

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2016-002556
Case No. 2014-CP-46-1307

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SC Court of Appeals

Russell Shane Carter, ... Respondent-Appellant,

v.

Bruce Bryant, as Representative for the
Office of the York County Sheriff, ... Appellant-Respondent.

RECORD ON APPEAL - VOLUME II OF II

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1 A. My name is Kevin Gwinn. I am now a correctional
2 officer at the -- for the Bureau of Prisons at the Federal
3 Correctional Institute of Edgefield.

4 Q. Okay. Before we get to that, I'm going to ask a
5 little bit about your background. Okay? Mr. Gwinn, you
6 have a report in front of you ---

7 A. Yes.

8 Q. --- in this case? I'm not going to ask you questions
9 about the report, anything about this just yet. I'm just
10 going to ask you just about your background. Okay?

11 Where were you born?

12 A. In Rock Hill, South Carolina.

13 Q. Okay. And where were you raised?

14 A. In Sharon, South Carolina.

15 Q. And you went to grade school and high school in York
16 County?

17 A. Yes.

18 Q. Where was that?

19 A. I went to elementary school in Hickory Grove, Sharon
20 Elementary and high school at York Comprehensive High
21 School.

22 Q. And did you -- you went to Newberry College. When --

23 A. Yes, I went to Newberry College.

24 Q. Did you -- Did you graduate from Newberry?

25 A. Yes, sir.

1 Q. What year was that?

2 A. I graduated in 2001.

3 Q. And what were your fields of study?

4 A. Sociology with a minor in criminal justice.

5 Q. After college, did you -- Where were you first
6 employed?

7 A. I got my first job working for the school district.

8 Q. Okay. How long did you work for the school district?

9 A. For one year.

10 Q. What did you do for the school district?

11 A. I was a teacher's aide.

12 Q. And after that one year, where did you work, if
13 anywhere?

14 A. I worked for the York County Prison. I was a
15 corrections officer at the prison farm.

16 Q. And how long were you working for the prison farm?

17 A. Two years.

18 Q. Are you a little nervous here today?

19 A. Yes, sir.

20 Q. Okay. I understand. You're no longer a York County
21 Sheriff's Deputy; is that correct?

22 A. Yes, sir.

23 Q. Okay. And I'll ask you questions about that in a
24 moment. Did you have an occasion to go to the Criminal
25 Justice Academy?

- 1 A. Yes.
- 2 Q. And what year was that?
- 3 A. I went in 2005.
- 4 Q. Okay. Did you graduate from the Criminal Justice
- 5 Academy?
- 6 A. Yes, sir.
- 7 Q. Okay. Is that in Columbia?
- 8 A. Yes, sir.
- 9 Q. And at that time where were you employed? What law
- 10 enforcement agency were you employed with?
- 11 A. York County Sheriff's Office.
- 12 Q. And how long were you a York County Sheriff's Deputy?
- 13 A. For ten years.
- 14 Q. When did you leave being a York County Sheriff's
- 15 Deputy.
- 16 A. January of last year.
- 17 Q. Okay. And you've already told us that you work for
- 18 the Federal Bureau of Prisons?
- 19 A. Yes.
- 20 Q. And that's in Edgefield?
- 21 A. Yes.
- 22 Q. As a corrections officer?
- 23 A. Yes.
- 24 Q. You left on good terms with the Sheriff's Office?
- 25 A. Yes, sir.

1 Q. And why did you leave?

2 A. For more opportunities and more finances.

3 Q. Okay. Let me bring you back to April 25th, 2012.

4 Were you on duty at that time?

5 A. Yes, sir.

6 Q. And were you -- What kind of shifts did y'all have
7 back then -

8 A. We had 'em all.

9 Q. --- from the uniform patrol?

10 A. Day shift and night shift.

11 Q. And what shift were you working?

12 A. I would have been on night shift.

13 Q. Let me bring you to about ten o'clock that evening.

14 Did you receive a call from somewhere on Lesslie
15 Highway?

16 A. Yes, sir.

17 Q. And did you receive information by way of dispatch, or
18 how?

19 A. I was dispatched yes, sir..

20 Q. What did you understand what was going on? What did
21 you understand dispatch wanted you to do?

22 A. To be honest with you, I haven't worked for the
23 Sheriff's Office in awhile, so I've got to go back and look
24 at the report that -

25 THE COURT: You've got to - You're a nice size man but

1 you got a soft voice so I need you to -

2 A. Yes, sir.

3 MR. MILLS: Your Honor, at this point I'm not sure
4 what he has in his hand, if he's referring to something
5 while he's testifying.

6 MR. GARFIELD: Could I -- could I see?
7 He's got the report in his hand.

8 MR. MILLS: Your Honor --

9 MR. GARFIELD: Got the warrant.

10 MR. MILLS: I absolutely object to the fact that --

11 THE COURT: I sustain the objection. He can't testify
12 off of that.

13 MR. GARFIELD: Okay.

14 Q. What would -- I don't -- I'm not asking for it to be
15 part of evidence. Let me ask you this. Did you generate a
16 report in this case?

17 A. Yes.

18 Q. Okay. This event happened, this report was generated
19 on -- can you tell me the date?

20 A. I haven't seen one of these in awhile. April 25th,
21 2012.

22 Q. Okay. That was about four and a half years ago?

23 A. Yes, sir.

24 Q. Would -- By looking at the report refresh -- help
25 refresh your recollection of those events?

1 A. Yes.

2 MR. GARFIELD: Your Honor, I think he's allowed to
3 look at the report and refresh his recollection for the
4 questions. Not to make the -

5 MR. MILLS: I object, it's not qualified under the
6 rule, your Honor.

7 THE COURT: I beg your pardon?

8 MR. MILLS: I don't think that qualifies for a
9 refreshed recollection.

10 MR. GARFIELD: Well, I believe he stated that it's
11 been four and a half years since -

12 THE COURT: I'll allow him to rely on it only to
13 refresh your memory.

14 MR. GWINN: Yes, sir.

15 THE COURT: Not for any other reason other than to
16 refresh your memory.

17 MR. GARFIELD: Okay. And thank you, your Honor.

18 Q. Mr. Gwinn.

19 A. Yes, sir.

20 Q. What you have in your hand, the contents of what you
21 have in your hand, who actually prepared that initially?

22 A. I did.

23 Q. Okay.

24 MR. MILLS: What document does he actually have?

25 MR. GWINN: Exhibit Number One.

1 MR. GARFIELD: Can you -- I'm sorry, I'm just going to
2 approach. This is Plaintiff's Exhibit Number One. I guess
3 at his deposition.

4 MR. MILLS: All right. I just didn't know what he
5 had.

6 MR. GARFIELD: Sure.

7 Q. Okay. You came up -- Did you arrive at the residence
8 in which the dispatch had asked you to go to?

9 A. Yes, sir.

10 Q. Okay. Could you please tell the jury what you saw or
11 what you observed when you arrived?

12 A. I saw someone standing in the yard yelling and I saw
13 two people on the porch yelling.

14 Q. Did you see a man on -- did you see one or two people
15 on the porch?

16 A. Two.

17 Q. You saw two people. Okay. Did you see anybody with a
18 weapon, or -- or any -- anything in anyone's hands?

19 A. Yes, sir.

20 Q. Okay. What, if anything, did you see?

21 A. A baseball bat.

22 Q. Okay. You saw a man with a baseball bat?

23 A. Yes, sir.

24 Q. Okay. You said you saw another man. What did you
25 observe about that man?

1 A. To be honest with you when I first arrived I didn't
2 see anybody else on the porch.

3 Q. Okay.

4 A. I didn't see him laying on the porch when I first got
5 there.

6 Q. So, you came to the scene, you saw a man with a
7 baseball bat. Did you approach the man? Did you get
8 closer to him?

9 A. Yes.

10 Q. Okay. What, if anything, did you see or do at that
11 point?

12 A. When I got up on -- got on scene I saw -- when I --
13 when I walked towards -- towards the porch that's when I
14 saw someone laying on the porch.

15 Q. Okay. And --

16 A. And that's --

17 Q. I'm sorry.

18 A. And at that point, you know, I called and said I need
19 EMS, and I also took the name . . .

20 THE COURT: You need to speak up a little bit. I'm
21 having -

22 MR. GWINN: I'm sorry. I don't --

23 THE COURT: That microphone doesn't move, so you'll
24 have to ---

25 MR. GWINN: I don't have a --

1 THE COURT: --- lean up a little bit.

2 MADAM COURT REPORTER: The chair won't either and I'm
3 sorry.

4 MR. GWINN: Yes, ma'am.

5 A. Like I said, at that point I called -- When I saw the
6 man on the porch I called for EMS. And then I also I took
7 the bat from Mr. Carter.

8 Q. Okay. When you called for the EMS would this just be
9 something you called on your police radio?

10 A. Yes, sir.

11 Q. So, the dispatch would contact EMS, or, did you
12 contact EMS directly?

13 A. The dispatcher would.

14 Q. Okay. What, if anything, did you observe about the
15 man, the second man? Not the man with the bat, but the man
16 on the porch.

17 A. He was covered in blood.

18 Q. Did you begin to conduct some type of investigation at
19 this point?

20 A. Yes.

21 Q. Okay. Let's just go over that investigation. The
22 first thing you did, did you have an occasion to ask
23 someone what happened?

24 A. Yes, sir.

25 Q. And who was that?

1 A. I ask everybody on -- on the scene.

2 Q. Did you have an occasion to ask the man with the bat?

3 Did you find out who he was?

4 A. Yes, sir.

5 Q. Did you find out where he lived?

6 A. Yes, sir.

7 Q. Okay. Where did he live?

8 A. At that residence.

9 Q. All right. Did you find out his version of events?

10 A. Yes, sir.

11 Q. Okay. Do you recall his version of events, generally?

12 A. Generally, yes, sir.

13 Q. Okay. Can you please describe, generally, what you --
14 what you learned as far as his version of events? Mr.

15 Carter.

16 A. That the neighbor came over and was banging on the
17 door because they didn't have water and he asked them to
18 leave. And at that time that's where things kind of get
19 conflicting because his wife told one thing and he told me
20 something different.

21 Q. Okay. Well, I'm just going into him first. He gave
22 you a version of events as to what happened; is that right?

23 Is that yes?

24 A. Yes, sir.

25 Q. Okay. After talking to him what, if anything, did you

1 do or ask him to do? This is Mr. Carter the homeowner.

2 A. After speaking with him I ask him to step inside the
3 house until I further do an investigate.

4 Q. What would be the purpose of you asking Mr. Carter to
5 step inside of his house?

6 A. So I can clear the scene and get him away from what's
7 going on outside so I can further figure out what was going
8 on.

9 Q. During that time would you have the occasion to take
10 statements or get versions from the people out there?

11 A. Yes, sir.

12 Q. Did Mr. Carter, who you had asked to step inside, did
13 he comply with your -- your directive?

14 A. He came back outside.

15 Q. So, you're saying he did not comply?

16 A. No, sir.

17 Q. And what, if anything, was he doing coming back
18 outside?

19 A. He came back outside taking pictures with his camera
20 phone.

21 Q. He was taking pictures of what as far as you were
22 concerned?

23 A. Of the gentleman laying on the porch bleeding.

24 Q. Part of your investigation, Mr. Gwinn, did you at some
25 point taken pictures of the individual that had been hurt?

1 A. Yes, sir.

2 Q. And did you do that at some point that night?

3 A. Yes, sir.

4 Q. Now, this individual, Mr. Carter, that was taking
5 pictures, why if anything, did that pose a problem for you
6 or not complying with your directives? Why did that pose a
7 problem for you?

8 A. He was interfering with the investigation.

9 Q. Well, what did you do at that point, if anything?

10 A. I detained him and placed him in my patrol car.

11 Q. Okay. Was he under arrest at this point?

12 A. No, sir. I advised him he wasn't under arrest, he was
13 just being detained.

14 Q. Did you have -- And you said I think a little bit
15 earlier that you also spoke with his wife?

16 A. Yes, sir.

17 Q. Okay. Did you find out her version of events?

18 A. Yes, sir.

19 Q. And you said that they were consistent or inconsistent
20 with what her husband said?

21 A. The majority of it was the same but it was some
22 inconsistencies with what originally happened when the
23 assault took place.

24 Q. Okay. Do you remember what those inconsistencies
25 were?

1 A. I think Mr. Carter said that he came outside and she
2 said that the other gentleman came inside.

3 Q. You're talking about inside. You're talking about the
4 screen door or the threshold of the door?

5 A. Inside the residence.

6 Q. Did you understand that Mr. Carter was taking the
7 point of view that he was protecting his home?

8 A. You say, did I understand that?

9 Q. Did -- Do you understand that's what he was saying?

10 A. Yes, sir.

11 Q. Now, the man that was hurt, did you ever understand or
12 find out who he was?

13 A. Yes, sir.

14 Q. And did you find out what his name was?

15 A. Yes, sir.

16 Q. And what was his name?

17 A. Mr. Faile.

18 Q. And did the EMS ever arrive?

19 A. Yes, sir.

20 Q. And when the EMS arrived where was Mr. Faile and what
21 was his condition?

22 A. He was like, in the -- in the corner where the house
23 and the porch meet. He was like wedged in.

24 Q. He was wedged where the house and the porch meet?

25 A. Yes, sir.

1 Q. On the ground?

2 A. On the porch.

3 Q. On the porch?

4 A. Yes, sir.

5 Q. And you say he was covered in blood?

6 A. Yes, sir.

7 Q. Did part of your investigation include you actually
8 going anywhere else to do interviews?

9 A. Yes, sir.

10 Q. And where was that?

11 A. I went to Piedmont Medical Center.

12 Q. And why did you go to Piedmont Medical Center?

13 A. That's where Mr. Faile was transported.

14 Q. When you went there how was it that a law enforcement
15 officer could just walk up to someone? Do they have a
16 protocol where you could talk to the person or how does
17 that work?

