regular Doctor, HMO or Clinic.

Within 2 days Doctor HMO Clinic

Call for appointment as soon as possible. IDENTIFY yourself as an ER Patient. If you don't have a doctor or need a specialist follow up with:

Physician/Specialist **LEXINGTON ORTHOPAEDICS - West Col**

Address **146 North Hospital Drive Suite 140**

West Columbia SC 29169

Phone **(803) 936-7230**

Additional Instructions:

If the symptoms worsen or new symptoms develop return to the Emergency Department (ED) immediately. Call your doctor for additional questions.

ED phone number: 803-791-2350

Use the splint and crutches until pain free. If not pain free in 3-5 days, follow with ortho. Return here sooner if any concerns.

Physician (Print)

Donato, Andrew MD (AD)

Nurse Signature:

Patient Signature

Lexington Medical Center

Emergency Department

Phone: 803-791-2350

Date Printed **3/14/2010**

Patient Name **MILES, VIRGINIA**

DOB **01/15/1963**

Prescriptions

Rx: **Percocet 5/325 1-2 p.o. q4h prn Pain #30** Refills **Zero**

This Prescription is VOID if submitted to a Pharmacy 72 hours after the Date and Time listed above.

Physician (Print)

Donato, Andrew MD (AD)

SUBSTITUTION PERMISSIBLE-IN ORDER FOR BRAND NAME TO BE DISPENSED, THE PRESCRIBER MUST HANDWRITE "BRAND MEDICALLY NECESSARY" ON PRESCRIPTION

Head Injury

You have suffered a head injury. Common symptoms include headache, nausea, vomiting (once or twice), and slight dizziness or sleepiness. There may be some swelling and pain. A head injury can cause slow bleeding or other problems inside the head that may not be detected at this time. You are being allowed to go home but a relative or friend should stay with you and read the following instructions. Have this relative or friend check you every four hours for the next 24-28 hours. You must report all observations to your follow-up doctor.

Treatment:

- ♦ If prescribed, take all medications as directed. **IMPORTANT: DO NOT STOP taking the medication just because you feel better. DO NOT TAKE** any sedatives or sleeping pills. **DO NOT TAKE** aspirin or compounds containing aspirin. Also avoid Motrin, Advil, Ibuprofen and similar drugs. Use acetaminophen (Tylenol, Panadol, Tempra, Liquiprin, etc.) if needed.
- ♦ Do not eat or drink much for the next 24 hours. Clear liquids are best if your stomach is upset. **DO NOT DRINK** alcoholic beverages.
- ♦ Rest in bed. Sleep or nap with the head elevated on at least one (1) or two (2) **PILLOWS**. Do not sleep flat.
- ♦ No school for children or work for adults. Do not exert yourself.
- ♦ Do not drive a car or operate tools or instruments which could harm you if you were not alert.

Contact your doctor or return to the emergency department immediately if any of the following occur:

- ♦ Fever greater than 100 degrees or shaking chills begin or worsen.
- ♦ Persistent nausea or vomiting (more than twice).
- ♦ Confusion, unusual drowsiness, personality changes or loss of memory. (such as if the patient cannot answer a simple question like what day is it)
- ♦ Dizziness, trouble walking or staggering gait.
- ♦ Convulsions or seizures such as twitching or jerking movements of either the eyes, arms, legs or body.
- ♦ Pupils of unequal size. The pupil is the dark center portion of the eye.
- ♦ A severe headache, or a headache that is worsening or constant.
- ♦ Weakness or trouble with the use of arms or legs or areas of numbness.
- ♦ Unconsciousness or fainting.
- ♦ Stiff neck.
- ♦ Visual disturbances including blurring of vision and/or double vision or sensitivity to light.
- ♦ Ringing or other unusual sounds in the ear.
- ♦ Bleeding or clear fluid drainage from the ears or nose.
- ♦ Difficulty speaking or slurred speech.
- ♦ Shortness of breath or difficulty breathing.
- ♦ Any other unusual or abnormal symptoms.

Contusions/Strains/Sprains/Fractures

The most common symptoms are pain, swelling, redness or bruising and stiffness (unable to move) in the area. The amount of pain and tenderness depends upon how serious the injury. These injuries may take several weeks to heal. Contusions (bruises) may change to a variety of different colors while healing. Fractures (broken bones) take longer to heal and you should follow up with an Orthopedic doctor (bone specialist) or your primary doctor as soon as possible. Strains are "pulled muscles" and can ache or throb. Sprains are stretched ligaments around a joint and can sometimes hurt as much as a broken bone.

Treatment:

- ◆ Elevation of the injured part above the heart, where possible, and application of ice packs applied intermittently (15 minutes at a time) on the area of injury will lessen swelling during the first 48 hours. Do not apply ice directly on the skin, but put ice in a plastic bag and wrap it with a small towel.
- ◆ If prescribed, take all medications as directed. **IMPORTANT: DO NOT STOP taking the medication just because you feel better.** If you have received a prescription for a muscle relaxant and/or strong pain medication, use these medications only as directed such "as needed" for pain medications. **DO NOT drive a car or operate equipment that could be dangerous. DO NOT drink alcohol.**
- ◆ If you have been advised to use an elastic bandage (Ace wrap), be sure it is neither too tight nor too loose. Watch for swelling or change of color of the part of the body farthest out from the bandage and call your doctor or return to the emergency department if it does.
- ◆ If you have a cast or splint, do not put weight on it unless and until your doctor advises you to do so.
- ◆ Use a cane or crutches as directed or prescribed if given. Do not rest the weight of your body on your armpits when using the crutches as this may bruise the nerve to the arm.

Contact your doctor or return to the emergency department if any of the following occur:

- ◆ Follow your doctor's recommendation concerning physical activities and exercises that may improve your condition.
- ◆ Fever (greater than 101F by mouth) or shaking chills begin or worsen.
- ◆ Increased pain, cold, color change, numbness, tingling or weakness in the injured area. Your condition does not change or gets worse.

Lexington Medical Center

Medication Reconciliation

Patient Name MILES, VIRGINIA

Medical Record No. M001114430

Account Number H00044477560

Date of ED Visit 3/14/2010

Allergies

Codeine

Home Medications

Cymbalta

Klonopin

Seroquel

Medications Administered in the Emergency Department

Zofran 4mg IVP

Dilaudid 0.5mg IV

Medication Prescription provided on Discharge

Percocet 5/325 1-2 p.o. q4h prn Pain #30

Physician Signature _____ Date _____

Patient Fact Sheet

Name and Address	Employer
MILES, VIRGINIA A 716 ZIMMERMAN DR APT 1 COLUMBIA SC 29210 Phone: (803) 665-2811 Sex: F SS No: 443-25-721 Marital Status: D Race: W Religion: NO Birth Date: 7/19/1958 Occupation: Patient's Maiden Name: MARGIE	Phone:

Nearest Relative	Admission Data
KIRBY, WILLIE 1016 W. 15th St. Columbia, SC 29063 IRMO SC 29063 Home Phone: (803) 253-1860 Rel: OTH Business Phone: KIRBY, WILLIE 1016 W. 15th St. Columbia, SC 29063 IRMO SC 29063 Home Phone: (803) 253-1860 Rel: OTH Business Phone: WAFFLE HOUSE BROAD RIVER RD IRMO SC 29063 Home Phone: Rel: Business Phone: (803) 253-1860	Account Number: H00044591931 Unit Number: M001114430 Admit Date: 3/20/2010 Admit Time: 14:50 ER MD: Triage Time: Prim Care MD: 4025 ER PHYS

Guarantor	Emergency Contact
MILES, VIRGINIA A 716 ZIMMERMAN DR APT 1 COLUMBIA SC 29210 Home Phone: (803) 665-2811 Business Phone: Rel: SP SS: 443-25-721 Occ: Employer:	KIRBY, WILLIE 1016 W. 15th St. Columbia, SC 29063 IRMO SC 29063 Home Phone: (803) 253-1860 Rel: OTH Business Phone: KIRBY, WILLIE 1016 W. 15th St. Columbia, SC 29063 IRMO SC 29063 Home Phone: (803) 253-1860 Rel: OTH Business Phone:

Patient Fact Sheet

WAFFLE HOUSE
BROAD RIVER RD

IRMO SC 29063

Home Phone: Rel:

Business Phone: (803)732-1232

Insurance Information

Ins: SELF PAY

Insured: MILES, VIRGINIA A

Policy Number:

Group Number:

Rel: SP

Phone Number

FIN SP

Auth Number

Patient Name **MILES, VIRGINIA**Medical Record # **M001114430**Account Number **H00044591931**Date **3/20/2010****Lexington Medical Center**ID **H00044591931****Emergency Department Record****History of Present Illness**

PO

47 Year Old Female Patient Presents with re-evaluation L ankle for 1 week(s). The Onset is blunt trauma (mild) (S/P). The symptoms are Mild, achey. Additional Symptoms or Pertinent History also involve recheck. to get splint off. no significant complaints. feels better. Radiating Symptoms include no radiations. ED records-seen 1 week ago for blunt trauma, multiple negative plain films. ankle splint placed and was told to follow up with ortho if pain not any better, was not told to come back here to have splint removed.

Review of Systems

(Symptoms and Signs not covered in the HPI)

GU	Neuro	Neg	ENT	Resp	Musculoskeletal	Pos	Hematologic/Lymphatic
Skin	Neg	Psych	Heart	GI	Endocrine		Allergic/Immunologic
☐ All other ROS negative				Constitutional Sxs	Neg		Eyes - Neg

☒ Vital Signs/Triage/Nursing Notes Reviewed and Agree☐ Hx unobtainable due to Tx urgency or poor historian(s)☐ Additional Information from Police, Ambulance, Nursing Home or Relatives☒ Old Medical Records Reviewed**Past Medical History**☐ No Relevant PMHx ☐ Asthma ☐ COPD ☐ CAD ☐ Cancer ☐ CHF ☐ CVA

Other PMHx

☐ Diabetes ☒ HTN ☒ Psychiatric ☐ Renal ☐ Seizures

Depression

Social History☐ No Relevant SoHx ☐ ETOH ☐ Drugs ☐ Smoking Additional Sx**Family History**☐ No Relevant FmHx**Physical Exam**Exam Time **15:08**

PO

General Appearance WD WN A&O in NAD cooperative c good affect

HEENT

Chest

Abdomen

GU

Extremities LLE ankle swollen, bruised nl limited ttp

Neuro CN2-12 intact, Motor (=) 5/5 Gross sensory intact Gait NL s ataxia

Skin L ankle bruising, swelling

Back

Neck

Lymphatics

Repeat or Additional Clinical Notes

MD	Notes	Time	
PO	.O'Malley MD-Primary ED Provider. Any lab test results, plain radiographs, ABG's, EKG's, and Pulse Oximetry were independently visualized and interpreted by this provider.	3/20/2010	15:08
PO	recheck of likely sprain. neg films last week. aircast and refer to ortho for long term management	3/20/2010	15:21
PO	No Sx(s) or Objective findings that are life or limb threatening. Medically Screened and Stable for disposition(Transfer) from the ED.	3/20/2010	15:22

Patient Name **MILES, VIRGINIA**Medical Record # **M001114430**Account Number **H00044591931**Date **3/20/2010****Diagnostics**

Specimen Collected / ECG / Rad Ordered

MD Initials Time	Diagnostic Ordered	Result Interpretation	Result Reviewed By	RN Initials Time
JLM 3/20/2010 14:56	Pulse Ox	Normal	PO	JLM 14:56

Medical Orders

MD Initials Time	Order	RN Initials Time	Location-Response-Quantity	RN Remarks
PO 3/20/2010 15:22	Air Cast/stirrup Splint to affected area	JLM 15:25		

MD Procedures

Procedure Description	Comments
Time 15:22 MD JLM	
Pulse Ox	

Recommended LOS/CPT/ICD-9 CodePhysician's LOS = **3 99283-26**Nurse's LOS = **3 611 APC****Diagnoses**

re-evaluation	V67.9 ICD-9
Ankle Sprain	845.00 ICD-9

Secondary Diagnoses

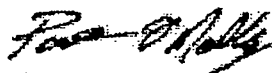
Hypertension	401.9 ICD-9
Psychiatric	298.9 ICD-9

	MD	MD Time		RN	RN Date/ Time	Admit to
Disposition	PO	15:22	Discharge Home	JLM	3/20/2010	15:30
Condition	PO	15:22	Good	JLM	15:30	

Physician (Print) **O'Malley, Patrick MD (PO)**

Other Physicians

Physician Signature

Primary RN (Print) **MacDougall, Jamie L (JLM)**

Other Nurses

Veronee, Jo Ann RN (JAV)~MacDougall, Jamie L (JLM)~Barrett, Freda LPN (FCB)~

This chart has been electronically signed via the Empower software.