18 A. Yes, sir. Like I go and talk to the ER staff and see
19 if he -- I was able to speak with him.

20 Q. Okay. And did they allow you to do so?

21 A. Yes, sir.

22 Q. And were you able to speak with him?

23 A. Yes, sir.

24 Q. Did he cooperate with you? Did he voluntarily speak
25 with you?

1 A. Yes, sir.

2 Q. And did you -- Can you just generally tell us what --
3 or specifically whatever you recall what Mr. Faile
4 indicated to you at that time?

5 A. Mr. Faile stated that, once again, he went over there
6 because the neighbor didn't -- they didn't have any water
7 and he tried to get the water cut back on. And he told Mr.
8 Carter that he could actually fix it if he showed him where
9 it was at.

10 Q. Okay. And what next?

11 A. He said that he was walking off the porch and that's
12 when he got hit in the back of the head.

13 Q. Is that about it or is there anything else?

14 A. And a fight ensued from there.

15 Q. All right. Do you -- Were you able to see Mr. Faile's
16 head?

17 A. Yes, sir.

18 Q. And how did his head appear to you?

19 A. Yeah. It was kind of swollen in some parts and sunken
20 in in others.

21 Q. Okay. How about his body? Did you have an occasion
22 to look about his body?

23 A. He had bruises all over his body.

24 Q. Now, you mentioned earlier that your -- you had
25 intended to take pictures. Did you take pictures?

1 A. Yes. I took pictures at the ER.

2 Q. Okay. Why did you take pictures at the ER?

3 A. Because I wasn't able to take them on the scene.

4 MR. GARFIELD: Mr. Mills, I've not marked these for
5 identification purposes.

6 Q. I'm going to show you pictures that, --

7 MR. GARFIELD: I'm sorry, your Honor, have not been
8 pre-marked. We could pre-mark all of this as one batch.

9 But I'm just going to --

10 THE COURT: Doing it as one batch makes it a little
11 difficult, because if somebody's going to testify to it ---

12 MR. GARFIELD: Yes, sir.

13 THE COURT: --- they need to be able to identify it
14 for the record.

15 MR. GARFIELD: You are correct. This -- this was out
16 of my hands for a little bit today. I apologize. If --
17 With your Honor's permission, I'm going to get him to just
18 describe in generally, and what he sees, and then we can
19 pre-mark them afterwards?

20 THE COURT: That would be fine.

21 MR. GARFIELD: Or at least mark them.

22 Q. Sir.

23 MR. GARFIELD: Oh, there were some more. Okay.

24 MR. MILLS: Your Honor, if it would speed up the
25 process I'll just agree to let 'em come in.

1 THE COURT: All right.

2 MR. GARFIELD: Okay.

3 THE COURT: In without objection.

4 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBERS ONE THROUGH
5 TWENTY-ONE, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 MR. GARFIELD: Okay. Multiple pictures, your Honor.

7 THE COURT: You want to bound them up and handled it
8 just issue as one?

9 MADAM COURT REPORTER: Judge, might I suggest
10 something?

11 THE COURT: Yes, ma'am.

12 MADAM COURT REPORTER: When he identifies it, lay it
13 down. I've got your marker, your sticker ready.

14 MR. GARFIELD: Okay. Very good. All right. Let's
15 get through these.

16 Q. Can you -- Could you identify what you see in this
17 picture?

18 A. It's just someone's body with a bruise.

19 Q. Okay. Did you take that picture?

20 MR. MILLS: May I come up just to see -

21 THE COURT: Yeah. Certainly.

22 MR. MILLS: Thank you.

23 MR. GARFIELD: Okay.

24 A. Yes, sir.

25 Q. Okay. You took this picture?

1 A. Yes, sir.

2 Q. All right. And do you know where on the body there
3 are bruises?

4 A. It looks like his kind of rib area.

5 Q. Okay.

6 A. Like his rib area.

7 Q. Okay. That's Exhibit Number One.

8 What do we see in Exhibit Number Two?

9 A. A leg. Someone's leg. Mr. Faile's leg with a bruise
10 and a scrape.

11 Q. Okay. Is that pic -

12 A. And some more bruises. Yes, sir, I took this picture.

13 Q. At the hospital?

14 A. Yes, sir.

15 Q. All right. What do we see in Exhibit Number Three?

16 A. Mr. Faile's leg -- eye area with another bruise.

17 Q. How about Exhibit Number Four?

18 A. Mr. Faile's head area with a swollen area and some
19 blood and.

20 Q. And you took this picture?

21 A. Yes, sir.

22 Q. Exhibit Number Five, what do we see in this picture?

23 A. Mr. Faile's head area with . . .

24 MADAM COURT REPORTER: I'm sorry.

25 A. Mr. Faile's head. I'm sorry.

1 Q. I understand, you're soft-spoken. I understand that.
2 And that's on Exhibit Five. What do we see in Exhibit Six?

3 A. Mr. Faile's shoulder and back area and more bruises.

4 MR. GARFIELD: Thank you, Madam Court Reporter.

5 Q. How about Defense Exhibit Number Seven?

6 A. Mr. Faile's leg and knee area and more bruises.

7 Q. Defense Exhibit Number Eight?

8 A. It would be Faile's legs with a scar, a cut, a
9 laceration.

10 Q. Defense Exhibit Number Nine, what do we see here?

11 A. Mr. Faile with a neck brace.

12 Q. Defense Exhibit Number Ten?

13 A. Mr. Faile with some scars on his right shoulder.

14 Q. Defense Exhibit Number Eleven?

15 A. Mr. Faile's leg with another scar.

16 Q. Exhibit Number Twelve.

17 A. Mr. Faile laying in the bed with a brace around his
18 neck and some scars on his face.

19 Q. Exhibit Thirteen?

20 A. Mr. Faile laying in the bed at the ER.

21 Q. And someone was holding his hand here it looks like.

22 A. Yes, sir.

23 Q. Do you know who that was?

24 A. No, sir.

25 MADAM COURT REPORTER: Just a minute. You got it.

1 MR. GWINN: Yes, ma'am.

2 MADAM COURT REPORTER: It's made to stay.

3 MR. GARFIELD: You're doing a great job. I'm so
4 sorry.

5 Q. Defense Exhibit Number Fourteen?

6 A. Mr. Faile's head.

7 Q. Exhibit Fifteen.

8 A. The back of Mr. Faile's head.

9 Q. What do we see on the back of his head, if anything?

10 A. Some blood and some . . .

11 Q. These are mix-matched. So sorry. Exhibit Sixteen?

12 A. Mr. Faile's back. Looks like a scar.

13 Q. We're getting through this. Exhibit Seventeen?

14 A. Mr. Faile's forehead with some blood.

15 Q. Exhibit Eighteen?

16 A. Mr. Faile's back with some scars.

17 Q. Why did you take this picture?

18 A. Because you can see it looks like the form of a bat.

19 MR. MILLS: I'm sorry. Did he testify about whose
20 back that was?

21 BY MR. GARFIELD:

22 A. I said, it looks like the form of a bat.

23 MR. MILLS: I said, but did you testify whose back it
24 was?

25 A. Whose back? Mr. Faile's yes, sir.

1 MR. MILLS: Okay.

2 BY MR. GARFIELD:

3 Q. Exhibit Number Nineteen.

4 A. Mr. Faile's leg with a laceration.

5 Q. Exhibit Twenty?

6 A. I'm not sure if that's a chest or a chest with some
7 blood.

8 Q. Okay. Exhibit Twenty-one?

9 A. Mr. Faile's leg with some bruises and scars.

10 Q. Exhibit Twenty-two?

11 A. The back of Mr. Faile's head with the blood.

12 Q. Exhibit Twenty-three?

13 A. Mr. Faile with blood on his face.

14 Q. Almost done. Exhibit Twenty-four?

15 A. Mr. Faile's hands with lacerations.

16 Q. I don't know the significance of this, but --

17 A. That picture right there while I was in the ER
18 snapping pictures I mistakenly snapped that one but I had
19 to leave it in because I took it.

20 Q. I understand. That's Exhibit Twenty-five I believe.

21 Okay. Did you also have an occasion to take a picture
22 of Mr. Carter at the scene?

23 A. Yes, sir.

24 Q. And did you take this picture?

25 A. Yes, sir.

1 Q. And this is Exhibit Number Twenty-six. Why did you
2 take this picture, and what do we see?

3 A. To see Mr. Carter with lacerations on one of his left
4 -- left eye.

5 Q. And I don't know what this is or who this is of.

6 A. That's Mr. Carter's back with a bruise on his back.

7 Q. And that's Exhibit Twenty-seven?

8 A. Yes, sir.

9 MR. GARFIELD: Thank you, Madam Court Reporter.

10 (WHEREUPON, DEFENDANT'S EXHIBITS TWENTY-TWO THROUGH
11 TWENTY-SEVEN, IDENTIFIED AND MARKED, RECEIVED INTO
12 EVIDENCE.)

13 BY MR. GARFIELD:

14 Q. Now, you had an occasion to generate a report in this
15 case?

16 A. Yes, sir.

17 Q. Okay. Did you -- Were you able to generate a
18 narrative in this case?

19 A. Yes, sir.

20 Q. Okay. Did you have an occasion to go to the
21 magistrate in this case?

22 A. Yes, sir.

23 Q. Did you have an occasion to --

24 MR. MILLS: Your Honor, I ask that he quit leading as
25 far as --

1 THE COURT: Okay. Don't lead.

2 MR. GARFIELD: Yes, sir.

3 Q. Did you -- did you -- did you draft the report or the
4 narrative and the report before or after you went to the
5 magistrate?

6 A. Before.

7 Q. What magistrate did you go to?

8 A. Judge Yard.

9 Q. Did you have experience going before Judge Yard?

10 A. Yes, sir.

11 Q. So, you had appeared before him in the past?

12 A. Yes, sir.

13 Q. Does Judge Yard represent law enforcement?

14 A. No, sir

15 Q. Is he represented in any way with the York County
16 Sheriff's Office?

17 A. No, sir.

18 Q. What was your experience with Judge Yard like as far
19 as him issuing magistrates?

20 A. Can you rephrase the question?

21 Q. Sure. I mean, did he do things his own way? I mean,
22 let's -- let's -- what was your impression of Judge Yard?

23 MR. MILLS: Judge, we'd ask -

24 THE COURT: That's a leading question. Just rephrase
25 it.

1 MR. GARFIELD: Yes, sir.

2 THE COURT: Or ask something else.

3 MR. GARFIELD: Certainly.

4 Q. You went to Judge Yard on this particular occasion.

5 Tell me how that came about.

6 A. The shift I work he's the judge which we actually had
7 to go see to obtain a warrant.

8 Q. Did Judge Yard have anything to do with the
9 investigation?

10 A. No, sir.

11 Q. So, did you actually meet with him in person?

12 A. Yes, sir.

13 Q. And when you met with him, what did you have in your
14 hand when you went to him, or what did you provide him
15 during your meeting with him?

16 A. I would have had a copy of the report and anything,
17 statements that -- anything that I had pertaining to the
18 case.

19 Q. Did you have the pictures with you at that time?

20 A. I should have had them. Yes, sir.

21 Q. Do you remember one way or the other?

22 A. I don't recall.

23 MR. GARFIELD: Just one moment, your Honor.

24 Do you have the exhibit for the arrest warrant?

25 MR. MILLS: I --

1 MADAM COURT REPORTER: It was there. It was there
2 earlier.

3 MR. GARFIELD: Beg the Court's indulgence.

4 It may have left with the in camera hearing, your
5 Honor.

6 MR. MILLS: I may have -- I think I may have a copy.

7 MR. GARFIELD: For purposes, I have a copy of the
8 arrest warrant. The same one.

9 Q. I'm going to just show you what's listed as Arrest
10 Warrant M604594. Take a moment and review that document.

11 (WITNESS COMPLIES.)

12 Q. Do you -- Are you familiar with that document?

13 A. Yes, sir.

14 Q. And what is that?

15 A. An arrest warrant.

16 Q. It's an arrest warrant for who?

17 A. For Mr. Carter.

18 Q. And for what charge?

19 A. Assault and battery of a high and aggravated nature.

20 Q. Is this the arrest warrant you were the affiant on?

21 A. Yes, sir.

22 Q. Now, when you went to Judge Yard, did you actually --
23 or did you ever ask for an arrest warrant?

24 A. No, sir.

25 Q. Tell me when you went before him what the

1 circumstances were as far as telling him about who was
2 involved and what you were there for.

3 A. I took him everything I had. I took him the victim's
4 statement, the witness -- witness and victim, suspect
5 statements and I presented the case and to see if there was
6 probable cause to get an arrest warrant.

7 Q. Okay. And the narrative that's listed there, okay?
8 Who typed up that narrative? Who typed up the arrest
9 warrant?

10 A. Judge Yard.

11 Q. Can you read out in the record what that says?

12 A. "On April 25th, 2012, in the County of York, one
13 Russell Shane Carter did willfully, unlawfully violate a
14 South Carolina code of laws by striking Michael Robinson
15 Faile about the head and body with an aluminum baseball bat
16 causing visible injuries that required medical attention.
17 The victim was transported to Piedmont Medical Center in
18 Rock Hill by EMS. Probable cause is based on police
19 investigation, Report Number 2012-00013457."

20 Q. Did you -- did you have an occasion to swear under
21 oath as to the existence of those facts?

22 A. Yes, sir.

23 Q. When you swore under oath, did you swear that --

24 MR. MILLS: Objection to the leading question, your
25 Honor.

1 MR. GARFIELD: Don't -- And I'm sorry, your Honor.

2 THE COURT: Rephrase your question.

3 MR. GARFIELD: I'll rephrase.

4 Q. You were -- You stated you were sworn under oath.
5 What exactly did you swear to?

6 A. Swear to the facts of the case.

7 Q. Okay. Now, you also --

8 A. The facts --

9 Q. Go ahead. I'm sorry?

10 MR. MILLS: I'm sorry. I didn't quite hear that? The
11 facts of the case, what was the last part?

12 A. The facts that's on the case that I had to get to to
13 obtain the warrant.

14 Q. Okay. And you also said that you -- you reference a
15 report and a report number.

16 A. Yes, sir.

17 Q. Okay. Why was that?

18 A. Because that's the -- that's the report number that
19 was associated with the case that I would have shown him.

20 Q. So, you would have shown that to the -- to the judge?

21 A. Yes, sir.

22 Q. Did the judge have an occasion to review that before
23 issuing a warrant?

24 A. Yes, sir.

25 Q. And you have a report, right? With you right there?

1 A. Yes, sir.

2 Q. Okay. And that was -- The contents of that report is
3 what you're -- you indicated to the judge, or he had an
4 opportunity to read at the time?

5 A. Yes, sir.

6 MR. GARFIELD: Your Honor, I would move to introduce
7 that into evidence.

8 MR. MILLS: Objection, your Honor. He can't introduce
9 his own witness's corroborating statement.

10 THE COURT: I sustain the objection.

11 MR. GARFIELD: May we approach, your Honor?

12 THE COURT: Yes, sir.

13 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
14 THE JURY AT 04:14 PM.)

15 BY MR. GARFIELD:

16 Q. The actual piece of paper that you have right here, a
17 copy of that, did you have that actual piece of paper and
18 copy or are we just talking about the narrative in that,
19 that the judge considered?

20 A. It probably wouldn't have been in this -- this format
21 right here, but I would have had a copy of -- I could have
22 had the report.

23 Q. Is there a final report with the supplemental report
24 that's done?

25 A. Yes, sir.

1 Q. Why is that done?

2 A. Because the merge -- clerks merge -- take all the
3 incident reports that was done for a particular report and
4 they make it all one.

5 Q. Did you ever say one way or the other as to whether a
6 subject should be named as either the assailant or a
7 witness or a subject?

8 A. No, sir. I listed both of them as victim/suspect.

9 Q. And why did you do that?

10 A. Because both of them was -- that's what both of them
11 were at the time. Both of them was the victim, victims,
12 and they both were suspects. Mr. Carter as well as Mr.
13 Faile.

14 Q. Did you -- What is a warrant worksheet or a warrant
15 request form?

16 A. A warrant request is what you send to the magistrate.
17 Like, before I arrive to him, I can send that to him before
18 I get there so he would know what I was wanting.

19 Q. Did you do that in this instance?

20 A. No, sir.

21 Q. Why not?

22 A. Judge Yard didn't require it.

23 Q. Were you truthful with Judge Yard?

24 A. Yes, sir.

25 Q. Did you have any reason to leave anything out, or be

1 untruthful in any way, or omit any information from Judge
2 Yard?

3 A. No, sir.

4 Q. Did you know Mr. Carter before these events?

5 A. No, sir.

6 Q. Did you ever respond to that house before?

7 A. No, sir.

8 Q. Did you know Mr. Faile or anyone connected to this --
9 this investigation?

10 A. No, sir.

11 Q. After you left the judge's office what, if anything,
12 did you do with respect to this case?

13 A. I would have called Mr. Faile and -- I mean, called
14 Mr. Carter and told him that he had a warrant. And then I
15 also called Piedmont to check on Mr. Faile.

16 Q. Okay. What, if anything, did you learn from Piedmont?

17 A. That he, Mr. Faile, had received some staples in his
18 head.

19 Q. Was there a dash-cam video that was, you know, dash
20 vid - well, let me ask you this way. Did your patrol car
21 have dash-cam video capability?

22 A. Yes, sir.

23 Q. Was there a camera or a video that depicts these
24 events from your car?

25 A. Yes, sir.

1 MR. GARFIELD: Beg the Court's indulgence.

2 Thank you, Mr. Gwinn. Please answer any questions Mr.
3 Mills has.

4 MR. GWINN: Yes, sir.

5 MR. GARFIELD: And if you -- if you need to stand up
6 between I think you could ask your Honor about that.

7 THE COURT: Do you need time for you to stretch?

8 MR. MILLS: You want to take a little short --

9 MR. GWINN: No, I'm good.

10 MR. MILLS: You good?

11 MR. GWINN: Yes, sir, I'm fine.

12 MR. MILLS: All right.

13 CROSS-EXAMINATION

14 OFFICER KEVIN GWINN BY MR. MILLS:

15 Q. I believe earlier you testified that the statements of
16 Mr. Carter and Ms. Ocskasy didn't match; there were
17 inconsistencies.

18 A. Yes, sir.

19 Q. All right. I'm gonna hand you these statements.
20 These are the two statements we're talking about, right?
21 Mr. Carter and Ms. Oackasy, right? Dawn Ocskasy and Mr.
22 Carter.

23 MR. MILLS: And your Honor, I just gave him my copies.
24 I've got to find another set.

25 Q. All right. This could be a little painstaking but

1 let's go ahead and go through it first. Read the first
2 sentence of what Dawn said.

3 A. "We were about to go to sleep with half of the house
4 already asleep when some man that I guess is staying with
5 the next-door people came over beating on our door
6 threatening us."

7 Q. All right. Let's stop right there. And what is the
8 first sentence of Mr. Carter's?

9 Well, let me ask you this. Were these statements
10 taken separately?

11 A. Yes, sir.

12 Q. You all separated the people at the scene. You just
13 told us earlier about putting Mr. Carter in your car in
14 handcuffs, correct, in his underwear; is that right.

15 A. Later on but not when we first got there we didn't. I
16 don't think he was in his underwear, but.

17 Q. You don't?

18 A. I don't recall if he was in his underwear or not.

19 Q. Okay. But he was separated. I mean, when they gave
20 these statements, they weren't with each other, were they?

21 A. I don't -- I don't recall. But I don't think -- I --
22 I'm going to be honest with you, I don't recall but I know
23 he was in the back of my car at one point.

24 Q. Usually you separate witnesses to get statements,
25 don't you?

1 A. Yes, sir.

2 Q. Because you want to make sure that they don't collude
3 and say the same thing and that they give independent
4 versions, right?

5 A. Affirmative, yes, sir.

6 Q. All right. So let's go on. I apologize. Where were
7 you on Mr. Carter's? What did he say?

8 A. I didn't -- I didn't start saying anything yet.

9 Q. I'm sorry.

10 A. So you want me to go ahead and read it?

11 Q. Please, sir.

12 A. "I was stirred from my bed at 9:41 Wednesday night by
13 loud banging and" ---

14 Q. I think that's *consistent*.

15 A. --- "consistent knocking. Upon reaching the door I
16 was met by a stranger demanding to know what was the
17 problem with the water."

18 Q. All right. Now, is that different from Ms. Oackasy's
19 in that respect?

20 A. Yeah, their similar yes, sir.

21 Q. Let's not go through this whole thing. I think you
22 said the real difference was, she said -- or somebody said
23 they stepped out, ---

24 A. Yes.

25 Q. --- and she said he came inside, that he came inside,

1 right? Is that the difference?

2 A. Yes.

3 Q. All right. So, let's go down to the bottom of Ms.
4 Oackasy's thing where she said -- do you see on the third
5 line from the bottom, it says, "and grabbed the screen
6 door"?

7 A. Yes, sir.

8 Q. All right. Could you read that, please?

9 A. "And he grabbed the screen door, and he wouldn't let
10 go."

11 Q. Yes, sir. What happened, what did say next?

12 A. "Shane told him to take his hands off the door and he
13 refused. More words exchanged and the guy pushed Shane."

14 Q. Pushed Shane where?

15 A. Through the door.

16 Q. Okay. And what did he say?

17 A. "And Shane had the bat beside the door and grabbed
18 it."

19 Q. All right. And now let's look over on Mr. Carter's
20 statement at the bottom. And it says, "I instructed". Do
21 you see that?

22 A. Yes, sir.

23 Q. Okay. And what did it say?

24 A. "I instructed Dawn to call the police. That's when I
25 -- that's when he held my screen door open."

1 Q. Go ahead.

2 A. "I took a step with my right foot and was blind-sided
3 by a right hook to the brow area."

4 Q. Okay. And that's what you thought was different than
5 Ms. Oackasy's?

6 A. Sir?

7 Q. That's what you thought was different? You thought
8 the stories were different about what happened?

9 A. I was referring to our actual conversation, not the
10 actual statement.

11 Q. Oh, the actual conversation that you had with them on
12 video?

13 A. Yes, sir.

14 Q. So, when I play this video it's going to have you
15 having conversations with both Dawn and with Mr. Carter?

16 MR. GARFIELD: Objection, your Honor. That's
17 speculating.

18 MR. MILLS: Well, he just said it's -- he just said
19 it's on the video.

20 THE COURT: I overrule the objection. He just said -
21 BY MR. MILLS:

22 Q. You just said it's on the video, right?

23 A. As far as I recall. Like I said this was four years
24 ago. I'm not sure.

25 Q. All right. Four years. It's tough to remember what

1 happened four years ago sometimes isn't it?

2 A. Yes, sir.

3 Q. All right. So, let's talk about your conversation
4 with Judge Yard. You really don't remember as we sit here,
5 what you told him, do you?

6 A. Do I remember everything? No, sir.

7 Q. And it wasn't done while you were under oath and you
8 were having these conversations with him, was it?

9 A. I would have been under oath when I signed for the
10 warrant.

11 Q. Right. So, you would have had this conversation with
12 him, telling him all this stuff, but you weren't under oath
13 at that time, correct?

14 A. No, sir.

15 Q. Right. And the only -- And then, after you talked to
16 him he went and typed up a warrant. And then you read the
17 warrant, and the document that Mr. Carter -- that Mr. --

18 I'm sorry, is the warrant still up here?

19 Yeah. And so, this information contained in this
20 warrant is all that was sworn to before the magistrate; is
21 that correct?

22 A. The -

23 MR. GARFIELD: Objection. It's a compound question.
24 It kind of led from an earlier question before he showed
25 the document.

1 THE COURT: I'm not sure I understand your objection.
2 But ask it a little different.

3 MR. MILLS: All right.

4 Q. I think we've just established that, when you -- Do
5 you remember calling him first on the phone?

6 A. I don't recall.

7 Q. Could you have called him on the phone?

8 A. Yes, sir.

9 Q. Okay. And then you went there and you talked to him
10 like you just said. I'm sorry, I didn't mean to get in
11 your space there.

12 And then what's on this document which it says "I
13 further state that there's probable cause to believe that
14 the defendant named above did commit this crime and that
15 probable cause is based on the following facts."

16 What facts are in there about probable cause to
17 believe that Mr. -- I know that it says he got beat with a
18 bat, but what facts do you have to say how it happened and
19 who did it and why you believe that happened and why that
20 was ABHAN?

21 A. That's just a brief summary of what happened. It's
22 not the whole -- You can't put the whole narrative in the
23 report in the warrant.

24 Q. I'm sorry, you have to speak up.

25 A. I said, that's just a brief summary. You can't put

1 the whole narrative in the warrant.

2 Q. Okay. So, Mr. Carter's getting arrested on a sworn
3 brief summary; is that right?

4 MR. GARFIELD: Objection, your Honor.

5 THE COURT: I overrule the objection.

6 BY MR. MILLS:

7 Q. Is that right?

8 A. No, he was arrested based off the evidence that I
9 presented to the judge.

10 Q. But it wasn't sworn, was it?

11 A. But, I mean, I presented the statements. I presented
12 the whole case to him. At that time he found that there
13 was probable cause to write up the warrant.

14 Q. Now you were for ten years you were a sheriff's
15 deputy; is that correct?

16 A. Yes, sir.

17 Q. And you were sworn to uphold the law, the criminal
18 laws of South Carolina, correct?

19 A. Yes, sir.

20 Q. And pursuant to that you have some policies and
21 procedures at the Sheriff's Department, correct?

22 A. Yes, sir.

23 Q. And you were required to be familiar with those
24 policies and procedures, correct?

25 A. Yes, sir.

1 Q. And if you had any question about them you can go back
2 and look at them if you needed to, correct?

3 A. Yes, sir.

4 Q. All right.

5 MR. GARFIELD: Objection, your Honor. We can either
6 address it at this time to your Honor's preference, or
7 really have a matter of law, at your Honor's convenience,
8 about this whole line of questioning.