Patient Name **MILES, VIRGINIA**

Medical Record **M001114430**

Account Number **H00044591931**

Date **3/20/2019**

Patient Name **MILES, VIRGINIA**

Medical Record Number **M000114430**

Account Number **H00044591931**

Date **3/20/2010**

**Lexington Medical Center
Emergency Department**

Discharge Instructions

Discharge Date/Time **3/20/2010 3:30:14 PM**

Diagnoses

re-evaluation

Ankle Sprain

Additional instructions were given on the following conditions:

☐ Abdominal Pain	☐ Neck Strain
☐ Allergic Reaction/ Rash	☐ Nose Bleed
☐ Asthma/ Wheezing/COPD	☐ Middle Ear Infection
☐ Back Pain	☐ PID/STD
☐ Chest Pain	☐ Sore Throat/Pharyngitis
☐ Conjunctivitis	☐ Threatened Abortion
☐ Corneal Abrasion/Eye Injury	☐ Toothache
☐ Fever	☐ Upper Respiratory Infection
☐ Fracture/Sprain/Contusion	☐ UTI/Kidney Infection
☐ Gastritis/Ulcer	☐ Vaginal Bleeding
☐ Head Injury	☐ Vomiting/Diarrhea
☐ Headache	☐ Wound Care/Sutures
☐ High Blood Pressure	
☐ Kidney Stone	

Other

You have been evaluated today by a healthcare provider practicing Emergency Medicine. In most cases follow-up care is recommended with your regular Doctor, HMO or Clinic.

Within 2 days ☐ Doctor ☐ HMO ☐ Clinic

Call for appointment as soon as possible. IDENTIFY Yourself as an ER Patient. If you don't have a doctor or need a specialist follow up with:

Physician/Specialist

Address

Phone

Additional Instructions:

If the symptoms worsen or new symptoms develop return to the Emergency Department (ED) immediately. Call your doctor for additional questions.

ED phone number: 803-791-2350

return or call for worsening symptoms or any concerns. follow up with orthopedist for definitive management. ice packs 3 times a day

Work/School Restriction:

☐ You may return to work/school today.

You may return to work/school

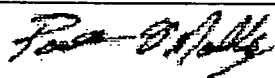
This information may be released to my school or employer

☐ If you had x-rays or blood tests, please note that these don't always show what's wrong. Sometimes x-rays don't show broken bones. After review by a specialist you will be notified if there is an abnormality.

☐ You may not drive or operate heavy machinery because the medicines you have may make you sleepy.

Physician (Print)

O'Malley, Patrick MD (PO)



Nurse Signature:

X

Patient Signature

X

Patient Name **MILES, VIRGINIA**Medical Record # **M001114430**Account Number **H00044591931**Date **3/20/2010****Lexington Medical Center****Emergency Department Nursing Notes and Vital Sign**Time Entered: **3/20/2010 15:30** Vitals Taken By: **JLM**

Temperature	Pulse	Blood Pressure	Respirations	Pulse Ox	Pain Scale
O	Right	R			Pain Level- Pt Accepts
T	Left	L			
R					

Nursing Notes

Time	Note Entered	RN Initials	Note
3/20/2010	14:57	JLM	told to have splint removed in 3 days if better. Pt desires removal. Unsure if improved. Pt with multiple complaints. Self driven.
3/20/2010	15:00	FCB	to er room 63 via wheelchair
3/20/2010	15:29	JLM	Discharge w/c. D/C Instructions and Rx Given. Verbalizes Understanding. Pt states per previously Rx med was too strong. Pt told to try motrin/tylenol.

Primary Nurse Diagnosis	Primary Nurse Outcome	Achieved
comfort, Altered R/T foot pain	Relates Increased Comfort	Yes

Primary RN (Print) **MacDougall, Jamie L (JLM)**

Lexington Medical Center Triage

Category **5 Routine**

Arrival Date/Time Triage Time Waiting Rm Time Exam Rm Time

3/20/2010 14:50 14:51 14:51 14:58

PCP Staff Status Family Physician

None none

Transported by

Self

Mode

W/C

Historian

Self

Police Dept

Custody

Notification

Beat #

Chief Complaint

re-evaluation

Onset Time

Location

Associated Sxs / Pertinent History

had splint placed 1 week ago, told to come back here to have it removed.

Past Medical History

Additional: Depression

☐ No Significant PMHx

☐ Asthma ☐ COPD ☐ CAD ☐ Cancer ☐ CHF ☐ CVA

☐ DM ☒ HTN ☒ Psych ☐ Renal ☐ Seizures ☐ Substance Abuse

Medications

☐ No Meds ☐ Unknown

Medications Verified

Cymbalta; Klonopin; Seroquel

Allergies

Codeine

Immunizations UTD? UTD

TB Hx, PPD Pos or No

Infectious Exposures?

*If yes to TB or Infectious question take precautions

Mental Status / Psychological Eval

Alert Oriented

Glasgow Coma Scale

Eye

Verbal

Motor

Total 0

Skin

Color Normal

Temp Normal

Moist Normal

OB/Gyn

LNMP 1wk No

G P Ab Miscarriages

0 0 0 0

Extremities

Pulses

ROM

No ROM

Lung Sounds

R L

Clear ☐ ☐

Diminished ☐ ☐

Wheezes ☐ ☐

Rales ☐ ☐

Rhonchi ☐ ☐

Retractions ☐ ☐

Eyes

Equal ☐ ☐

Reactive ☐ ☐

Fixed ☐ ☐

Constricted ☐ ☐

Dilated ☐ ☐

Caused ☐ ☐

Nutrition

Normal

Fall Risk Assessment

No Fall Risks Identified

Plan

WR Time 14:51

Triage Nurse: Veronee, Jo Ann RN (JAV)

Triage II: JLM

Triage III: JLM

Domestic Violence Assessment

Are you being hurt by someone you live with or who takes care of you?

Yes/No NA

* Mandatory completion of Domestic Violence Referral.

Functional D/C Planning

Daily Living Independent

Living Conditions Own Home

Going Home with Self

Assessing Patient's, Child's or Parent's readiness to learn

Primary Language English

Assessed Disability No Disability

Communication Barrier ☐

Language Translator ☐

Motivation Level Low

Knowledge Level Low

Comprehension Ability Low

Patient Name

MILES, VIRGINIA

Medical Record Number

M001114430

Account Number

H00044591931

DOB

Age

47 Years

Gender

Female

Vitals

Tem

Oral

97.7

Rectal

Tympanic

Pulse

Right

Left

70

Respirations

18

Blood Pressure

Right

Left

137/94

Pulse Ox

98%

Weight (Kg)

52 Kg

Head

Height

Circumferenc

Pain Scal

Severe

7 - 8

☐ LWBS ☐ LW Completed Tx/ Eloped ☐ AMA ☐ AMA Refused ☒ Patient Rights and Responsibilities and Guide to Pain Management given to Patient, Family, and/or Caretaker

Patient Name **MILES, VIRGINIA**

Medical Record No. **M001114430**

Account Number **H00044591931**

3/20/2010

Emergency Department Pharmacy and Supply Charges

Interventions

Intervention Name	Comments	Charge Code
Air Cast/stirrups	Splint to affected area	

Diagnostics

Diagnostic Ordered	Charge Code
Pulse Ox	0

Nurse LOS	3	611 APC	Charge Code	0

Lexington Medical Center

Medication Reconciliation

Patient Name **MILES, VIRGINIA**

Medical Record No. **M001114430**

Account Number **H00044591931**

Date of ED Visit **3/20/2010**

Allergies

Codeine

Home Medications

Cymbalta
Klonopin
Seroquel

Medications Administered in the Emergency Department

Medication Prescription provided on Discharge

Patient Name **MILES, VIRGINIA**

Medical Record Number **M01 4430**

Account Number **H00044591931**

Date **3/20/2010**

**Lexington Medical Center
Emergency Department**

Discharge Instructions

Discharge Date/Time **3/20/2010 3:25:38 PM**

Diagnoses

re-evaluation

Ankle Sprain

Additional instructions were given on the following conditions:

Abdominal Pain

Allergic Reaction

Asthma

Back Pain

Chest Pain

Conjunctivitis

Corneal Abrasion/Eye Injury

Fever

Fracture/Sprain/Strain

Head Injury

High Blood Pressure

Kidney Stone

Neck Strain

Nose Bleed

Middle Ear Infection

PID/STD

Sore Throat/Pharyngitis

Threatened Abortion

Toothache

Upper Respiratory Infection

UTI/Kidney Infection

Vaginal Bleeding

Vomiting/Diarrhea

Wound Care/Sutures

Other:

Work/School Restriction:

☒ You may return to work/school today.

You may return to work/school

This information may be released to my school or employer

If you had x-rays or blood tests, please note that these don't always show what's wrong. Sometimes x-rays don't show broken bones. After review by a specialist you will be notified if there is an abnormality.

You may not drive or operate heavy machinery because the medicines you have may make you sleepy.

You have been evaluated today by a healthcare provider practicing Emergency Medicine. In most cases follow-up care is recommended with your regular Doctor, HMO or Clinic.

Within **2** days Doctor HMO Clinic

Call for appointment as soon as possible. IDENTIFY yourself as an ER Patient. If you don't have a doctor or need a specialist follow up with:

Physician/Specialist

Address

Phone

Additional Instructions:

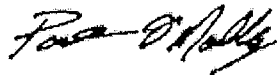
If the symptoms worsen or new symptoms develop return to the Emergency Department (ED) immediately. Call your doctor for additional questions.