9 THE COURT: Let me let the jury go to the jury room.
10 We'll take a short break and take this up and then get back
11 to work.

12 (JURY EXITS COURTROOM AT 04:28 PM.)

13 MADAM COURT REPORTER: I don't have it, Judge. That's
14 what I'm trying to tell Nathan.

15 MR. MILLS: Are you talking about the warrant?

16 COURT REPORTER: Yeah. Have you got it?

17 MR. MILLS: I don't see it. I don't know if Mr.
18 Phillips scooped it up. I'll be perfectly -- it's the same
19 warrant. We have bunches of copies. We can just put a new
20 sticker on it, if the Court has no objection.

21 THE COURT: I think that's wise.

22 MADAM COURT REPORTER: I'm happy if y'all happy.

23 THE COURT: I'm happy.

24 MR. MILLS: I'm happy.

25 MR. GARFIELD: Substitute, that's fine.

1 MADAM COURT REPORTER: Okay.

2 THE COURT: All right.

3 MR. MILLS: You got one up there or do I need to -

4 THE COURT: Let's get to that in a minute; let's take
5 care of this issue first.

6 MR. GARFIELD: On the first part, your Honor, I would
7 ask at the appropriate time that the -- the jury be
8 informed that the Court has ruled as a matter of law that
9 the actual arrest itself was lawful and therefore the only
10 issue before them is the probable cause standard and I say
11 that for two reasons. Number one, because that is your
12 Honor's ruling, and then Number Two, because we do run the
13 risk of a little juror confusion in this case.

14 If all we're looking at is the probable cause
15 standard, for Mr. Mills to question this witness is to
16 whether he adhered or complied with the policies and
17 procedures in this case, will absolutely confuse the jury.

18 For instance, one of the *Tort Claims Act* immunities
19 that I was addressing, the Subsection 4. And I believe
20 that this is one that you -- you considered in the -- in
21 the *Ira Johnson* case.

22 MR. MILLS: Your Honor, is he passing up circuit court
23 orders for authority?

24 MR. GARFIELD: Well, it's not authority, it's
25 persuasive, your Honor.

1 THE COURT: It's an order I wrote, so it has to be
2 persuasive.

3 MR. MILLS: It must be. Wish I'd seen it.

4 MR. GARFIELD: Well, we can take a break and let him
5 read it. It's -

6 THE COURT: What's the heart of what we're talking
7 about?

8 MR. GARFIELD: The heart of what we're talking --

9 THE COURT: I may have been wrong.

10 MR. GARFIELD: And I understand and I may wrong in
11 arguing the two. But one of the reasons why you issued --
12 and you were right then, and you would be right now to look
13 at it this way, that Subsection 4 of 15-78-60, I believe
14 it's the bottom of page seventy, that you acknowledged --
15 and I believe that there is a good amount of law out there
16 that recognizes as to whether a law enforcement officer
17 complies with his own policies and procedures or not. It
18 constitutes an immune function.

19 As we learned from the expert the policy, procedure,
20 and the law are two totally different things. Policies and
21 procedures generally have a stricter standard than the law
22 for quality assurance purposes. If a jury hears that he
23 didn't cross a T or dot an I, in compliance with or to the
24 satisfaction of his supervisors, it can very easily believe
25 that he didn't act appropriately. Because what Mr. Mills

1 is going to ask him that I understand is, that's your
2 policy and procedure, sir, correct? Well, yes. Well, that
3 wouldn't have been appropriate, or that would not have been
4 proper. A jury can very well get lost in the words of the
5 -- of the minutia of the policy and procedure because those
6 are just guidelines rather than probable cause.

7 THE COURT: Well, I'm looking at the language and I'll
8 hear from Mr. Mills in a moment, but it says, the failure
9 to adopt - and that's not here because you're saying there
10 are.

11 MR. GARFIELD: Yes, sir.

12 THE COURT: There are policies, so, the failure to
13 adopt is not at issue. And then it says are enforced in
14 laws or written policies. Enforced written policies.

15 MR. GARFIELD: And the full Subsection 4, because I
16 understand your Honor's inquiry, a governmental entity is
17 not liable from a loss resulting from the adoption,
18 enforcement, or compliance with any law or failure to adopt
19 or enforce any law, whether valid or invalid, including but
20 not limited to written policies.

21 So, the point I was trying to make is that, if the
22 reason why the legislature carved that out as an exception
23 to the waiver of sovereign immunity, it's because of a
24 governmental entity does not -- or governmental employee
25 does not do everything that their agency's policy and

1 procedures prescribes them to do, and if he fails to do it,
2 that shouldn't be confused with the actual issue of the
3 case. In this case it's probable cause. He had probable
4 cause to believe that a crime had been committed. Whether
5 or not his investigatory technique was proper, or whether
6 he did a followup investigation, all of the things that
7 your Honor was concerned about in excluding the expert, for
8 him to get in and ask him about the policies and
9 procedures; what's proper and appropriate could be very
10 well confused with whether he acted lawfully.

11 And once we go down that rabbit hole I don't know how
12 I can get back out, and then -- because it's a very
13 straightforward issue as to whether probable cause exists.

14 THE COURT: Mr. Mills?

15 MR. MILLS: Your Honor, I'm simply impeaching him.
16 He's saying I did a proper investigation; I did a thorough
17 investigation. I'm impeaching him about what his own
18 department says you do in these investigations. I'm not
19 asking the jury to return a verdict because of that. I'm
20 showing that he didn't do the homework necessary to
21 establish probable cause.

22 MR. GARFIELD: I think he can ask what -- I'm sorry,
23 Judge, if you were inclined to say something that -- He can
24 ask why you think you did a proper investigation, but he
25 can't say he opened the door if he asks the question. He

1 said I think I did it properly. But to go in and go into
2 the black-letter, deep in the roots of what this guideline
3 was back at the time, and whether he fulfilled all of that
4 really goes into, your Honor, which we've all established
5 there's no such thing as a negligent investigation, there's
6 no such thing as a negligent arrest. Policies/procedures
7 are promulgated and adopted for quality assurance purposes,
8 so that officers and governmental employees could -- could
9 adhere to standards with the agency.

10 You know, there's no such thing as, again, a negligent
11 investigation, or standard of care for law enforcement
12 officers. The standard of care is whether they acted
13 lawfully or not which whether he had probable cause. The
14 jury could come back and see that maybe he didn't do a
15 followup investigation and completely confuse that as to
16 whether he had probable cause to arrest on this particular
17 --

18 THE COURT: Let me hear what the question's going to
19 be.

20 MR. MILLS: Well, there's --

21 THE COURT: Ask him the question.

22 MR. MILLS: Well we have two different policies here.
23 One is their investigation policies, which says, "a serious
24 crime supervisable, authorizable investigator whenever a
25 serious crime needing immediate attention of an

1 investigator take written statements from all witnesses.
2 Followup investigations: conduct followup interviews with
3 suspects; check suspect's criminal history."

4 That was where I was going with that one. The one
5 about policy of arrest, "the arrest" - requirements and
6 Supreme Court applicable laws this -- "warrants may be done
7 on sworn testimony given by the affidavit of the law
8 enforcement officer."

9 I'm just trying to establish what he was taught. And
10 it also has, "the inclusion of other evidence favorable to
11 the accused must be considered" in highlighted words,
12 "before an arrest is made."

13 So, they -- This department considers that type of
14 protocol appropriate before an arrest is made. I mean its
15 really gonna hamper me if I can't even cross-examine them
16 on their own policies on what they're supposed to do on
17 their job and they get to testify that they're doing their
18 job great.

19 MR. GARFIELD: And Judge, I don't think anyone's
20 testified they did their job great. I think he testified
21 that he went through the normal legal processes to obtain
22 the warrant. And really what Mr. Mills is doing is trying
23 to trying to introduce evidence as to the quality of the
24 investigation and whether it was careful or careless. That
25 gets into what is a negligent investigation which is not a

1 viable cause of action.

2 MR. MILLS: I mean, just because Mr. --

3 MR. GARFIELD: I mean, that's the basis -

4 THE COURT: Whoa, whoa, whoa. I'm going to allow him
5 to testify, to go over it, because it's talking about
6 establishing probable cause so I'm going to allow him to go
7 into it.

8 MR. GARFIELD: Thank you, your Honor.

9 THE COURT: Let's take a short break.

10 Mr. Gwinn, you can step down if you want to and
11 stretch. We'll take about a ten minute break and let the
12 jury refresh.

13 (COURT IN RECESS AT 04:37 PM.)

14 (COURT BACK IN SESSION AT 4:50 PM.)

15 THE COURT: All right. You can be seated. Thank you.

16 MADAM COURT REPORTER: Yes, sir.

17 MR. GARFIELD: You get combat pay. Thank you. Sorry
18 about that.

19 THE COURT: Bring in the jury.

20 (JURY RE-ENTERS COURTROOM AT 04:51 PM.)

21 THE COURT: You may proceed.

22 CROSS-EXAMINATION - CONTINUED

23 OFFICER KEVIN GWINN BY MR. MILLS:

24 Q. I believe you testified that Judge Yard doesn't
25 require a warrant request?

1 A. Yes, sir.

2 Q. I'm going to ask you this. Is that what you were
3 talking about on that page right there?

4 A. Yes, sir.

5 Q. All right. Now, on that page you would write a
6 written request, right? And you'd write down everything
7 you thought was probable cause, right?

8 A. Yes, sir. Write or type it out, yes, sir.

9 Q. And you would submit it to the judge and we'd know
10 what you told the judge, correct?

11 A. Yes, sir.

12 Q. Because it would be in writing and we can come back
13 and check on it, right?

14 Q. Yes, sir.

15 A. All right. Now, when you talked to the judge and you
16 have this conversation with him, is that being recorded?
17 Can we go back and look at that and determine what you
18 actually told the judge?

19 Q. Not that I'm aware of.

20 A. So now four years later you're just kind of deciding,
21 yeah, this is what I gave him; this is the best of memory
22 what I gave him, right?

23 A. I would have gave him what was in -- what I had at the
24 time, yes, sir.

25 Q. Okay. Now, you said at the time you had the pictures.

1 Did you?

2 A. I -- If I took the pictures I would have had 'em, yes,
3 sir.

4 Q. Did you --

5 A. And I took the pictures, so.

6 Q. All right. Do you remember at the scene asking to
7 borrow somebody's camera so you could take a picture of Mr.
8 Carter?

9 A. I don't recall.

10 Q. All right. Could that have been true?

11 A. It could have been true, yes, sir.

12 Q. Okay. So, you wouldn't have had a camera, right?

13 A. We've had -- we had cameras. Yes, sir, we did.

14 Q. Okay. But -- Well why would you ask to borrow
15 somebody else's if you had one?

16 A. My batteries could have been dead, or.

17 Q. Okay. Did anybody else come down to the hospital with
18 you?

19 A. Not that I recall, no, sir.

20 Q. Could they have?

21 A. Could they have?

22 Q. Yes, sir.

23 A. Yes, sir.

24 Q. Okay. So, you remember some things but you don't
25 remember others?

1 A. Like I said, it was four years ago.

2 Q. I understand. Now, we were talking about policies and
3 I think you made an earlier reference to your incident
4 report. You might still have it up here. Is that correct?

5 A. Yes, sir.

6 Q. And you told me you wrote out the incident report and
7 you had that done by the time you went to see Judge Yard;
8 is that right?

9 A. Yes, sir.

10 Q. All right. And it's kind of -- You talked about
11 merging so it seems like some of the latter stuff is at the
12 beginning and some of the beginning stuff is at the end.

13 Does that --

14 A. Yes, sir.

15 Q. Okay. I ask you to look at the last page of that will
16 you? The last page of your --

17 A. What did you say, the last page?

18 Q. Yes, sir. This last page. Now, I believe on the page
19 before it you have your long narrative; is that right? You
20 have a long narrative, which you've --

21 A. I'm sorry. Mine's not in the order yours is in. I'm
22 sorry.

23 Q. This is the page we're looking for, right here.

24 A. All right.

25 Q. Do you agree with me?

1 A. Yes, sir.

2 Q. All right. And that's your long narrative, correct?

3 A. Yes, sir.

4 Q. And then you finish it up on this page; is that right?

5 A. Yes, sir.

6 Q. All right. And what is the last thing you say right
7 here?

8 A. Investigation pending.

9 Q. All right. And what's the next thing that happens?

10 A. I went to see the magistrate.

11 Q. All right. What investigation did you do from the
12 time that you said the investigation was pending until you
13 went to the magistrate?

14 A. I don't recall.

15 Q. Did you do any -- You didn't do any, did you?

16 A. I don't recall.

17 Q. If you did it there would be a document supporting it,
18 wouldn't it?

19 A. Like I say, I don't recall.

20 Q. No, I'm just asking you the question. If you did
21 something there would be documentation to support it,
22 correct?

23 A. Yes, sir.

24 Q. All right. And you haven't seen any other
25 documentation supporting the other investigation, have you?

1 A. No, sir.

2 Q. But your -- the Sheriff's -- the York County Sheriff's
3 Department's pretty big isn't it?

4 A. Yes, sir.

5 Q. They even have a detective division, don't they?

6 A. Yes, sir.

7 Q. They have investigators, right?

8 A. That would be detectives.

9 Q. Yeah. And you can refer cases to them can't you?

10 A. Yes, sir.

11 Q. In fact, you have a policy that says when you have a
12 serious crime talk to your supervisor and refer it to
13 investigators for followup investigation, correct?

14 A. I'm going to be honest with you, I don't recall. I
15 haven't -- I don't know what the County's policies is
16 because I got to learn a whole new set of policies now so
17 I'm going to be honest with you.

18 Q. Well I understand but at the time you were aware of
19 them, right?

20 A. At the time I would have, yes.

21 Q. Yeah. And if you did -- if you wanted to you could
22 certainly go look at them, right?

23 A. Yes, sir, we could at the department.

24 Q. All right. And would it surprise you to know that the
25 York County policy talks about getting written statements

1 from everybody, right?

2 A. Yes, sir.

3 Q. And you did that with Mr. Carter and his wife, didn't
4 you?

5 A. Yes, sir.

6 Q. Why didn't you do it with Mr. Faile?

7 A. He couldn't write at the time.

8 Q. Well, couldn't you talk to him?

9 A. I spoke with him.

10 Q. All right. Couldn't you write down what he tells you?

11 A. I don't remember what I did.

12 Q. Well that's something you thought of and you
13 remembered it later on when you wrote up your report. I'm
14 talking about writing it when he's telling it to you and
15 have him initial it.

16 A. I could have.

17 Q. And then we would have known what his actual statement
18 was at that time, right?

19 A. Yes, sir.

20 Q. And then you could kind of compare it with what other
21 evidence there was to see if you believe his story or Mr.
22 Carter's story, right?

23 A. Yes, sir.

24 Q. Okay. Because ultimately you've got to believe one of
25 those stories because you're the one who's making the

1 arrest and requesting the warrant, correct?

2 A. Yes, sir.

3 Q. Okay. Now, one of the things you would do pursuant to
4 a policy would it surprise you if the policy called --
5 asked for you to check the suspect's criminal history?

6 A. You said, would I be surprised?

7 Q. Yeah.

8 A. No, sir.

9 Q. So that would be a legitimate thing to do in part of
10 your investigation, correct?

11 A. At the time the incident occurred?

12 Q. Or after.

13 A. We would normally get their criminal history when we
14 was doing the *General Sessions Summary*.

15 Q. Right. I understand that, but let me ask you this.
16 I'm going to hand you the policy, York County Policy here,
17 and ask you --

18 MR. GARFIELD: Your Honor, may I ask which policy's
19 he's -

20 MR. MILLS: I apologize.

21 MR. GARFIELD: What portion of the policy he's asking
22 about. I think there's --

23 MR. MILLS: I'm sorry. It's Policy Number 900.02,
24 *Criminal Investigations, YCSO Policies and Procedures*.
25 It's got a Bates Number 9486-801. And I am on the second

1 page, 9486-02.

2 MR. GARFIELD: Thank you.

3 MR. MILLS: All right.

4 Q. Would you agree with me that assault and battery is a
5 serious crime?

6 A. Talking about assault and battery of a -

7 Q. Of a high and aggravated nature, yes.

8 A. Yes, sir.

9 Q. I mean it's a twenty-year felony, correct?

10 A. Like I said, I don't recall what it actually -

11 Q. All right. It's fair enough.

12 A. Yes, sir.

13 Q. And there's potential for Mr. Faile to be arrested,
14 too, right?

15 A. Yes, sir.

16 Q. Right. Because he did assault and trespass, right?

17 A. Yes, sir.

18 Q. And burglary first, didn't he?

19 A. Yes, sir.

20 Q. Okay. And that actually carries life in prison,
21 doesn't it?

22 A. Like I said, I don't recall what the penalties -

23 Q. Potentially life, I'm sorry. But you -- would you
24 classify those both as serious crimes?

25 A. Yes, sir.

1 Q. All right. Now, in this policy one do you remember,
2 or were you allowed on a serious crime, or was it suggested
3 that you should refer that to an investigator for a
4 followup investigation?

5 A. No, sir.

6 Q. It wasn't?

7 A. I don't recall that.

8 Q. All right. And I ask you to look at this policy and
9 look at the first section there. Do you see that?

10 A. Yes, sir.

11 Q. And it talks about referring it over to the -- for
12 followup investigations with an investigator, doesn't it?

13 A. It says in the opinion of the supervisor, yes, sir.

14 Q. All right. So, this incident report that you did,
15 what supervisor looked over it?

16 A. Is there one on here?

17 Q. Pardon me?

18 A. I said, is there one on here?

19 Q. There's not -- there was no approving officer, was
20 there? Was there, Mr. Gwinn?

21 A. There's not one on this, no, sir.

22 Q. Okay. And that's the official incident report, right?

23 A. Like I said, this is the merged copy. Yes, sir.

24 Q. That's the one we've been working off of, right?

25 A. Like I say, it's -- it's the merged copy, yes, sir.

1 Q. Okay. So, there's another warrant out there somewhere
2 or another incident report out there somewhere out there
3 with your signature on it somewhere that nobody had seen?

4 A. I'm saying my signature's not on this one. That's
5 what I'm saying.

6 Q. Uh-huh. Right. All right. So let's go further.
7 Let's say you had referred it to the investigators. What
8 kind of followup investigations things would they do? Did
9 they do things like look over all the previous reports and
10 videos in the case?

11 A. I'm not sure.

12 Q. You want to read there and see what they say?

13 A. Which part?

14 Q. I'm sorry. Why don't you look -- first of all, why
15 don't you read the first sentence of the followup begins
16 what the the purpose of it is?

17 A. "The purpose of a followup investigation is to
18 discovery additional information or to clear a case.
19 Identifying original offender, recover stolen property,
20 and/or to gather additional evidence to present in a
21 judicial proceeding."

22 Q. Okay. So, you -- I believe you told Mr. Garfield you
23 didn't know who to charge or what to do, correct?

24 A. Like I said I was a neutral party ---

25 Q. It wasn't ---

1 A. --- it wasn't mine, you know ---

2 Q. --- it wasn't your thing. You weren't the one who
3 signed -- applied for the arrest warrant, right?

4 A. I got the warrant, yes.

5 Q. Yeah. You applied for it, right?

6 A. I got the warrant.

7 Q. Okay. Right. And so did you go back and look at the
8 videos that you have? I mean you record everything when
9 you're out there, right?

10 A. If they're working, yes, sir.

11 Q. Yeah. Well, you know that they're working, right?
12 You know that we have videos from that incident?

13 A. Yes, sir.

14 Q. Right. And you have the ability to go back and look
15 at 'em to determine what these people said out there and
16 what Michael Faile said out there if you want to.

17 A. You said, do I have the ability?

18 Q. Yes, sir.

19 A. Did I have the ability?

20 Q. Did you have the ability?

21 A. It would depended upon if the video had downloaded or
22 not.

23 Q. Right. But you didn't arrest him at the scene, right?

24 A. No, sir.

25 Q. And I think we talked about this in your deposition,

1 you can actually review it on your machine before it's
2 downloaded, right?

3 A. That's what I'm saying. If -- if I go to the Moss or
4 if I go to our district office it would download.

5 Q. Right.

6 A. So, if I didn't look at it at the end of my period of
7 time I wouldn't have been able to see it until it got
8 downloaded to the computer.

9 Q. Right. If you come in there it would automatically
10 download on the computer. You go to the custodian and say,
11 hey, can I have a copy of my tape so I can look at it?

12 A. Yes.

13 Q. I mean it's not like you're prevented from looking at
14 it again, right?

15 A. No, sir.

16 Q. Right. I mean it's just you view it from a different
17 location. Instead of on your car you get to view it on a
18 computer screen, right?

19 A. Yes, sir. Depending on when it's downloaded, yes,
20 sir.

21 Q. Okay. Okay. Now, you could have listened to the 911
22 tape, right?

23 A. Could I have that night?

24 Q. Uh-huh.

25 A. I'm not sure.

1 Q. Well, again, you did not arrest Mr. Carter that night
2 so you could have looked -

3 A. No, sir, I didn't.

4 Q. So, you could have looked at it the next day. Did you
5 get to listen to the 911 tape the next day?

6 A. I'm not sure if I could have or not but at some point
7 in time, could I have? Yes, sir.

8 Q. Okay. Or you could have turned it over to the
9 investigators and they could have listened to it, right?

10 A. Yes, sir.

11 Q. Okay. And have you listened to that 911 tape to this
12 day?

13 A. No, sir.

14 Q. Okay. If the 911 tape corroborated Dawn's statement
15 about being attacked first, would that be important to you?

16 A. You said, if it corroborated -

17 Q. Yes.

18 A. --- Dawn?

19 Q. Yeah. If it corroborated that Mr. Faile hit Mr.
20 Carter first, would that make any difference to you?

21 A. It's -

22 MR. GARFIELD: Objection. It assumes facts not
23 necessarily in evidence, your Honor.

24 THE COURT: I overrule the objection.

25 Go ahead.

1 A. It's just one piece of the puzzle. Yes, sir.

2 Q. Right. I mean, it could be helpful; it could be not,
3 right?

4 A. Yes, sir.

5 Q. And one is you're trying to determine is who started
6 this fight because you have two different stories, right?

7 Is that correct?

8 A. Yes, sir.

9 Q. I'm sorry.

10 A. We have multiple sides, yes, sir.

11 Q. Multiple sides? Okay. Other than Mr. Faile's story
12 and then Carter's story, what other stories did you have?

13 A. That's what I'm saying. You got more than two people
14 so you got more than two sides.

15 Q. Okay. So do you think their stories were different

16 ---

17 A. No --

18 Q. --- about what happened?

19 A. So, if you got three people, you're going to have
20 three different stories.

21 Q. Okay. So, maybe it would be good to go back and
22 listen to your tape and see what they actually said, right?
23 So you could be accurate in the report that you wrote.

24 A. Yes, sir.

25 Q. Okay. Now, in the followup investigations it also

1 talked about doing -- check suspect's criminal history,
2 right? I'm sorry. Followup Investigations. Check
3 suspect's criminal history. Is that fair?

4 A. Like I said, but it goes along with that though
5 doesn't it?

6 Q. Well let's just take -- That's another thing.

7 A. That's when you're preparing for court.

8 Q. Well, does it say there?

9 A. That's what that says right there. Continue reading.

10 Q. Yeah, well, that's the last thing that they're having
11 here. What else? Photo lineups?

12 A. No, I'm saying, what you just showed me, that's what
13 goes along with that. It says when we're preparing for
14 court.

15 Q. And prepare cases for court. It says, "determine
16 involving suspect of similar nature, check suspect's
17 criminal history." Well, let's talk about that. They list
18 a bunch of them, don't they? A, B, C, E, E, F, G, H, and
19 I, right?

20 A. Yes, sir.

21 Q. Okay. Did you check the criminal history of Mr.
22 Faile?

23 A. No, sir.

24 Q. All right. Would it surprise you to learn that Mr.
25 Faile has an extensive criminal history?

1 A. Say -

2 MR. GARFIELD: Objection, your Honor.

3 THE COURT: I sustain the objection.

4 MR. MILLS: Your Honor, I don't know if I can cure it,
5 I don't know what the ground for the objection -

6 THE COURT: I'll let the jury go out just a minute.

7 MR. MILLS: I'm sorry.

8 (JURY EXITS COURTROOM AT 05:07 PM.)

9 THE COURT: By my recollection, the only evidence
10 about his prior record was from a witness I did not allow
11 to testify, so, there's nothing in the record to support
12 what you're asking him.

13 MR. MILLS: Well -- Well obviously I don't understand
14 -- I would assume on cross-examination if you see I didn't
15 check something I can say if he had checked -

16 THE COURT: Well, no, but you didn't say did you
17 check. You said, would it surprise -- something to the
18 effect, would it surprise you to find out -

19 MR. MILL: Okay.

20 THE COURT: --- that he has an extensive record.

21 MR. MILLS: That's what -

22 THE COURT: That is not a proper question.

23 MR. MILLS: I understand. But that's why I wanted a
24 clarification so I didn't now how to cure it.

25 THE COURT: You can certainly ask, did you check on

1 Mr. --

2 MR. MILLS: All right. I apologize for making the
3 jury leave.

4 THE COURT: That's okay.

5 MR. GARFIELD: Judge, I do have a point of law.

6 THE COURT: All right.

7 MR. GARFIELD: If I may.

8 THE COURT: You may.

9 MR. GARFIELD: We at this point ask for a mistrial,
10 based on the fact that Mr. Mills -- First of all, the
11 phrasing of the question in which he says, are you
12 surprised. I understand why he was saying that, but
13 frankly, we can't un-ring that bell. Mr. Faile's criminal
14 history has not been testified to by anybody up until now.