ED phone number: 803-791-2350

return or call for worsening symptoms or any concerns. follow up with orthopedist for definitive management. ice packs 3 times a day

Physician (Print)

OMalley, Patrick MD (PO)



Nurse Signature:

Patient Signature

Lexington Orthopaedics

Lexington

811 West Main Street

Suite 101

Lexington, South Carolina 29072

PATIENT: MILES, VIRGINIA		VISIT DATE: 03/26/2010
PATIENT #: 00001581094	XXX-X3-7207	D: 03/26/2010 4:16 PM
PHYSICIAN: T. J. DALEY, PA-C		T: 03/29/2010 12:12 PM / dji
		DATE OF BIRTH: [REDACTED]

CHIEF COMPLAINTS

1. Left foot and ankle pain.
2. Left shoulder pain.

HISTORY OF PRESENT ILLNESS: The patient is a 47-year-old female who is here today with a couple of issues. The first is left foot and ankle pain and secondly left shoulder pain. She was on a hood of a car. This happened on March 14, 2010. Essentially, she works at the Waffle House. She is not sure how the altercation began but apparently she wind up in the front of a lady's car that she states was drunk. The lady started to take off and she jumped on the hood. The patient then went down about a block apparently and went into the Burger King parking lot and stopped the car quickly. She rolled off the car and landed onto the ground. She has had left shoulder pain and left ankle pain since that time. She was treated at the Emergency Department and released. She states she was placed into a posterior splint on the left foot and ankle but she stopped wearing this in a couple of weeks. She has pain about her left foot, mainly towards the lateral aspect. She has pain in the left shoulder towards the AC area. She has had no numbness or tingling or paresthesias.

PAST MEDICAL HISTORY/PAST SURGICAL HISTORY: The patient's history including allergies, medications, past medical history, surgical history, family history, and review of systems was reviewed with the patient. This was signed by myself and entered into the permanent record.

PHYSICAL EXAMINATION

GENERAL: Walks with a limp, not putting a lot of weight down on left side.

SKIN: Within normal limits.

HEENT: Conjunctivae and sclerae within normal limits.

MUSCULOSKELETAL: **LEFT SHOULDER:** Shows full range of motion. Clinically stable. Neurovascularly intact. Tender to palpation over AC joint. Rotator cuff strength appears to be intact as well. **LEFT FOOT:** Shows ecchymosis, swelling, and tenderness through lateral aspect. Tender over base of 5th metatarsal. Good pulses. EHL and FHL unremarkable.

RADIOGRAPHIC STUDIES: Three views of left foot, AP, lateral and oblique are taken today. These show a fracture, some small displacement of the radial styloid of the left foot. Review of x-rays from outside source, ankle films are negative as well as plain chest x-ray which shows no significant migration of the distal clavicle.

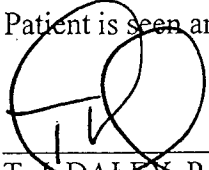
IMPRESSION

1. Fracture of 5th metatarsal of left foot.
2. Acromioclavicular separation of left shoulder, grade 1.

PATIENT: MILES, VIRGINIA	
PATIENT. #: 00001581094	XXX-X3-7207

RECOMMENDATIONS: Referable to her shoulder, she states she is getting better. This should progressively improve for her. I am a little concerned about the diastasis she has of the 5th metatarsal fracture. Nonetheless, will place her in a boot currently and see how she continues to improve. She can work in 2 weeks, weightbearing in the boot at work. Rx Norco for pain.

Patient is seen and evaluated by T.J. Daley, PA-C. Chart to be reviewed by Dr. Kingery.



T. J. DALEY, PA-C

DAVID KINGERY, MD

cc:

768-0246

Lexington

ORTHOPAEDICS



Lexington Medical Center
Your partner for health and wellness®

Matison L. Boyer, M.D.

Date:

3-29-10

Barnaby T. Dedmond, M.D.

Patient Name: Virginia Miles

David R. Kingery, M.D.

Chart # 1581094/37207

Andy T. McGown, M.D.

Doctor TJ Dakey

James C. McIntosh, M.D.

Charge For: Disability Form

FMLA

Return to Work Form

Financial Protection Form

Other:

Lexington Medical Park 2
146 North Hospital Drive
Suite 140
West Columbia, SC 29169
Phone (803) 936-7230
Fax (803) 936-8097

1 Forms @ \$20.00 per Form

811 West Main Street
Suite 101
Lexington, SC 29072
Phone (803) 936-7230
Fax (803) 358-6208

Amount Due: \$ 20.00

Payment

☒ Cash ☐ Check# ☐ MC/VISA

Amount Paid \$

Initials

I have read and understand the Form Completion Policy.

* Patient Signature Virginia Miles

Lexington Orthopaedics

West Columbia

146 North Hospital Drive, Suite 140
West Columbia, South Carolina 29169

PATIENT: MILES, VIRGINIA		VISIT DATE: 04/16/2010
PATIENT #: 00001581094	XXX-X3-7207	D: 04/16/2010 5:05 PM
PHYSICIAN: T. J. DALEY, PA-C		T: 04/20/2010 9:33 AM / wbj
		DATE OF BIRTH: [REDACTED]

HISTORY OF PRESENT ILLNESS: The patient returns today for recheck of her left foot 5th metatarsal base fracture. She states she is not getting a whole lot better. She has been in her boot. She really is just weepy today in the office. They discussed options at work. She states work will not let her work in her boot because of the open toe.

PHYSICAL EXAMINATION

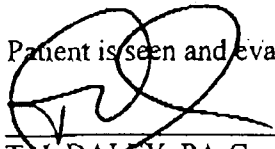
LEFT FOOT: Still has some swelling about the left foot 5th metatarsal base. Pulses intact. Neuro intact. Not a whole lot of swelling, however.

RADIOGRAPHIC STUDIES: Three views of the left foot, AP, lateral and oblique, were taken. Shows fracture at the base of the 5th metatarsal with slight diastasis. Do not see any evidence of bony healing as of yet.

IMPRESSION: Fracture, 5th metatarsal base as above, left foot.

RECOMMENDATIONS: Discussed her options as far as working. States she needs to work, but she really cannot get around very well in regular shoe wear yet and they will not let her work in the boot. I told her the only option she would have then if she needs to work would be a total contact cast closing in the toe. We will try this for her and have her return in 3 weeks' time

Patient is seen and evaluated by T.J. Daley, PA-C. Chart to be reviewed by Dr. Boyer.


T. J. DALEY, PA-C


MATISON L. BOYER, MD

cc:

Matison L. Boyer
M.D.

Barnaby T. Dedmond
M.D.

David R. Kingery
M.D.

James C. McIntosh
M.D.

Randall S. Suarez
M.D.

TJ Daley, PA-C

Lexington Medical Park 2
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Phone: (803) 936-7230
FAX: (803) 936-8097

811 West Main Street
Suite 101
Lexington, SC 29072
Phone: (803) 936-7230
FAX: (803) 358-6208

7033 St. Andrews Road
Suite 104
Columbia, SC 29212
Phone: (803) 936-7230
FAX: (803) 749-9675

DATE: 4/16/00
Virginia Miles IS UNDER MY MEDICAL CARE
DIAGNOSIS: Fracture 5th metatarsal
OUT OF WORK/SCHOOL-
BEGINNING: _____ RETURNING: _____

HE/SHE IS NOW ABLE TO RESUME **LIGHT DUTY** WORK
ON _____

_____ TO A LIMITED SHIFT
_____ TO A SEATED POSITION
_____ NO BENDING
_____ NO STOOPING OR SQUATTING (DEEP KNEE BENDS)
_____ NO CLIMBING (STAIRS, LADDERS, ETC.)
_____ NO PUSHING/PULLING
_____ NO LIFTING MORE THAN _____ POUNDS
_____ NO USE OF THE LEFT RIGHT UPPER EXTREMITY
_____ NO OVERHEAD LIFTING

HE/SHE IS NOW ABLE TO RESUME **FULL WORK DUTIES** WITH **NO**
RESTRICTIONS ON:

RETURN TO WORK DATE: 4/17/00

COMMENTS: MUST WEAR CAST @ work
may work in cast

SIGNED: [Signature]

Lexington Orthopaedics

West Columbia

146 North Hospital Drive, Suite 140
West Columbia, South Carolina 29169

PATIENT: MILES, VIRGINIA		VISIT DATE: 04/19/2010
PATIENT #: 00001581094	XXX-X3-7207	D: 04/21/2010 8:20 AM
PHYSICIAN: T. J. DALEY, PA-C		T: 04/21/2010 11:56 AM / cgu
		DATE OF BIRTH: [REDACTED]

HISTORY OF PRESENT ILLNESS: The patient returns, trouble with her total contact cast. She has been able to work and did okay over the weekend.

PHYSICAL EXAMINATION: Again quite weepy on exam, states she feels like her toe is not bothering her.

PROCEDURE: Removed the cast. Applied a new total contact cast.

RECOMMENDATION(S): Not sure what else we have to offer her. Try to work in this. Return at regular scheduled appointment.

Patient was seen and evaluated by T. J. Daley, PA-C. Chart to be reviewed by Dr. McIntosh.

T. J. DALEY, PA-C

JAMES C. MCINTOSH, MD

cc:

Lexington Orthopaedics

West Columbia

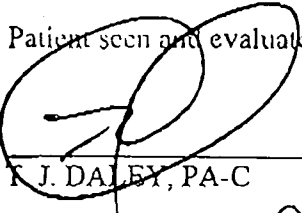
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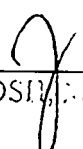
PATIENT: MILES, VIRGINIA		VISIT DATE: 04/19/2010
PATIENT #: 00001581094	XXX-X3-7207	D: 04/21/2010 8:20 AM
PHYSICIAN: T. J. DALEY, PA-C		T: 04/21/2010 9:45 AM / kss
		DATE OF BIRTH: 0 [REDACTED]

ADDENDUM

She called her work, and they told her she could not work in the cast or the boot. At this point, I am going to place her into the boot, continue our normal plans, and see her back in 3-4 weeks. I have not written her out but state that if they cannot accommodate her to work in the boot, then she must be out.

Patient seen and evaluated by TJ Daley, PA-C; chart to be reviewed by Dr. McIntosh.



T. J. DALEY, PA-C

JAMES C. MCINTOSH, MD

cc:

Marison L. Boyer
M.D.

Barnaby T. Dedmond
M.D.

David R. Kingery
M.D.

James C. McIntosh
M.D.

Randall S. Suarez
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TJ Daley, PA-C

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Suite 104
Columbia, SC 29212
Phone: (803) 936-7230
FAX: (803) 749-9675

DATE: 4/19/10

Virginia Miller IS UNDER MY MEDICAL CARE

DIAGNOSIS: Foot Fracture

OUT OF WORK/SCHOOL-
BEGINNING: _____

RETURNING: _____

HE/SHE IS NOW ABLE TO RESUME LIGHT DUTY WORK
ON _____

_____ TO A LIMITED SHIFT

_____ TO A SEATED POSITION

_____ NO BENDING

_____ NO STOOPING OR SQUATTING (DEEP KNEE BENDS)

_____ NO CLIMBING (STAIRS, LADDERS, ETC.)

_____ NO PUSHING/PULLING

_____ NO LIFTING MORE THAN _____ POUNDS

_____ NO USE OF THE LEFT RIGHT UPPER EXTREMITY

_____ NO OVERHEAD LIFTING

HE/SHE IS NOW ABLE TO RESUME FULL WORK DUTIES WITH NO
RESTRICTIONS ON:

RETURN TO WORK DATE: _____

COMMENTS: I HAD RETURNED PT TO WORK 4/10/10
& Manager was unable to Accommodate
Restrictions & put her out.