15 I think it was referenced in the proffer with the
16 expert witness at some point to determine -- The fact that
17 he tried to get into evidence, Mr. Mills, did intentionally
18 or invariably try to get into evidence that is clearly not
19 part of the record. It's unduly prejudicial. The jury now
20 will be making a determination as to the -- based on, now,
21 the assumption that the victim in the case has a
22 substantial criminal record. And I'm not sure, once again
23 how that bell would unring by saying with -- you know, with
24 all due respect, ladies and gentlemen of the jury, you have
25 to now disregard what now all the lawyers appear to have

1 because Mr. Faile has not been -- the plaintiff did not
2 call him in his case-in-chief. He has not been a witness.
3 We do not plan on necessarily calling him. He was not
4 deposed in this matter and now that information purportedly
5 is in front of the jury and it's unduly prejudicial.

6 And plus, on top of that, your Honor, I just renew my
7 objection that this entire line of questioning is
8 irrelevant. Based on 403 it's a waste of time, its
9 confusion of the issues and for this witness to be examined
10 on the policies and procedures, and how he did comply and
11 did not comply with policies and procedures at a given time
12 is unduly prejudicial for the reason that, once again, in
13 the light of v. Fowler there is no such cause of action in
14 South Carolina that's been recognized as a negligent
15 investigation.

16 This entire line of questioning is to get the jury the
17 idea is that his investigation was substandard on some
18 level. The takeaway from this is that they can only
19 understand that it was a careless investigation and certain
20 things were not done. Now, they're under the impression
21 that the victim has a substantial criminal history. I
22 believe, based on all of that, we would respectfully ask
23 for a mistrial.

24 THE COURT: I deny the motion. I do not believe there
25 is a manifests necessity to grant a mistrial and I'll give

1 a curative instruction.

2 MR. GARFIELD: Yes, sir. And if I may, just one
3 followup. Thank you, your Honor.

4 THE COURT: All right.

5 MR. GARFIELD: Thank you. At some point, just so we
6 could understand, because there was some examination as to
7 when the witness was sworn under oath and what the
8 magistrate learned. Since we are now only -- the issue for
9 the fact finder is only about probable cause. And we have
10 -- your Honor has ruled as a matter of law that he was
11 arrested, Mr. Carter, pursuant to lawful authority, then,
12 the actual warrant itself was a lawful warrant and the
13 execution of that lawful warrant.

14 May I respectfully ask your Honor to go ahead and tell
15 the jury that arrest was lawful but this is only a probable
16 cause case.

17 THE COURT: Well, I'll look at your request of charge
18 when we do have a charge conference.

19 MR. GARFIELD: Yes, sir.

20 THE COURT: I'm not gonna tell 'em that now.

21 MR. GARFIELD: Yes, sir. Thank you, your Honor.

22 MR. MILLS: Your Honor, just so I don't walk into
23 something I shouldn't walk into and need to send the jury
24 back out, are you prohibiting me if I ask him the question,
25 have you checked it to ask and -

1 THE COURT: You can ask him, did you check -- although
2 I know that Mr. Garfield will think you shouldn't -- but
3 I'm going to let you at least ask, did you check to see if
4 the victim, Mr. Faile, had any criminal record.

5 MR. MILLS: But I -

6 THE COURT: That's it.

7 MR. MILLS: That's it. I can't follow up with if he
8 had a substantial record -

9 THE COURT: No. See, there you -- that's -- no. No.
10 Because -

11 MR. MILLS: Even if their policy says it's relevant to
12 --

13 THE COURT: No. There's no evidence in the record.
14 You -- you -- you're starting to testify when you say
15 there's -- if he had a substantial record. There's nothing
16 in the record to support that.

17 MR. MILLS: All right.

18 THE COURT: All right. Bring in the jury.

19 MR. MILLS: Judge, have you decided how late we're
20 going to run tonight?

21 THE COURT: Is this your last witness?

22 MR. GARFIELD: For --

23 THE COURT: We'll stop after this witness, because
24 it's ten after five.

25 MR. GARFIELD: It depends on how long he was going to

1 go. I was going to have one relatively short one, but I
2 mean, we could --

3 THE COURT: Well still it's ten after five.

4 MR. GARFIELD: Yes, sir.

5 THE COURT: When it gets close to six we'll stop.

6 MR. GARFIELD: Thank you.

7 THE COURT: Not to rush you.

8 (JURY RE-ENTERS COURTROOM AT 05:14 PM.)

9 THE COURT: Members of the jury panel, I'm going to --
10 want to tell you there's nothing in the record to support
11 any criminal record of Mr. Faile so you must disregard the
12 question from Mr. Mills regarding any record of Mr. Faile.

13 This question is stricken from the record.

14 MR. MILLS: May I go ahead, your Honor?

15 THE COURT: You may. Yeah, sure.

16 CROSS-EXAMINATION - CONTINUES

17 OFFICER KEVIN GWINN BY MR. MILLS:

18 Q. Deputy Gwinn, did you check Mr. Faile's record?

19 A. No, sir.

20 Q. Would that be of any interest to you?

21 A. I don't recall no, sir.

22 Q. Now, I believe you have in front of you a York County
23 Sheriff's Department Policy On Warrants; is that correct?

24 A. Yes, sir.

25 Q. All right. And if you turn over to page could you

1 read the first full sentence at the top of the page
2 starting with, *it is not?*

3 A. "It is not constitutionally permitted for the deputy
4 to make the arrest and then investigate further hoping to
5 establish probable cause."

6 Q. Okay. And can you read the next sentence, please?

7 A. "The inclusion of other evidence favorable to the
8 accused must be considered before the arrest is made."

9 Q. And as before, bolded and highlighted?

10 A. Yes, sir.

11 Q. All right. And then down below on arrest warrants it
12 says that magistrates generally issue criminal warrants.

13 What does the next sentence say?

14 A. "This may occur as a result of sworn testimony given
15 to them by the affidavit of law enforcement officer or
16 citizen."

17 Q. Will you agree with me that a magistrate can only
18 issue a warrant based on sworn testimony?

19 A. Yes??

20 MR. GARFIELD: Objection, your Honor. Calls for a
21 legal conclusion.

22 THE COURT: I'll allow the question.

23 BY MR. MILLS:

24 Q. I'm sorry, sir, your answer?

25 A. Yes, sir.

1 Q. All right. Now, I believe you told Mr. Garfield that
2 you didn't ask for a warrant. You just took to the Court
3 and showed him what you had, right?

4 A. Yes, sir.

5 Q. All right. Do you remember having a conversation at
6 the scene discussing with Sergeant Wright and Deputy Reed
7 about calling up the judge and seeing what he thinks?

8 A. Do I remember the whole conversation?

9 Q. Or do you remember that conversation?

10 A. I don't remember the whole conversation no, sir.

11 Q. Okay. I'm not asking about the whole conversation.

12 Do you remember something -- I mean I can go get it
13 and play it.

14 A. I'm saying I remember us talking. Yes, sir. But I

15 ---

16 Q. Okay.

17 A. --- but like I said I don't remember everything that
18 was said. No, sir.

19 Q. Right. Do you remember Sergeant Wright saying, no,
20 we're not allowed to do that any more, we're not supposed
21 to call up the magistrate and ask him?

22 A. I'm going to be honest with you, I don't recall.

23 Q. Okay.

24 MR. MILLS: Your Honor, if you could give me a moment
25 I'm gonna cue up the tape from that part.

1 THE COURT: Okay.

2 MR. MILLS: One moment, please, your Honor.

3 MR. GARFIELD: Your Honor, we'd ask what the purpose
4 is of playing the video? Is it that -- to refresh his
5 memory of the video or what he's trying to remember? I
6 just don't understand the purpose of showing the video to
7 this particular witness.

8 MR. MILLS: I mean, you can call it either impeachment
9 or a refreshment. I'm going to show him what he said at
10 the time.

11 THE COURT: I'll allow it.

12 MR. MILLS: I'm sorry, your Honor. I'll move on, your
13 Honor, until we can locate it.

14 Q. All right. Did you -- You said you went back to check
15 on Faile at the hospital; right, or you called back there?

16 A. Yes, sir.

17 Q. Did you ever get any other records to document his
18 injuries and to say what actually -- I know we see this
19 neck brace. Was his neck broken?

20 A. I don't think so, sir.

21 Q. Okay. Were any of his legs broken?

22 A. I don't think so.

23 Q. Were both his kneecaps broken?

24 A. I don't think so.

25 Q. All right. He just actually had bruises around his

1 body and some staples in his head, right?

2 A. Yes, sir.

3 Q. Did you get a toxicology report or any medical records
4 to see if he was under the influence of drugs?

5 A. No, sir.

6 Q. Did you think that was important?

7 A. No, sir.

8 Q. Okay. Have you ever in your experience as a police
9 officer had to use force against an individual?

10 A. Yes, sir.

11 Q. All right. Have you ever done it where you've done
12 things in what you thought would make somebody -- either a
13 tase or a PR-24 and it didn't seem to have any effect?

14 A. No, sir. I never tased anyone. I've never hit with a
15 PR-24, sir.

16 Q. Okay. Let me ask you this question. Did -- did Mr.
17 Faile tell you -- Excuse me. Did Mr. Faile tell you that
18 he hit Mr. Carter first?

19 A. I don't recall.

20 Q. All right.

21 MR. MILLS: We're going to try and play this part of
22 the video, your Honor. I don't know if it's gonna be
23 exactly how I planned it.

24 (VIDEO/AUDIO PUBLISHED TO THE JURY AT 05:21 PM.)

25 MR. MILLS: Stop it for a moment there.

1 Q. Did you hear that, Mr. Gwinn?

2 A. Yes, sir.

3 Q. What did you just say in that video?

4 A. I'm soft-spoken, so. I heard it but you might have to
5 turn it up a little louder so I can tell you exactly what I
6 said.

7 Q. Okay. We'll try and get it back there.

8 (VIDEO/AUDIO REPUBLISHED TO THE JURY.)

9 Q. Can you hear this, Mr. Gwinn?

10 A. Yes, sir. I'm talking about my part of it.

11 (VIDEO/AUDIO CONTINUES TO BE PUBLISHED.)

12 Q. All right. Did you hear that?

13 A. Yes, sir.

14 Q. What did you say?

15 A. He said he hit him because he had a bat in his hand.

16 Q. So, he didn't say he got hit with the bat first. He
17 said he hit him because he had a bat, right?

18 A. I'm -- My statement was he said he hit him because he
19 had the bat in his hand.

20 Q. Right.

21 A. It didn't say he hit him, you know, I don't know what
22 else. In that video that's all I said was, he said he hit
23 him because he had the bat in his hand.

24 Q. All right.

25 MR. MILLS: Just go on.

1 (VIDEO/AUDIO CONTINUES TO BE PUBLISHED AT 05:24 PM.)

2 MR. MILLS: Stop.

3 Q. Did you hear that?

4 A. Yes, sir.

5 Q. All right. You said we can always just call the judge
6 and see what he says.

7 A. Yes, sir.

8 Q. Is it the judge's job to charge somebody?

9 A. No, sir.

10 Q. It's your job to decide the charge, correct?

11 A. In that aspect I was saying I will call the judge and
12 see what he says as if he would go ahead and give me the
13 warrant for the charge, not to make a charge.

14 Q. Well, why did he say you can't do that any more, we're
15 not allowed to do that any more?

16 A. Like I said I don't -- I don't recall. I don't
17 remember all the policies and stuff so I'm going to be
18 honest with you.

19 Q. All right. Are you familiar with the *Castle Doctrine*?

20 A. Not any more, no, sir.

21 Q. Do you remember talking to me about it in your
22 deposition?

23 A. No, sir.

24 Q. Let me ask you this. If Mr. Carter is attacked in the
25 doorway of his house, does he have a duty to retreat?

1 A. I'm being honest with you, I don't -- I don't know.
2 Like I say I don't remember because I'm dealing with
3 something totally different now.

4 Q. All right.

5 MR. MILLS: One moment, please. The -- Let me check
6 with my counsel, your Honor, we may be finished.

7 That's all I have for this witness, your Honor.

8 Please answer everything if Mr. Garfield has any
9 questions.

10 THE COURT: Redirect?

11 MR. GARFIELD: Part of the redirect, your Honor, is I
12 did want to play him something from the video which I have
13 not done yet. And if I could just take a very short break
14 for technical because I'm going to have to use my DVD maybe
15 for this system.

16 THE COURT: All right. We'll let you go to the jury
17 room. No sense in you sitting here while we do that.

18 We'll send for you as soon as it's ready.

19 (JURY EXITS COURTROOM AT 05:27 PM.)

20 MR. MILLS: I assume this is going to be in response
21 to something we've had on cross?

22 THE COURT: I have no idea.

23 MR. GARFIELD: To the extent this may be an issue, Mr.
24 Mills was asking the witness in great detail about what he
25 knew when he reported to the magistrate in the -- I just

1 wanted to ask him about that first part because he was
2 talking -- asking him about witnesses' statements and his
3 version of events. He has given a version of events
4 spontaneously to the officer, to Deputy Gwinn, at the
5 moment he arrived. I'd like for him to play that for him
6 and I'd like to ask him about it.

7 THE COURT: Any objections?

8 MR. MILLS: I don't see that's any -- that's not new
9 matters on redirect.

10 THE COURT: No, you ask him -- I thought you ask him
11 about whether he got the information from the statements
12 and --

13 MR. MILLS: Well, I mean Robbie covered it and I
14 covered it. Its not a new matter. I mean he's got -

15 MR. GARFIELD: It's redirect. He -- What Mr. Mills
16 asked him was what he ascertained from Mr. Carter at the
17 events, what he learned. He asked him about what he put in
18 his statement, what he reported to the magistrate. I'd
19 like to go ahead and ask him what he heard at this
20 particular time.