SIGNED: _____

Matison L. Boyer
M.D.

Barnaby T. Dedmond
M.D.

David R. Kingery
M.D.

James C. McIntosh
M.D.

Randall S. Suarez
M.D.

TJ Daley, PA-C

Lexington Medical Park 2
146 North Hospital Drive
Suite 140
West Columbia, SC 29169
Phone: (803) 936-7230
FAX: (803) 936-8097

811 West Main Street
Suite 101
Lexington, SC 29072
Phone: (803) 936-7230
FAX: (803) 358-6208

7033 St. Andrews Road
Suite 104
Columbia, SC 29212
Phone: (803) 936-7230
FAX: (803) 749-9675

DATE: 4-19-10

Virginia Miles IS UNDER MY MEDICAL CARE

DIAGNOSIS: Foot Ex

OUT OF WORK/SCHOOL-
BEGINNING: _____ RETURNING: _____

HE/SHE IS NOW ABLE TO RESUME **LIGHT DUTY** WORK
ON _____

_____ TO A LIMITED SHIFT
_____ TO A SEATED POSITION
_____ NO BENDING
_____ NO STOOPING OR SQUATTING (DEEP KNEE BENDS)
_____ NO CLIMBING (STAIRS, LADDERS, ETC.)
_____ NO PUSHING/PULLING
_____ NO LIFTING MORE THAN _____ POUNDS
_____ NO USE OF THE LEFT RIGHT UPPER EXTREMITY
_____ NO OVERHEAD LIFTING

HE/SHE IS NOW ABLE TO RESUME **FULL WORK DUTIES** WITH **NO**
RESTRICTIONS ON:

RETURN TO WORK DATE: _____

COMMENTS: PT MUST WEAR BOOT @
work - IT UNABLE TO ACCOMMODATE
will need to be out of work until
Next time.

SIGNED: _____

Matison L. Boyer
M.D.

Barnaby T. Dedmond
M.D.

David R. Kingery
M.D.

James C. McIntosh
M.D.

Randall S. Suarez
M.D.

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FAX: (803) 749-9675

DATE: 4/19/10

Virginia Mader IS UNDER MY MEDICAL CARE

DIAGNOSIS: Foot Fracture

OUT OF WORK/SCHOOL-
BEGINNING: _____

RETURNING: _____

HE/SHE IS NOW ABLE TO RESUME LIGHT DUTY WORK
ON _____

- _____ TO A LIMITED SHIFT
- _____ TO A SEATED POSITION
- _____ NO BENDING
- _____ NO STOOPING OR SQUATTING (DEEP KNEE BENDS)
- _____ NO CLIMBING (STAIRS, LADDERS, ETC.)
- _____ NO PUSHING/PULLING
- _____ NO LIFTING MORE THAN _____ POUNDS
- _____ NO USE OF THE LEFT RIGHT UPPER EXTREMITY
- _____ NO OVERHEAD LIFTING

HE/SHE IS NOW ABLE TO RESUME FULL WORK DUTIES WITH NO
RESTRICTIONS ON:

RETURN TO WORK DATE: _____

COMMENTS: I HAD RETURNED PT TO WORK 4/10/10
Manager was UNABLE TO ACCOMMODATE
Restrictions & PUT HER OUT.

SIGNED: _____

Lexington Orthopaedics

West Columbia

146 North Hospital Drive, Suite 140
West Columbia, South Carolina 29169

PATIENT: MILES, VIRGINIA		VISIT DATE: 05/05/2010
PATIENT #: 00001581094	XXX-X3-7207	D: 05/05/2010 1:00 PM
PHYSICIAN: T. J. DALEY, PA-C		T: 05/06/2010 9:17 PM / cgu
		DATE OF BIRTH: [REDACTED]

HISTORY OF PRESENT ILLNESS: The patient returns for recheck of her 5th metatarsal fracture. She essentially is doing somewhat better. She has been in her boot. A little bit of pain still about the fracture site.

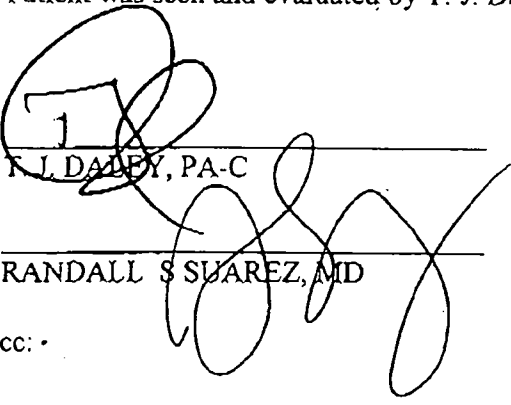
PHYSICAL EXAMINATION: Really no swelling, deformity or signs of infection. Tenderness over fracture site. Some tightness to range of motion, which is expected.

RADIOGRAPHIC STUDIES: Three views are taken of the left foot, AP, lateral and oblique that shows slight comminution to the 5th metatarsal styloid fracture without any evidence of concrete callous formation at this time.

IMPRESSION RADIOGRAPHIC STUDIES: Fifth metatarsal fracture left foot as above.

IMPRESSION/ RECOMMENDATIONS: I have discussed this at length with her. It has been 6 to 7 weeks. I think that we should D/C the boot, start to get her back to work on Monday 4 hours a day. She may have some swelling and pain with this but I think she is going to have to tolerate a little bit of this. If she has not seen progressive improvement, she may need further treatment but we will give this some time now. I have filled out some paperwork for her referable to her restrictions, etc. Do 4 hours a day for 2 weeks, then return to full duty. Return here in 6 weeks.

Patient was seen and evaluated by T. J. Daley, PA-C. Chart to be reviewed by Dr. Suarez.


T. J. DALEY, PA-C

RANDALL S SUAREZ, MD

cc: •

PATIENT: MILES, VIRGINIA		VISIT DATE:
PATIENT #: 00001581094	XXX-X3-7207	D: 05/13/2010 12:06 PM
PHYSICIAN: MATISON L. BOYER, MD		T: 05/14/2010 9:01 AM / dji
		DATE OF BIRTH: [REDACTED]

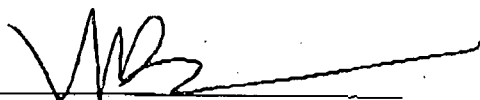
HISTORY OF PRESENT ILLNESS: The patient is a very pleasant 47-year-old female who has been followed by Mr. T. J. Daley for a 5th metatarsal fracture. Since the last time we saw her, she has been very anxious, upset and painful. The foot is very uncomfortable. It radiates up into her leg.

RADIOGRAPHIC STUDIES: Radiographs show some disuse osteopenia. She has a very tiny 5th metatarsal avulsion. Additional on x-rays show some calcaneocuboid joint narrowing, perhaps some irregularity of her subtalar joint as well.

PHYSICAL EXAMINATION: Red, swollen, stiff, dysesthetic foot entirely consistent with a rampant case of RSD. Very tender to palpation anywhere on foot. Overly anxious. Tearful. Agitated. Pressured for her speech. Very reluctant to allow me to examine foot at all. Diffusely tender and not even related to area of 5th metatarsal fracture.

IMPRESSION: Acute reflex sympathetic dystrophy attack, previous left 5th metatarsal styloid injury (insignificant).

PLAN: Talked to her that I think most of it maybe coming from her RSD and it certainly may be a component to some other injury on the foot, fracture or otherwise. At this point, it is apparent that we need to start treating her RSD aggressively. Talked about having her referred for therapy. Give consideration to putting her on either Neurontin or Lyrica but she is on Seroquel and a number of other agents that may not do well with that. Talked about starting off with therapy, see if we can get her progressed on her weightbearing, get rid of the crutches, get her into a regular shoe. Return in about 2-3 weeks. At some point, if it continues to be this problematic, we may need to have her referred to a neurologist.



MATISON L. BOYER, MD

cc:

Marison L. Boyer
M.D.

Barnaby T. Dedmond
M.D.

David R. Kingery
M.D.

James C. McIntosh
M.D.

Randall S. Suarez
M.D.

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Suite 104
Columbia, SC 29212
Phone: (803) 936-7230
FAX: (803) 749-9675

DATE: 5/5/10

Virginia Miles IS UNDER MY MEDICAL CARE

DIAGNOSIS: Foot

OUT OF WORK/SCHOOL

BEGINNING: 5-5-10 RETURNING: 5-10-10

HE/SHE IS NOW ABLE TO RESUME LIGHT DUTY WORK
ON 5/10/10

☐ TO A LIMITED SHIFT
☐ TO A SEATED POSITION
☐ NO BENDING
☐ NO STOOPING OR SQUATTING (DEEP KNEE BENDS)
☐ NO CLIMBING (STAIRS, LADDERS, ETC.)
☐ NO PUSHING/PULLING
☐ NO LIFTING MORE THAN _____ POUNDS
☐ NO USE OF THE LEFT RIGHT UPPER EXTREMITY
☐ NO OVERHEAD LIFTING

HE/SHE IS NOW ABLE TO RESUME FULL WORK DUTIES WITH NO
RESTRICTIONS ON

RETURN TO WORK DATE: 5/24/10

COMMENTS: LIMIT 4 hours/day (Shift)

SIGNED: [Signature]

SOVA Employer's Report - Lost Wages / Support Rev. 6/08

State Office of Victim Assistance ♦ 1205 Pendleton St., Brown Bldg. Room 401, Columbia, SC 29201 ♦ Phone: (803) 734-1900 ♦ Fax: (803) 734-2261

SOVA Claimant/Applicant filing for benefits (print full name) Virginia A. Miles

Job Type Sales person Social Security No. [REDACTED] Date of Birth [REDACTED]

Employer: An application for assistance has been filed for the person listed above.

Please complete this form and return it to SOVA as soon as possible; a fax is acceptable.

Date the above person was first employed by you 10 / 1 / 2008

Date he/she was first absent due to crime related injuries 3 / 15 / 2010

Date he/she returned to work part time, if applicable 4 / 17 / 2010

Date he/she returned to work full time / /

Date he/she was terminated, if no longer employed by you / /

Insurance Type and Policy No.

Health/Medical # Disability #

Was this employee compensated for time absent from work? No If so, how much?

Daily Work Schedule: from 2 am/pm to 9 am/pm or 9pm - 7am

Average work hours per week 35 Average overtime per week 0

Average hourly wage ~~7.75~~ 3.09 + tips Overtime hourly wage 0

Gross salary per week 275 - 375 Average commissions per week 0

Employer Waffle House Address 7813 Broad River Rd. Phone No. (803) 732 1232

Person Completing Form (print) JAMES KEARSE Signature [Signature]

Title Unit Manager Date 4/30/12 Comments?

**Further documentation may be required to receive lost wages/support, i.e., W-2, pay stubs, or tax returns. Wages will be offset by other sources such as annual or sick leave, social security or disability.

SOVA Physician's Disability Report Lost Wages Rev. 6/08

State Office of Victim Assistance ♦ 1205 Pendleton St., Brown Bldg. Room 401, Columbia, SC 29201 ♦ Phone: (803) 734-1900 ♦ Fax: (803) 734-2261

An application for assistance has been filed with our office for the crime victim listed below.
Please complete this form and return it to us as soon as possible; a fax is acceptable.

Full name of injured patient

Virginia Niles

Social Security No.

[REDACTED]

Date of Birth

1 [REDACTED]

Date the patient was first seen by you

3/14/10

Diagnosis:

Left foot fracture & Ankle

Briefly describe extent and location of injuries:

Left foot & Ankle

Did the patient sustain any disability?

☒ Yes

No

(Please circle one.)

If yes, is the disability solely a result of this injury?

☒ Yes

No

(Please circle one.)

Please explain:

fell off of hood of car

Patient will be totally unable to work from

3/14/10 through

Patient will be partially unable to work from

3/14/10 through

Has the patient been discharged from your care?

Yes

☒ No

(Please circle one.)

Has payment been filed with any of the following?

Medicaid

Yes

☒ No

Policy #

Medicare

Yes

☒ No

Policy #

Workers' Compensation

Yes

☒ No

Other insurance or program

Yes

☒ No

Company or Agency

Address

Type or print physician's name

[Signature]

Phone

(803) 932-7230

Signature of physician

Date

1/1/10

Address of physician

146 N. Hospital Dr. Ste 40, W. Columbia SC 29169

AGENCY I.D.
SC0320700

INCIDENT REPORT

CASE NUMBER

10-03394

NCIC

INQ. ENTD.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, 13A		☒ YES ☐ NO	☐ YES ☒ NO	PARKING LOT/GARAGE		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgs. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
2.		☐ YES ☐ NO	☐ YES ☐ NO			
3.		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		ZIP CODE		WEAPON TYPE		
WAFFLE HOUSE - 7813 BROAD RIVER ROAD IRMO SC		29063		MOTOR VEHICLE		
INCIDENT DATE		24 HR. CLOCK	TO DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	
03/14/2010		05:00	03/14/2010	06:30	DISP. DATE DISP. TIME TIME ARRIVED DEPART. TIME	
					03/14/2010 0510 0513 0830	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
MILES, VIRGINIA		#1 #2 #3		J (S) O U	W	F
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
7620 ZIMMERMAN DRIVE, APT 105		COLUMBIA		SC	29210	OUT OF TOWN
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
MILES, VIRGINIA		#1 STRANGER #2 #3		J (S) O U	W	F
HEIGHT		WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.	
503		115	BRO	BRO		
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
		COLUMBIA		SC	29210	OUT OF TOWN
VISIBLE INJURY (VICT. 1)		POSS. INTERNAL INJURY, OTHER MAJ. INJURY, SEVERE LACERATIONS		COMPLAINT OF ANY NON-VISIBLE INJURIES:		
☒ YES ☐ NO ☐ EXPLAIN -				☒ YES ☐ NO ☐		
VICTIM (NO. 1) USING: ALCOHOL		DRUGS:		TYPE:		
☐ YES ☒ NO ☐ UNK		☐ YES ☒ NO ☐ UNK				
TWO-MAN VEH.		ONE-MAN VEH.		DETECTIVE/SPL. ASMT.		
☐		☐		☐		
OTHER		ALONE		ASSISTED		
☐		☐		☐		
* J - This Jurisdiction. S - State. O - Out of State. U - Unknown.						
SUBJECT NO. 1		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE
☒ SUSPECT		HOWES, KELLEY MAE		W	F	23
☐ RUNAWAY		FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.		ETH.	DATE OF BIRTH	HEIGHT
☐ WANTED						505
☒ WARRANT		ADDRESS		CITY	STATE	ZIP CODE
☒ ARREST 1		126 S. BAYVIEW DR		IRMO	SC	29063
☒ JAIL		SUBJECT (NO. 1) USING: ALCOHOL:		ARRESTED NEAR OFFENSE SCENE		DATE/TIME OF OFFENSE
☐ SUMMONS		☒ YES ☐ NO ☐ UNK		☐ YES ☒ NO		03/14/2010 05:10
		DRUGS: ☐ YES ☐ NO TYPE: ☒ UNK		TOTAL # ARRESTED 1		DATE/TIME OF ARREST
						03/14/2010 06:39
ON 03/14/2010 AN ARGUMENT ENSUED AT THE WAFFLE HOUSE, THE INCIDENT LOCATION, BETWEEN AN EMPLOYEE, BRITTANY MASSALOU, AND A CUSTOMER, TIFFANY GIBSON. DURING THE ARGUMENT, A WAFFLE HOUSE EMPLOYEE CALLED IRMO POLICE DEPARTMENT.						
THE SUBJECT, KELLEY MAE HOWES, AND GIBSON EXITED THE WAFFLE HOUSE AND GOT INTO THE LISTED VEHICLE. THE VICTIM WALKED OUTSIDE AND TOLD THE SUBJECT, WHO WAS THE DRIVER, NOT TO LEAVE. THE SUBJECT BACKED OUT OF A PARKING AREA AND STARTED DRIVING TOWARD THE VICTIM. THE VICTIM JUMPED UP ON THE HOOD OF THE LISTED VEHICLE IN AN ATTEMPT TO AVOID BEING RUN OVER. THE VEHICLE EXITED THE WAFFLE HOUSE ONTO BROAD RIVER ROAD, WITH THE VICTIM ON THE HOOD. THE VEHICLE DROVE SOUTHBOUND, PASSING THE GAFF BAR AND GRILL AND TURNING INTO THE BURGER KING, LOCATED AT 7703 BROAD RIVER ROAD, WHICH WAS AROUND 524 FEET. THE VICTIM THEN EXITED THE HOOD OF THE VEHICLE,						
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
TYPE (GROUP)						TOTAL VALUE
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						
SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE		ADM. CLOSED
☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☒ ARRESTED UNDER 18
						☐ ARRESTED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE:		1. ☐ OFFENDER DEATH.		2. ☐ NO PROSECUTION.		3. ☐ EXTRADITION DENIED.
						4. ☐ VICTIM DECLINES COOPERATION
						5. ☐ JUVENILE - NO CUSTODY
REPORTING OFFICER		DATE		UNIT NUMBER		APPROVING OFFICER
PERRY, D		03/14/2010		82		PERRY, D.
						DATE
						03/14/2010
						UNIT NUMBER
						82
FOLLOW-UP INVESTIGATION		OFFICER BEZA, J				03/14/2010
☒ YES ☐ NO						

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AGENCY I.D.
SC0320700

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

10-03394

NCIC

INO. ENTO.

☒ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 OF 4 PAGES

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)			VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH.			
	☐ VICTIM #	MASSALOU, BRITTANY			#1	#2	#3	☒ S	O	W	F	19		N		
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.										
	☐ RUNAWAY	508	150	BRO	BRO											
	☐ WANTED	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE	EVENING PHONE						
	☐ WARRANT	17 [REDACTED]			IRMO	SC	29063	NEW FRIARS GATE	[REDACTED]	[REDACTED]						
	☐ ARREST	☐ VICTIM NO.	☐ VISIBLE INJURY	☐ NO	☐ YES	☐ COMPLAINT OF ANY NON-VISIBLE INJURIES		☐ VICTIM USING: ALCOHOL		☐ NO	☐ YES	☐ UNK	☐ TWO-MAN VEH.	☐ DETECTIVE / SPLASMT.	☐ ALONE	
	☐ JAIL	EXPLAIN -			☐ NO		☐ YES	☐ DRUGS		☐ NO	☐ YES	TYPE:	☐ UNK	☐ ONE-MAN VEH.	☐ OTHER	☐ ASSISTED
	☐ SUMMONS	☐ SUBJECT NO.			USING ALCOHOL			☒ NO	☐ YES							
	☒ WITNESS	1			USING DRUGS:			☒ NO	☐ YES	TYPE: ☐ UNK						

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)			VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH.			
	☐ VICTIM #	HILL, ROBERT E.			#1	#2	#3	☒ S	O	W	M	45		N		
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.										
	☐ RUNAWAY	508	210	BLN	BLU											
	☐ WANTED	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE	EVENING PHONE						
	☐ WARRANT	[REDACTED]			IRMO	SC	29063	NEW FRIARS GATE	[REDACTED]	[REDACTED]						
	☐ ARREST	☐ VICTIM NO.	☐ VISIBLE INJURY	☐ NO	☐ YES	☐ COMPLAINT OF ANY NON-VISIBLE INJURIES		☐ VICTIM USING: ALCOHOL		☐ NO	☐ YES	☐ UNK	☐ TWO-MAN VEH.	☐ DETECTIVE / SPLASMT.	☐ ALONE	
	☐ JAIL	EXPLAIN -			☐ NO		☐ YES	☐ DRUGS		☐ NO	☐ YES	TYPE:	☐ UNK	☐ ONE-MAN VEH.	☐ OTHER	☐ ASSISTED
	☐ SUMMONS	☐ SUBJECT NO.			USING ALCOHOL			☒ NO	☐ YES							
	☒ WITNESS	2			USING DRUGS:			☒ NO	☐ YES	TYPE: ☐ UNK						

PULLING OFF A WINDSHIELD WIPER WITH HER. THE VICTIM LANDED ON THE GROUND IN THE PARKING LOT OF THE BURGER KING.

EMS WAS NOTIFIED AND RESPONDED TO THE BURGER KING FOR THE VICTIM WHO HAD VISIBLE INJURIES TO HER HEAD AND LEFT ARM. THE VICTIM WAS TRANSPORTED TO THE LEXINGTON MEDICAL CENTER FOR EVALUATION. OFFICER T. WILLIAMS MADE CONTACT WITH THE VICTIM AT THE HOSPITAL, AND THE VICTIM GAVE A WRITTEN STATEMENT. PHOTOS WERE TAKEN OF THE VICTIM'S INJURIES.

THE SUBJECT DROVE TO THE IRMO POLICE DEPARTMENT AND WAS LOCATED BY OFFICER J. GANTT AND CORPORAL D. DECHMAN. GIBSON GAVE CORPORAL DECHMAN A WRITTEN STATEMENT OF THE INCIDENT.