21 THE COURT: I'll allow it.

22 MR. MILLS: Well only for the record, as did Mr.
23 Garfield asked him all those questions on direct, so.

24 THE COURT: Okay.

25 MR. MILLS: But that's fine.

1 THE COURT: All right. Bring in the jury.

2 (JURY RE-ENTERS COURTROOM AT 05:33 PM.)

3 THE COURT: Okay.

4 REDIRECT EXAMINATION

5 KEVIN GWINN, BY MR. GARFIELD:

6 Q. Okay. Mr. Gwinn, -- is going to play you a part of a
7 video.

8 MR. GARFIELD: And I just represent, your Honor, that
9 it is --

10 MR. MILLS: There's got to be a question, your Honor,
11 doesn't there?

12 MR. GARFIELD: Well, he gave a little precursor for
13 the other videos. I was just going to generically explain
14 who's -

15 THE COURT: All right.

16 MR. GARFIELD: With the Court's permission.

17 THE COURT: Go ahead.

18 MR. GARFIELD: This is -- Your Honor, this is the
19 beginning of Mr. Gwinn's dashboard-cam video.

20 (DEPUTY GWINN'S IN-CAR VIDEO/AUDIO PUBLISHED TO THE
21 JURY AT 04:34 PM.)

22 BY MR. GARFIELD:

23 Q. Did you hear the portion that was just played out in
24 court?

25 A. Yes, sir.

1 Q. Okay. Is that -- Whose dash-cam video was that?

2 A. That's mine.

3 Q. What song did we hear when you were pulling up?

4 A. That's Chaka Kahn.

5 Q. Chaka. And when you -- when you pulled up you heard
6 the man's voice, what we just heard?

7 A. Yes, sir.

8 Q. And can you identify who that was?

9 A. Mr. Carter.

10 Q. Mr. Mills was asking you, after he played a portion of
11 a video, and we heard three people's voices on it, and then
12 he asked you did you say something which is the final
13 voice. Do you recall that?

14 A. Yes, sir.

15 Q. All right. Can you tell me who the other two
16 individuals you were talking to?

17 A. It would have been Sergeant Wright and Officer Reed.

18 Q. Sergeant Lee Wright and Officer Jonathon Reed?

19 A. Yes, sir.

20 Q. And we heard you say something like other guys -

21 MR. MILLS: Your Honor, he's going beyond redirect.

22 THE COURT: I haven't heard -

23 MR. GARFIELD: I'm asking --

24 THE COURT: --- the question yet, so, I don't know.

25 BY MR. GARFIELD:

1 Q. At the time of the video, when we heard your
2 statement, had you interviewed Mr. Faile at that point?

3 A. No, sir.

4 Q. Had you asked Mr. Faile about his version of events at
5 that point?

6 A. No, sir.

7 Q. Did you know what Mr. Faile's perspective was, or what
8 he was going to say?

9 A. No, sir.

10 Q. When did you learn that?

11 A. When I talked with him at the hospital.

12 Q. Until sometime after the video?

13 A. Yes, sir.

14 MR. GARFIELD: One moment, your Honor.

15 Nothing further. Thank you, your Honor.

16 RE-CROSS-EXAMINATION

17 OFFICER KEVIN GWINN BY MR. MILLS:

18 Q. So you're saying that you never talked to Faile about
19 what he did at the scene?

20 A. I don't recall talking to him, no, sir.

21 Q. Well you just told him you didn't talk about it until
22 the --

23 MR. GARFIELD: Objection. Argumentative, your Honor.

24 BY MR. MILLS:

25 Q. But did you not just tell Mr. Garfield that you didn't

1 get his story until you had went to the hospital?

2 A. Yes, sir.

3 Q. Is that true?

4 A. As far as I can recall, yes, sir.

5 Q. All right.

6 MR. MILLS: I'd like to play a part of the tape, your
7 Honor.

8 Let me find it on the tape. 22:52.

9 MR. GARFIELD: Your Honor, may we approach on this
10 point?

11 THE COURT: No. Let's just go ahead and -

12 MR. GARFIELD: Just in the interest of time. Okay.

13 Thank you, your Honor.

14 (VIDEO/AUDIO PUBLISHED.)

15 BY MR. MILLS:

16 Q. Now, Mr. Gwinn, that's you talking to Mr. Faile,
17 right?

18 A. I don't know who that is.

19 Q. You don't know who that is? All right.

20 A. I'm not sure if that's Mr. Faile or was that the other
21 guy.

22 Q. This is not Mr. Blackwelder. Mr. Blackwelder is in
23 the car.

24 MR. GARFIELD: Objection, your Honor.

25 THE COURT: Whoa, whoa, whoa. That's not a question.

1 That's -- you're testifying now.

2 MR. MILLS: All right. I'll just play it and let's
3 see if he can identify it.

4 (VIDEO/AUDIO PUBLISHED AT 05:40 PM.)

5 BY MR. MILLS:

6 Q. Did that refresh your memory?

7 A. Not really.

8 Q. All right. That's fine.

9 MR. GARFIELD: I have one question.

10 THE COURT: No, you've already done redirect, haven't
11 you?

12 MR. GARFIELD: That -- that's correct, your Honor, but
13 it was only based on that last question.

14 THE COURT: Well, no, I'm not going to -

15 MR. GARFIELD: Okay. Thank you, your Honor.

16 THE COURT: It's time to stop.

17 MR. GARFIELD: That's fine.

18 THE COURT: All right. Mr. Gwinn, you can step down
19 and be excused. We appreciate your time.

20 MR. GWINN: Yes, sir.

21 (WITNESS LEAVES WITNESS STAND.)

22 THE COURT: Members of the jury, we're going to stop
23 for the day and start back at ten in the morning. We
24 should have this in your hands by lunchtime and we'll order
25 lunch for you tomorrow. Have a pleasant evening and we'll

1 see you at ten in the morning.

2 (JURY EXITS COURTROOM AT 05:41 PM.)

3 THE COURT: Anything else before we stop for the day?

4 MR. MILLS: No. I was just going to try and, for
5 tonight, jury charges for tomorrow?

6 THE COURT: I thought we'd get together at nine
7 thirty. Have we got a copy to give them?

8 LAW CLERK: We can print some off.

9 THE COURT: We're going to print off what we have, but
10 I think you might have punitive damages in there but you
11 can't get punitive damages against a government entity

12 MR. MILLS: No.

13 THE COURT: --- so we'll take that out. We -- we're
14 not really sure about what all the damages claim is so you
15 might want to get us a charge on that.

16 MR. GARFIELD: All right.

17 THE COURT: But other than that, I think we've got
18 something together, and we'll give it to you to study
19 overnight. And I've looked at the defendants and
20 incorporated some.

21 MR. MILLS: I have not seen the request of --

22 THE COURT: We'll talk about them all in the morning.

23 MR. MILLS: I haven't seen the request to charge yet.
24 Do you have a copy?

25 MR. GARFIELD: I thought we provided it.

1 MR. MILLS: No.

2 MR. GARFIELD: We have an extra copy.

3 THE COURT: All right. We'll see you all in the
4 morning at nine thirty.

5 MR. GARFIELD: Thank you, your Honor.

6 (COURT IN EVENING RECESS AT 05:45 PM.)

7 (COURT BACK IN SESSION WEDNESDAY, NOVEMBER 9, 2016 AT
8 10:22 AM.)

9 THE COURT: The CAD report, which I understand says
10 Detailed Call For Service Report, I do remember seeing this
11 and I'll check up here and make sure I don't have it, I
12 don't think I kept it for any reason, but we're going to
13 substitute a copy for the copy that was introduced as
14 Exhibit Nine.

15 MADAM COURT REPORTER: Nine b).

16 THE COURT: (B). Any objection?

17 MR. MILLS: No, sir.

18 MR. GARFIELD: Just -- We're just talking about a
19 substitution?

20 THE COURT: Right.

21 MR. GARFIELD: No objections.

22 THE COURT: All right.

23 (WHEREUPON, PLAINTIFF'S EXHIBIT NINE, PREVIOUSLY
24 MARKED AND IDENTIFIED, NOW SUBSTITUTED WITH A COPY AS
25 PLAINTIFF'S EXHIBIT NUMBER NINE(B).

1 THE COURT: Now before we get the jury in I have
2 revisited -- I just wanted to get my comfort level up on my
3 ruling and directed verdict on the false arrest.

4 The contention of the Defense is that the warrant was
5 facially invalid and I found that it was not, that it
6 mirrored the statute that it cites, 16-3-600(b)(1), and it
7 contained information about what was observed. It didn't
8 observe the striking, of course, but that there was the
9 testimony from the defendant and others that from which a
10 logical person could conclude there was a striking
11 particularly admitted. But I have revisited *State versus*
12 *Bacchus*, 367 S.C. 41; *State versus Gest*, 336 S.C. 611. I
13 pulled up a case that had not been handed up that I thought
14 bore some value on the issue of *State versus Porch*,
15 *P-o-r-c-h*, 417 S.C. 619; *Loggs versus Department of*
16 *Corrections*, 368 S.C. 424, and I looked at those. I also
17 --

18 MR. MILLS: Your Honor, just so the record's clear,
19 it's *Gest versus Berkeley County*. You said *State versus*
20 *Gest*.

21 THE COURT: Oh, *Gest versus Berkeley County*, Yeah,
22 that's right. I also got the warrant this morning and the
23 last sentence on the warrant says -- and this is sworn to
24 by Mr. Gwinn -- the last sentence says "probable cause
25 based on police investigation" and cites the report number

1 thereby incorporating the report into the warrant and the
2 information which the judge had under oath. That report is
3 not in evidence so I cannot say whether that does or does
4 not support the probable cause finding. But even without
5 the report I again find that the warrant was not facially
6 invalid; was, in fact, valid. So, I just wanted to put
7 that on the record.

8 MR. MILLS: Can I just state my position?

9 THE COURT: Yes.

10 MR. MILLS: Just so the record's clear. Your Honor,
11 not to argue with the court but just for our position for
12 the appellate courts. We believe just the reference that
13 probable, the swearing out has to be under oath. When you
14 swear about something you said not under oath doesn't
15 bootstrap it into the warrant. All they're saying is -- so
16 that is our position. Probable cause is not defined and
17 did not give the underlying facts which an independent
18 magistrate could assess whether those facts constituted --
19 I do not argue with the Court -- they laid out the elements
20 of ABHAN.

21 THE COURT: I understand. I thought through all of
22 that but what I came down to is that this -- Officer Gwinn
23 swore that probable cause was based on police
24 investigation. He testified that he had shown that report
25 to the magistrate and I know he -- there wasn't sworn

1 testimony regarding that but that does add, in my opinion,
2 some more basis on which the magistrate relied, and had a
3 right to rely on, because they're sworn to.

4 The report is not in the evidence and so I can't look
5 at it to see whether it had any value or not although I
6 find that even without it that the warrant was valid. But
7 I just want to -- I want to make sure I felt comfortable
8 with my ruling and so I revisited it and came in early this
9 morning and did some research and came back with my same
10 conclusion. All right.

11 MR. GARFIELD: And I need to put something on the
12 record just based on that. More for just housekeeping,
13 your Honor. At the time that we did approach we attempted
14 to introduce the report into evidence. I don't know if
15 that actually got on the record. If I could just mark now,
16 for the record, we did ask, or at least try to pursue the
17 actual report to put it into evidence. We take the
18 position, and we took it at the time, that that would be
19 clearly a hearsay exception based on not only the business
20 records exception but also a drafted document memorialized
21 by a governmental entity. That's the second exception. I
22 just wanted to put that on the record to first
23 completeness.

24 THE COURT: Has that report been made a Court's
25 exhibit? I suggest you do, so if it goes up -

1 MR. GARFIELD: Yes, sir. I'm trying to look at the
2 stack.

3 MR. MILLS: It's not.

4 MR. GARFIELD: Okay. We'll go ahead and make that an
5 exhibit, your Honor. Thank you.

6 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
7 MARKED, RECEIVED INTO EVIDENCE.)

8 MR. MILLS: Nothing else.

9 THE COURT: Okay. All right. We can do it at some
10 point.

11 MR. MILLS: Yes, sir.

12 THE COURT: Bring in the jury.

13 (JURY RE-ENTERS COURTROOM AT 10:29 AM.)

14 THE COURT: Good morning.

15 Call your next witness.

16 MR. GARFIELD: Good morning. Thank you. The
17 defendant Sheriff calls Sergeant Lee Wright to the stand,
18 please.

19 (WHEREUPON, LEE WRIGHT, BEING
20 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 DIRECT EXAMINATION

22 SERGEANT LEE WRIGHT BY MR. GARFIELD:

23 Q. Good morning.

24 A. Good morning.

25 Q. Please introduce yourself to the jury.

1 A. My name is Sergeant Henry Lee Wright, Junior.

2 Q. Sergeant Wright, where are you from?

3 A. I'm from Rock Hill, South Carolina.

4 Q. Okay. And can you tell the jury a little bit about
5 your educational background?

6 A. I graduated from Northwestern High School in '97. I
7 went -- I had two years of York Tech, computer and
8 electrical engineering. I realized I didn't want to work
9 in an office for the rest of my life, so I got hired on at
10 the Sheriff's Office, went to the Criminal Justice Academy
11 and been working here for fifteen years. So, continued
12 education throughout the whole time I was here with the
13 Sheriff's Office.