JURISDICTION OF THEFT
LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY
LAW ENFORCEMENT AGENCY

STATUS	TYPE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.			
		SERIAL AND/OR OWNER APPLIED NO.		STATE			
		YEAR OF REGISTRATION		YEAR OF EXPIRATION	YEAR	MAKE	TYPE
		MODEL		STYLE	COLOR	BRAND NAME	CALIBER
		NIC NO.		DENOMINATION	ISSUER	SECURITIES DATE	
		MISCELLANEOUS					

TYPE (GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							

☒ YES	☐ NO	☒ YES	☐ NO	☐ ACTIVE	☐ ADM. CLOSED	☒ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
				☐ UNFOUNDED		☒ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
REPORTING OFFICER		DATE		UNIT NUMBER		APPROVING OFFICER	
PERRY, D		03/14/2010		82		PERRY, D.	
						DATE	
						03/14/2010	
						UNIT NUMBER	
						82	
				FOLLOW-UP INVESTIGATION		OFFICER BEZA, J	
				☒ YES ☐ NO		03/14/2010	

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CAD INCIDENT REPORT

DATE	TIME	EVENT ID	PHONE	ESN	Police	File	RMS
2010 03 14 05:12:00		100314-057036P	(803) 722-1232	108	IRPD	17B	RICH EMS
OWNER	ADDRESS	CITY	GRID	CODE			
WAFFLE HOUSE #1198	7813 BROAD RIVER RD		D7X1				

CALLER : WAFFLE HOUSE #1198 IRMO
 LOCATION : 7703 BROAD RIVER RD
 BUSINESS : BURGER KING
 CROSS 1 : COLUMBIANA DR
 CROSS 2 : NONE
 NATURE : CIVIL CIVIL DISTURBANCE
 LAT/LON : 34 06 5 N 81 10 55 W

***** REMARKS *****

05:12:24 ZT VERY ACTIVE
 05:12:32 ZT FEMALE THROWING STUFF EVERYWHERE
 05:12:36 ZT CALLER WAS EMPLOYEE
 05:12:39 ZT CALLER HUNG UP
 05:12:52 ZT CALLING BACK
 05:13:03 JH OFFICER(S) ASSIGNED TO UNIT 812 : PITTMAN, PAUL
 05:13:11 JH OFFICER(S) ASSIGNED TO UNIT 810 : PERRY, DON
 05:13:11 JH PRIMEUNIT CHANGED FROM 812 BY JH
 05:13:34 JH OFFICER(S) ASSIGNED TO UNIT 814 : HARE, DONNIE
 05:13:38 JH PRIMEUNIT CHANGED FROM 810 BY JH
 05:14:09 ZT THEY HAVE ONE OF THE WAITRESSES ON THE HOOD OF THEIR CAR
 05:14:21 ZT EMPLOYEE REFUSED TO GIVE ANY INFO
 05:14:31 ZT JUST SAID SHE WOULD TALK TO THE OFFICERS WHEN THEY GOT THERE
 05:16:56 JH 810 OUT AT BK MALE ON THE GROUND
 05:17:10 JH 814 OUT WITH 810
 05:18:41 JH 47 YO FEMALE LACERATIONS TO THE HAND LEFT ANKLE PAIN
 05:18:45 JH CON AND BRE
 05:18:56 JH TAG EXT598
 05:19:20 JS OFFICER(S) ASSIGNED TO UNIT 1 : WAMPLER, BOBBY; JOHNSTON, SUZY
 05:22:44 JH ALSO POSS HEAD INJURY
 05:22:46 JS NATURE CHANGED FROM CIVIL BY JS
 05:22:46 JS NATURE CHANGED FROM CIVIL BY JS
 05:26:33 JH OBVIOUS CONTUSION TO HER HEAD
 05:26:55 AMN KELLY HOWES IS AT THE POLICE DEPARTMENT STATES A WAITRESS HIT HER IN THE HEAD
 05:27:04 AMN 391-5091
 05:27:41 JH OFFICER(S) ASSIGNED TO UNIT 822 : FOSTER, CHARLES
 05:27:41 JH PRIMEUNIT CHANGED FROM 1 BY JH
 05:27:41 JH PRIMEUNIT CHANGED FROM 1 BY JH
 05:30:29 JH DL 100C9829
 05:31:18 JH OFFICER(S) ASSIGNED TO UNIT 824 : HARE, DONNIE
 05:31:19 JH PRIMEUNIT CHANGED FROM 822 BY JH
 05:31:19 JH PRIMEUNIT CHANGED FROM 822 BY JH
 05:32:01 JH 824 OUT AT PD WITH TWO SUBJ
 05:33:38 JH DL 1000745036
 05:44:54 JS ENRT LEX NE SPINAL
 05:54:33 JH OFFICER(S) ASSIGNED TO UNIT 803 : RINGER, BRETT
 05:57:24 JS CALL (100314-057036M) CLOSED BY JS
 06:39:43 JH ONE IN CUSTODY AT IRPD
 07:02:24 KP ALVIN S GLENN BEG 21262 W/F
 07:09:35 KP 822 W/F ESCORT 125 ST ALBANS CT BEG 7966 VEHICLE 3
 07:14:31 KP SCHROEDERS TOWING ASSIGNED BY DISPATCH AT 03/14/2010 07:13:36. REASON -
 A, LOC - IRMO PD, UNIT - 821, OWNER - GLEASON, VIVAN MAE, ADDR - 125 SAINT ALBANS CT IRMO SC,
 TAG - SC EXP598, VEH - 2007 MITS GALANT.
 07:15:25 KP 822 ONSCENE END 7987
 07:19:36 KP 822 CLEAR FROM ST ALBANS ENROUTE TO LMC FOR FOLLOW UP
 07:25:06 KP 810 END 21284 AT ALVIN S GLENN
 07:30:12 KP 822 OUT AT LMC
 08:05:18 KP
 810 CLEA ALVIN S GLENN
 08:05:33 KP 810 CLEAR ALVIN S GLENN
 08:25:14 KP 810 BACK IN TOWN

09:10:50 KP OFFICER(S) ASSIGNED TO UNIT 822 : FOSTER, CHARLES
 09:13:07 KP PRIMEUNIT CHANGED FROM 824 BY KP
 09:13:07 KP PRIMEUNIT CHANGED FROM 824 BY KP
 09:27:15 KP 822 CLEAR FROM LMC ENROUTE BACK TO TOWN
 09:27:37 KP CALL (100314-057036P) CLOSED BY KP

***** UNITS *****

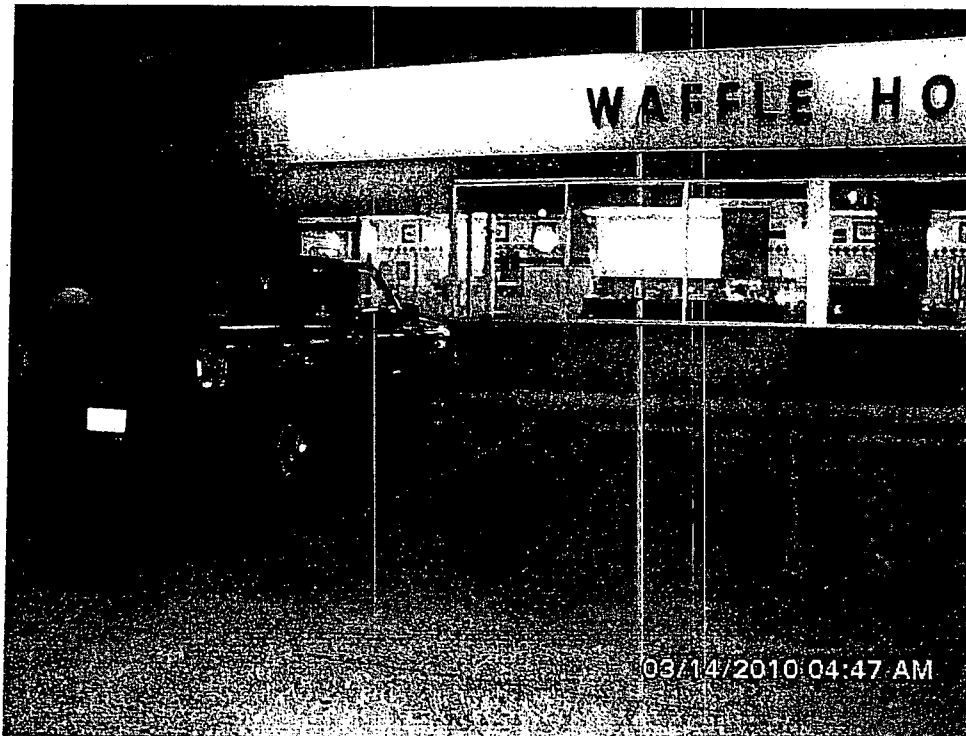
UNIT	DISP	ENRT	ONSC	ENRH	ONSH	CLRD	RUN NUMBER
803	05:54:32	05:54:32	05:54:32	00:00:00	00:00:00	09:27:37	0310-003394
	7703 BROAD RIVER RD	()					
810	05:13:10	05:13:10	05:17:30	00:00:00	00:00:00	06:06:20	0310-003394
	7613 BROAD RIVER RD	()					
812	05:13:02	05:13:02	05:17:24	00:00:00	00:00:00	06:26:05	0310-003394
	7613 BROAD RIVER RD	()					
814	05:13:33	05:13:33	05:17:27	00:00:00	00:00:00	06:23:47	0310-003394
	7613 BROAD RIVER RD	()					
822	05:27:39	05:27:39	05:28:52	00:00:00	00:00:00	06:26:02	0310-003394
	7703 BROAD RIVER RD	()					
P 822	09:10:50	09:10:50	09:10:50	00:00:00	00:00:00	09:27:37	0310-003394
	7703 BROAD RIVER RD	()					
P 824	05:31:17	05:31:17	05:31:24	00:00:00	00:00:00	09:10:24	0310-003394
	7703 BROAD RIVER RD	()					

***** WRECKERS *****

WRECKER	DATE	R LOCATION	TAG	NOTES
SCHROEDERS T	07:13:36 A	IRMO PD	SC EXP558	

SHIPPED	ADVISED	DISPATCHED	ON SCENE	CLEARED
2010-03-14 05:12:18	2010-03-14 05:13:02	2010-03-14 05:13:02	2010-03-14 05:17:24	2010-03-14 09:27:37
DISPOSITION				CT ZT
REPORT REPORT WRITTEN				DP JH

IRMO POLICE DEPARTMENT
Media Report



Name: NONE
File Type: OTHERS
Link To: NONE
Tatto/Scar:
Position:
Date: 3/14/2010
Notes:

IRMO POLICE DEPARTMENT
Media Report



Name: NONE
File Type: OTHERS
Link To: NONE
Tatto/Scar:
Position:
Date: 3/14/2010
Notes:

IRMO POLICE DEPARTMENT
Media Report



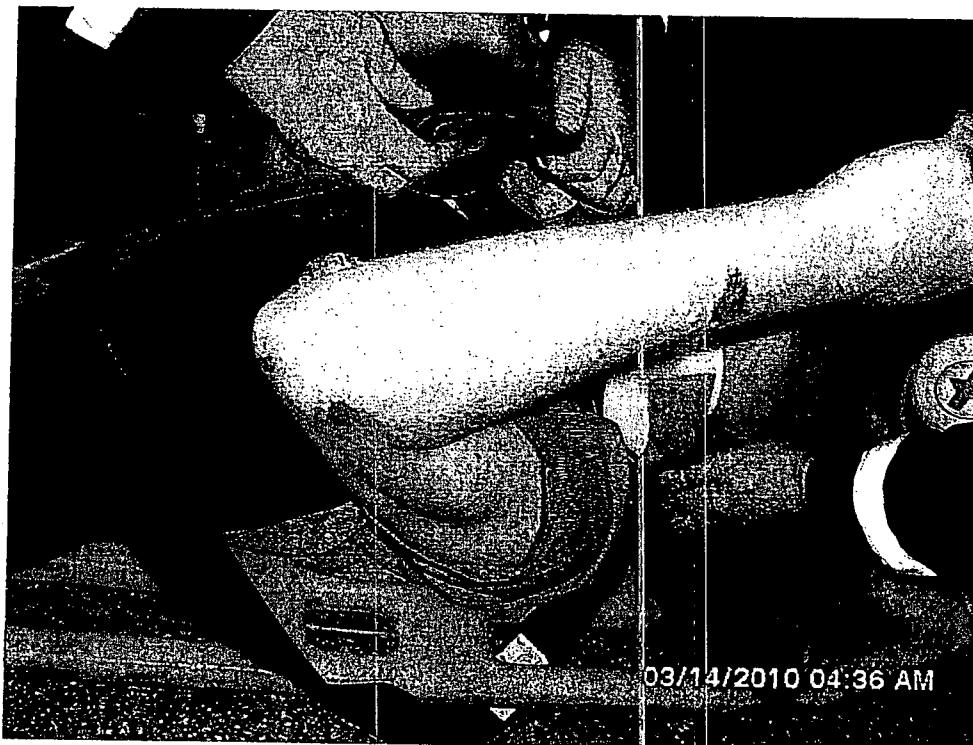
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Position:
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IRMO POLICE DEPARTMENT
Media Report



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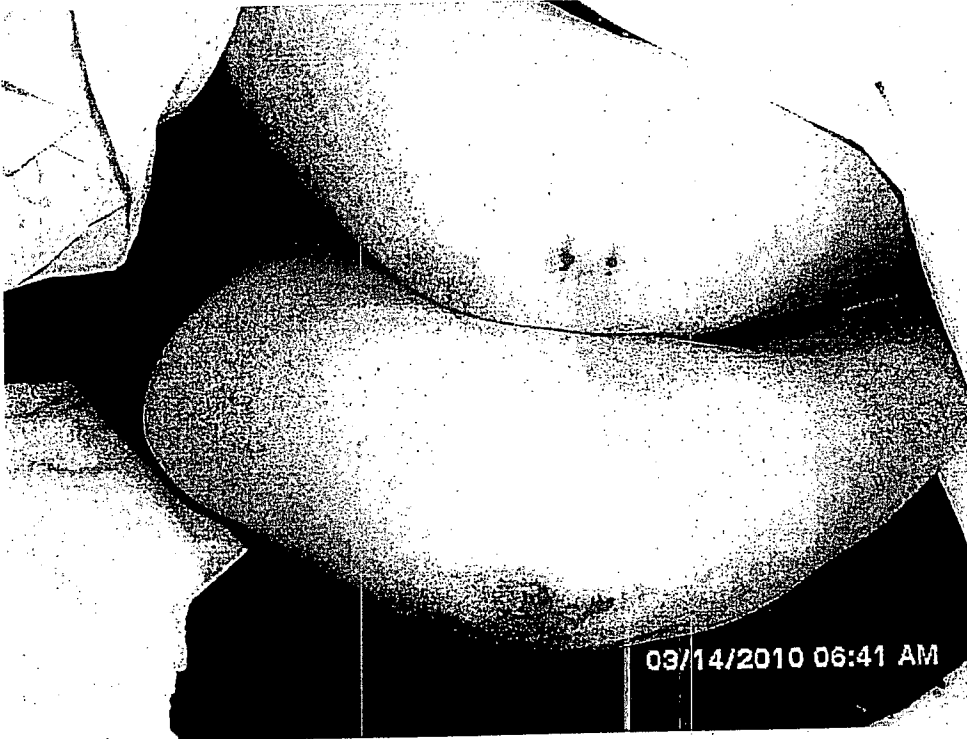
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Date: 3/14/2010
Notes:

IRMO POLICE DEPARTMENT
Media Report



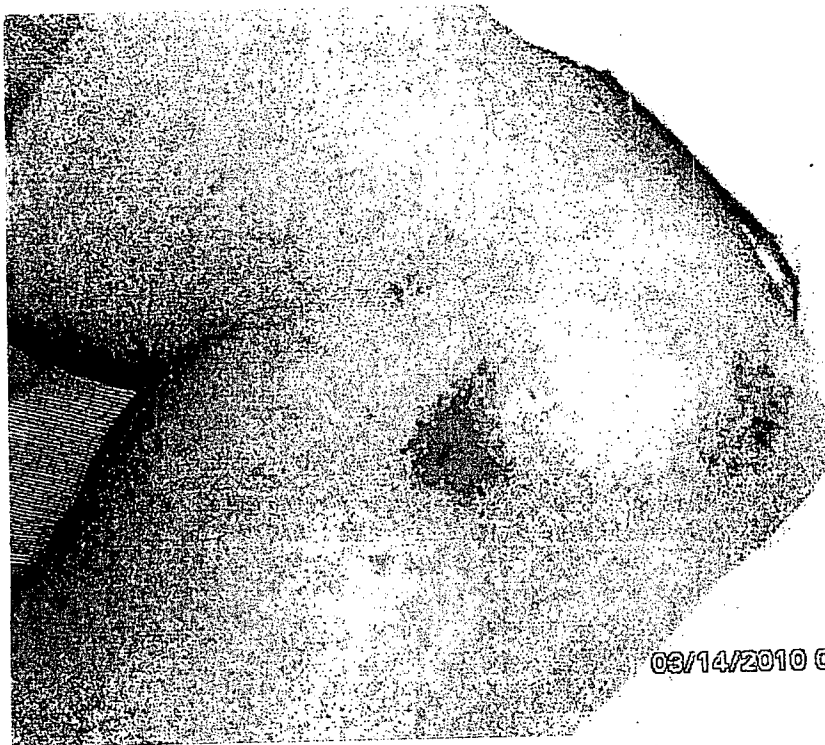
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Position:
Date: 3/14/2010
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IRMO POLICE DEPARTMENT
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Media Report



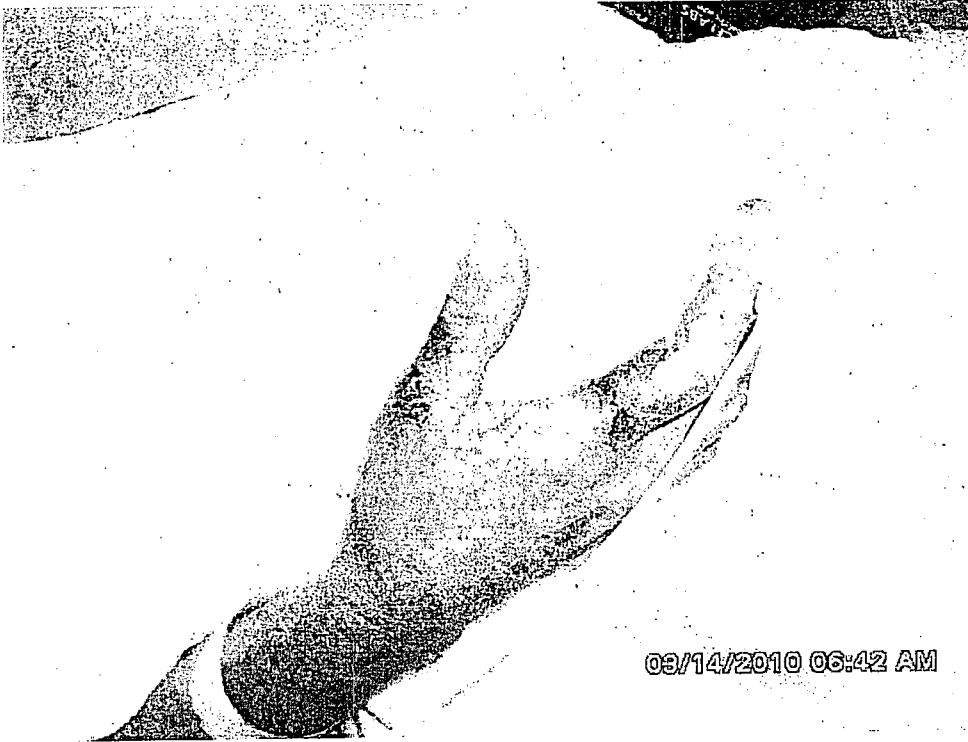
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IRMO POLICE DEPARTMENT
Media Report



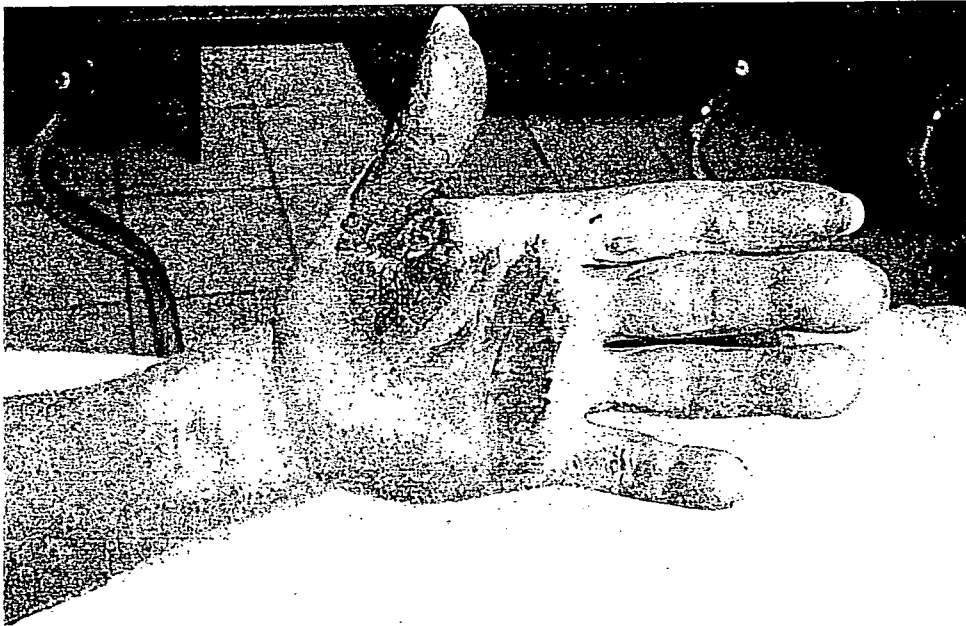
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IRMO POLICE DEPARTMENT
Media Report



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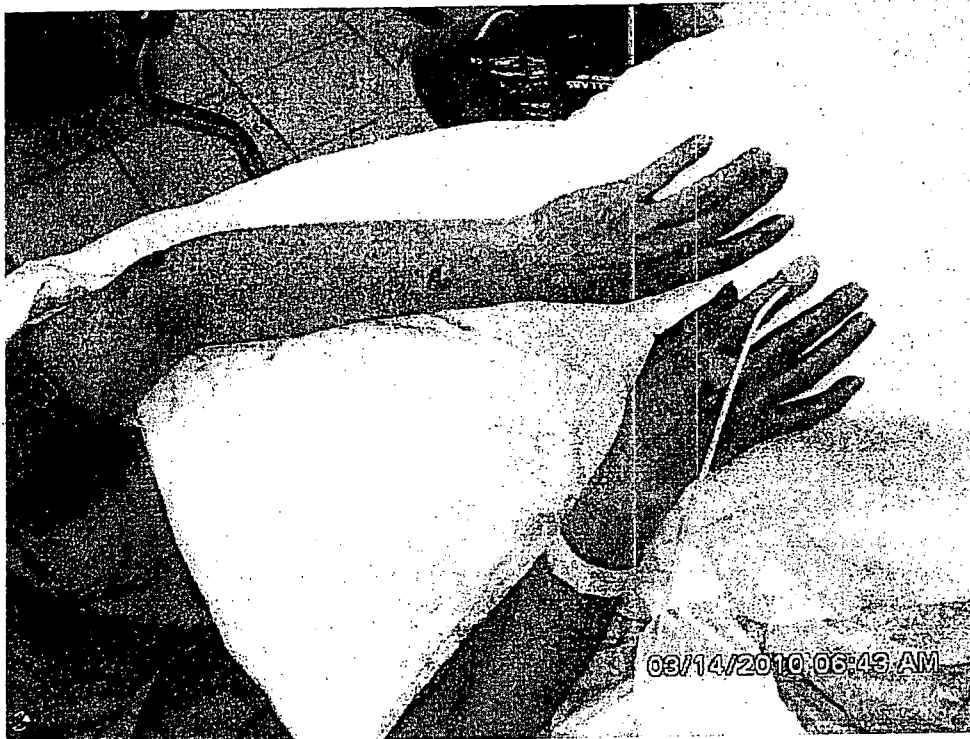
IRMO POLICE DEPARTMENT
Media Report



03/14/2010 06:42 AM

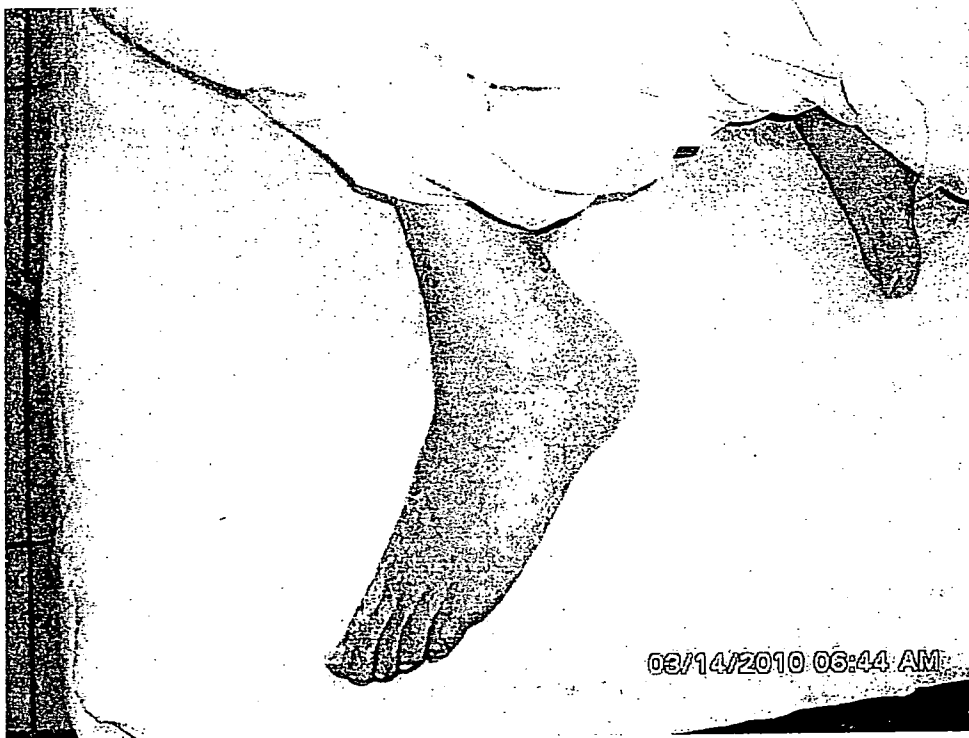
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IRMO POLICE DEPARTMENT
Media Report

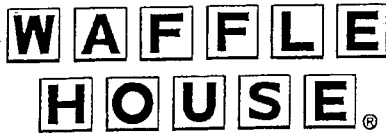


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Position:
Date: 3/14/2010
Notes:

IRMO POLICE DEPARTMENT
Media Report



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File Type: OTHERS
Link To: NONE
Tatto/Scar:
Position:
Date: 3/14/2010
Notes:



UNIT MANAGER SAFETY CHECKLIST

AMERICA'S PLACE TO WORK
AMERICA'S PLACE TO EAT®

The Unit Manager will explain each item below to the Associate, and then both will initial within the ().

GENERAL SAFETY

- (V) (M) Explain proper techniques for cleaning up spills.
- (V) (M) Don't leave slip hazards lying on the floor (i.e. condiments, silverware, etc).
- (V) (M) Explain the safety hazards of the dish machine.
- (V) (M) Demonstrate the proper way to cut produce (i.e. use of sharp knife, cutting glove, a cutting board, etc.)
- (V) (M) Wear proper slip resistant foot wear.
- (V) (M) Keep floor mats clean and in their proper place; replace floor mats with turned up edges.
- (V) (M) Use grill gloves and goggles when cleaning the grill.
- (V) (M) Wash hands regularly with anti-bacterial soap.
- (V) (M) Use cutting gloves when doing prep work or when making salads.
- (V) (M) Report all maintenance problems to management (i.e. leaks, broken appliances, etc).
- (V) (M) Never stand on chairs or roll carts; never climb on storage racks in commissary.
- (V) (M) Report all accidents immediately to management.
- (V) (M) Never come to work under the influence of alcohol or drugs.

BACKROOM SAFETY

- (V) (M) Point out the location of the first aid kit and fire extinguishers.
- (V) (M) Stress that care should be taken when approaching the swinging door.
- (V) (M) Never sit or stand on milk crates or boxes.
- (V) (M) No boxes should be stored in the aisles.
- (V) (M) Stress proper storage of all cleaning items (i.e. mops, brooms, chemicals, etc).

COMMISSARY SAFETY

- (V) (M) Discuss the importance of storing heavy objects low and light objects high.
- (V) (M) Demonstrate proper lifting techniques - lift with a straight back, using the legs.

SECURITY

- (V) (M) Explain what to do in case of a robbery (i.e. full cooperation, no heroes, etc.).
- (V) (M) Don't prop open hallway doors.
- (V) (M) Keep the back door locked at all times. Tag it when management is not at the Unit.
- (V) (M) Drop all large bills. No more than three twenties in the drawer.
- (V) (M) Explain that shift sales volume should never be discussed in front of customers.
- (V) (M) Blinds open at night - ALWAYS.
- (V) (M) If the Unit has panic alarms, explain the proper use of the alarms.
- (V) (M) Explain that NO FIREARMS are allowed on Waffle House property.

HAZARD COMMUNICATION

- (V) (M) Explain the danger of waffle baker cleaner and other cleaning chemicals by showing and reviewing the Hazard Communication Manual (the red folder) with the Associate.

DON'T LOSE YOUR BENEFITS

If you are involved in a work related accident or injury, refusal to take a drug test or testing positive for illegal drugs or alcohol could result in a denial of any Workers' Compensation benefits that might be due!

Virginia A. Miles
Associate Signature

Oct. 13, 08
Date

Unit Manager Signature

Unit Number

(NOT UNDER ARREST)

I, Mike Stray, am not under arrest for, nor am I being detained for

any criminal offenses concerning the events I am about to make known to _____.

I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 24 years of age, and I live at [REDACTED] IRMO SC 29043

I can read and write and completed the 11th grade in school. DOB: 4-8-85

2 guys were asking for the waffle house (giddy) went over to them and told them to quit clown or go outside they started cussing her out (female the driver) told giddy she wasn't getting a tip (one male) then a dollar out giddy saying how you dollar (bitch) I then told him to watch his mouth he said a few words on his way out I then told the (female driver) to get her friend before he gets his ass beat (on his way out the door he looked me in the eye said he'd beat my ass) she told me to not talk about it and be about it I + Brittany then told her to leave she got up cussing at Brittany put her hands up as to hit her and Brittany hit her first she then grab stuff and just started running. They got in the car giddy got behind the car they then tried to run her over she moved to the front and they tried to run her over again she had no choice but to jump on the hood I got in my truck chased and found giddy lying in George King parking lot.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 5:42 A.M. on the Saturday day of MARCH 13, 2010.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS _____ DAY OF _____, 20____

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

Mike Stray
Signature of person giving voluntary statement

WITNESS: U. /

WITNESS: _____ P313

UNIT+A1

PERFORMANCE REVIEW - HourlyAssociate Name: Ginny Miles

SSN: _____

Dept/Unit: 1198

Job Title: _____

Performance Review Period: _____

From FY10 OP5 through FY10 OP11Salesperson**SECTION 1**

	Needs Improvement	Meets Expectations
1. Has the knowledge and skills to perform the essential functions of the job.		☒
2. Displays a good work ethic and helps out with others on the team.		☒
3. Displays professional appearance and communicates respectfully to Customers and to other Associates.		☒
4. Shows up to work consistently and on time.		☒
5. Executes the functions of the job effectively to deliver the Waffle House Customer Experience according to the Waffle House Way.		☒
6. OVERALL EVALUATION		☒

SECTION 2

Comment on overall performance. Explain what's good and what "needs improvement" as scored above.

Ginny is very hardworking and is always willing to help me out with staffing or any other task I need help with. If we can prevent her from getting overwhelmed she will be fine. Don't forget keep thoughts to you-self & don't speak them out loud so others can hear & remember customers are more important than the dishes. Think you
Menu test everyday & POST IT!
Ginny

SECTION 3

Associate should write comments (if any) here:

REQUIRED SIGNATURES

Associate: _____

Virginia Miles
 (signature does not necessarily signify agreement)

Date: _____

3/26/10

Manager/Reviewer: _____

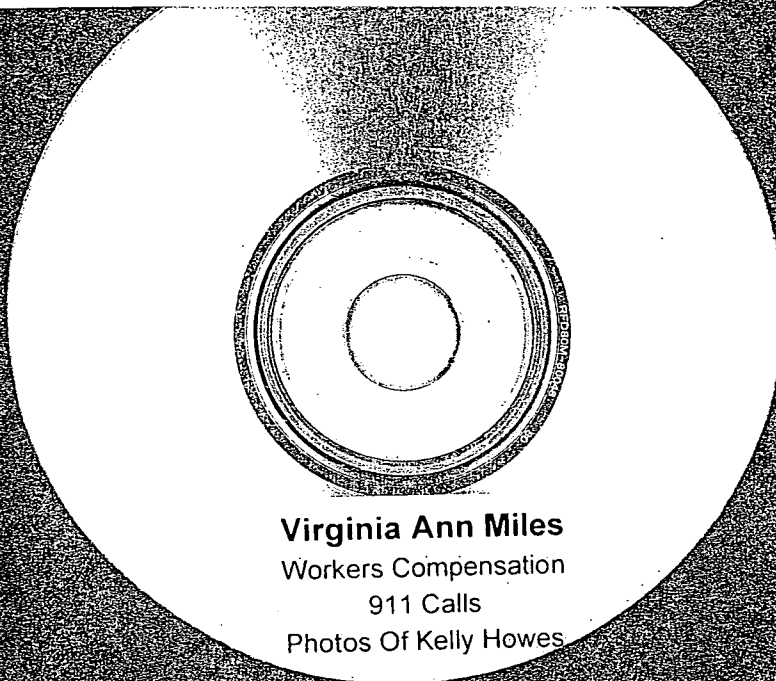
John K...

Date: _____

3/18/10



XXXXXXX



Virginia Ann Miles

Workers Compensation

911 Calls

Photos Of Kelly Howes

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,



Stephen B. Samuels
Samuels Law Firm, LLC
1527 Blanding Street
Post Office Box 50349
Columbia, South Carolina 29250
(803) 779-4000
Stephen@SamuelsLawFirm.net

Attorney for Appellant

Columbia, South Carolina

October 12, 2011