14 Q. When did you attend the South Carolina Criminal
15 Justice Academy?

16 A. It would have been 2001. I can't remember exactly the
17 dates but probably around October to December of 2001.

18 Q. And you went directly to work for the York County
19 Sheriff's Office?

20 A. Yes, sir.

21 Q. And you've been here ever since?

22 A. Yes, sir.

23 Q. All right. And about when were you promoted to
24 Sergeant?

25 A. I was promoted in, I believe it was February of 2008.

1 Q. Basically what are your duties as a sergeant with York
2 County Sheriff's Office?

3 A. That's a lot.

4 Q. Well, let me make -- simplify it to some degree.

5 A. Okay.

6 Q. You're a sergeant. Does that provide you supervisory
7 duties?

8 A. Yes, sir.

9 Q. In what way, or tell the jury your role as a
10 supervisor.

11 A. I'm a patrol supervisor. The way our department is
12 set up is we have four lieutenants that work the individual
13 districts and under those lieutenants there is a sergeant
14 for each shift in each district so that's a total of four
15 sergeants working per night. So, I am a supervisor of the
16 Rock Hill district on my shift.

17 Q. And are you assigned to a particular district or
18 region within the county?

19 A. Yes, sir. The Rock Hill district.

20 Q. Do you ever work any of the other districts,
21 generally, or any other regions in the county?

22 A. When the Fort Mill sergeants all for -- In all reality
23 any time another supervisor is off in another area I could
24 be called to go to that area for -- for supervisor
25 purposes.

1 Q. Let me bring you to April 25th, 2012.

2 A. Okay.

3 Q. Okay. What shift were you working on that particular
4 day?

5 A. It was night shift, 6:00 pm to 6:00 am.

6 Q. And you say you were working the night shift. Where
7 -- what does that entail? Were you stationary? Are you in
8 your car? Are you mobile? What typically happens?

9 A. Mobile. Pretty much the entire -- I even supervise --
10 We have to answer calls. Rock Hill is the busiest
11 district.

12 Q. Do you ride with anybody?

13 A. No, sir. It's single-man units. Unless we're
14 training in the FTO program.

15 Q. And do you consider that a night shift? Do you
16 consider that a night shift? Is it just a day shift and a
17 night shift?

18 A. Yes, sir.

19 Q. So at that particular time did you have an occasion to
20 go to or be dispatched to somewhere on Lesslie Highway?

21 A. Yes, sir.

22 Q. Okay. Can you please explain or describe that to the
23 jury?

24 A. That night we had a call about a disorderly in
25 progress. I had two of my officers responding, Deputy

1 Gwinn and Deputy Reed. It's not uncommon for the
2 supervisor, myself that night, to go en route if he's close
3 to that incident to see if I could be of resource to the
4 officers or any kind of assistance.

5 Q. Okay. And when you arrived what did you observe, if
6 anything?

7 A. When I arrived on the scene it was a very chaotic
8 scene. A lot of moving parts. There were at least four
9 individuals that were highly upset. My immediately -- my
10 immediate duties at that point, as Mr. Mills brought up
11 yesterday, the Sheriff's Office just had a force continuum.
12 The first portion of the force continuum is officer presence
13 so we had three officers on scene. That's the first step
14 of the force continuum.

15 The second step is verbal commands. My officers had
16 already advised people to go inside. I -- they -- you
17 know, as they already testified and you heard on the
18 videos, Mr. Carter had come back outside of his residence
19 after Deputy Gwinn had told him to go inside. Mr.
20 Blackwelder, likewise, had not left the area. He continued
21 to be highly irate. So, those two individuals were
22 detained in order for us to secure the scene for EMS to
23 come in and treat Mr. Faile as well as officer safety.
24 That's our number one -- or number two priority. Number
25 one is life. So, when we arrived on the scene we had to

1 get medical attention for Mr. Faile.

2 Q. Okay. Well, let's break it down. Your number one
3 priority when you arrive you said is life?

4 A. Life.

5 Q. Okay. And what, if anything, did you observe or
6 evaluate with respect to Mr. Faile?

7 A. I don't recall exactly if he was on the porch or if he
8 was on the stretcher when I arrived on the scene. But I do
9 remember he was in bad shape. It appeared that he had
10 multiple injuries. Again I'm not a doctor but there were
11 bruises, abrasions, blood. There appeared to be multiple
12 injuries.

13 Q. And you said that there were some actions taken to try
14 to get medical attention to come?

15 A. Right.

16 Q. And after that's taken care of, you said the number
17 two priority is officer safety.

18 A. That is correct.

19 Q. Okay. What if anything about this scenario, going to
20 this scene at this particular night, gave you pause or
21 concerns about officer safety?

22 A. There were -- there were numerous things about the
23 incident that -- that -- I don't know the best way to
24 describe -- gave me red flags, I guess, is the best way to
25 explain it. Number one is as law enforcement we never know

1 who has weapons. You know, we're not allowed but under
2 certain circumstances to do Terri frisks, things you see on
3 TV. It's not like the TV shows where you can just go up
4 and search anyone or search for any kind of evidence or
5 weapons of that sort. So we have strict guidelines that we
6 have to go by. So one red flag is when you have
7 individuals that are going back and forward from inside the
8 house to outside, things of that nature. We never know if
9 they're going in to -- to get another gun to bring out to
10 escalate the situation. We don't know if neighbors are
11 going to come to bring weapons to the situation. So, -- so
12 that was a big red flag in the very beginning of when we
13 were on the scene to make sure that the three officers were
14 safe as well as the civilians that were involved in the
15 case.

16 Q. Does the number of individuals that you encounter in a
17 situation like that, does that affect your decision making
18 or thought process with respect to red flags?

19 A. Absolutely.

20 Q. How so?

21 A. I mean, the more people you have, the worse it can
22 get. You got to understand, we're outnumbered, even four
23 to one -- or four to three at that point. We're
24 outnumbered on just about every call that we go to in
25 service.

1 Q. You mentioned a chaotic scene. How were the -- how
2 were the witnesses or the people that you encountered?
3 Describe their demeanor and their tempers.

4 A. Okay. Mr. Faile, he was highly irate because he -- he
5 had been assaulted with the ball bat. I remember having
6 conversations with him trying to get him to calm down. He
7 was very upset about the water. He was very concerned for
8 his daughter having water. He -- he seemed confused at
9 times. Again, at that point, he was just kind of yelling
10 out things. Couldn't really get his side of everything.
11 Yes, he said that Mr. -- turned out Mr. Carter struck him
12 with the bat but at the time he wasn't making a lot of
13 sense so we weren't able to -- to get a good understanding
14 from his point of view of what happened.

15 Q. And I'll ask you a little bit about that in just a
16 bit.

17 A. Okay.

18 Q. But if there -- if there were tempers flaring, did
19 that cause you any concern as far as officer safety?

20 A. Absolutely. I mean, anytime you have a subject that's
21 upset and certain things don't go their way involving an
22 investigation there's the heightened sense that things
23 could get more heated.

24 Q. And how would the fact that someone was injured and
25 needed medical attention, how would that factor into --

1 MR. MILLS: I would ask he not lead the witness, your
2 Honor.

3 THE COURT: Yeah. Those are leading questions.

4 MR. GARFIELD: Okay.

5 Q. Does the fact that you've come upon a scene where
6 someone needs medical attention does that in any way factor
7 into your officer safety assessment?

8 A. Yeah. I mean, you know, like I said first -- our
9 first and foremost is to make sure that medical treatment
10 is received by anybody that needs medical treatment. So,
11 when you go into a situation like that you have to secure
12 anyone that's irate or anything like that or at least get
13 them away from the situation so that EMS can come in so
14 that, you know, we can get the medical treatment. So, I
15 mean, basically just so we can start the investigation.

16 Q. So if the number one priority is life and the number
17 two is officer safety, are there any other things of
18 significance or priorities for you?

19 A. The number three thing would be to -- to start the
20 investigation, to start finding out what happened from --
21 from individuals. Once we get the scene secured so we know
22 that life is taken care of, once we know that the officers
23 are safe, at that point we start the investigation. We
24 start trying to find out what happened: who, what, when,
25 where and how.

1 Q. Okay. Let's be clear about something. Were you the
2 case officer here?

3 A. No, sir.

4 Q. Why not?

5 A. I was not the officer -- first officer on the scene.
6 It's my shift. It's not a policy directly but my guys
7 we've kind of got the understanding that the first officer
8 on the scene is the officer that's going to take care of
9 the case.

10 Q. And who was the first officer on the scene?

11 A. Deputy Gwinn.

12 Q. Okay. Who was the other officer on the scene?

13 A. Deputy Reed. They arrived basically about the same
14 time. Deputy Reed actually was dispatched the call first.
15 Deputy Gwinn was the backup officer. However Deputy Gwinn
16 did pull up on-scene first and then Deputy Reed.

17 Q. Despite the fact that you were not the case officer,
18 did you have an occasion to participate or play a part in
19 the investigation?

20 A. Yes, sir.

21 Q. Okay. And could you describe for the jury how you did
22 that?

23 A. Part of my function as a supervisor is to make sure
24 the officers are doing a complete and thorough
25 investigation. Making sure they're talking to all parties;

1 making sure that they're getting things like statements if
2 they can, getting photographs. And I do -- I'm a police
3 officer so I kind of -- I kind of like to investigate
4 things myself. So, I did have a chance to talk to Mr.
5 Carter. I did have a chance to talk to Mrs. Carter. I did
6 have a chance to talk to Mr. Faile briefly before they
7 loaded him up in the ambulance and took him -- took him to
8 the hospital.

9 Q. Were written statements taken of any of the folks that
10 were there?

11 A. In my understanding Mr. Carter and Mrs. Carter's
12 written statements were taken from them.

13 Q. What, if anything, do you do when you come to a scene
14 before at the time of taking statements? In other words,
15 do you just go take statements immediately or are there
16 other things that you factor in?

17 A. You know there's other things that we factor in. We
18 like to get -- we kind of have a Golden Rule of three
19 three's. We ask them twice of what happened to see if
20 there's any inconsistencies in stories. And then thirdly
21 we ask for a written statement is normally how we try to do
22 it. Obviously in all cases you can't do that but we try to
23 do that in most of our investigations.

24 Q. What if somebody's very upset? Do you put a piece of
25 paper and a pen in front of them right there?

1 A. No, sir.

2 Q. Why not?

3 A. We give them a chance to calm down. You know, a lot
4 of times we'll do the verbal interviews while, you know, as
5 soon as we can for excited utterances and things of that
6 nature. However I find that if you give people time to
7 cool down and to stop and think they write better
8 statements. And they normally give more detail in the
9 statements.

10 Q. Okay. When Mr. Carter gave a statement had he calmed
11 down, to your -- from your impressions?

12 A. From my impression, yes, sir.

13 Q. And how about Mrs. Carter?

14 A. Yes, sir.

15 Q. How about Mr. Faile? Did he give a written statement
16 at the scene?

17 A. No, sir.

18 Q. And why not?

19 A. He was unable to write at the time.

20 Q. Okay. Was -- What was his demeanor like at the scene?

21 A. Mr. Faile?

22 Q. Mr. Faile. I'm sorry.

23 A. Mr. Faile was -- was very upset. Like I said, he --
24 his -- his whole statement to us is that he came over to
25 try to question to find out why the water was turned off.

1 He felt like that he was, you know, assaulted and that, you
2 know, basically all he wanted was water. So, he was - he
3 was very upset. He -- As you can see on the video.

4 Q. If he could have written down or have been able to
5 write was he, in your estimation, too upset to give a
6 written statement at the scene?

7 A. At the time, yes, sir.

8 Q. Did you understand that he did give some type of
9 version -

10 MR. MILLS: Objection to leading, your Honor.

11 THE COURT: Okay. Just rephrase your question.

12 MR. GARFIELD: Yes, your Honor. Thank you.

13 Q. Did he ever give a statement?

14 A. Yes, sir.

15 Q. And he gave -

16 A. He gave his verbal statement to Deputy Gwinn at the
17 hospital.

18 Q. When you conduct an investigation what importance, if
19 any, do you factor in as far as the credibility of the
20 witnesses?

21 A. We have to remain objective. We do not use prior
22 incidents to -- to affect our decision on a certain case.
23 That would be unfair. So what we try to do is just go off
24 of the facts of that individual incident.

25 Q. At some point, Sergeant Wright, I believe we hear

1 officer voices I'd represent to you on the video. It looks
2 like that there are three voices, male voices, purporting
3 to be the deputies ---

4 A. Yes, sir.

5 Q. --- involved.

6 A. Yes, sir.

7 Q. Did -- a conversation between three deputies.

8 A. Yes, sir.

9 Q. Do you recall Mr. Mills putting that up?

10 A. Yes, sir, I do.

11 Q. Who are the deputies involved in that?

12 A. Myself, Deputy Gwinn, and Deputy Reed.

13 Q. Could you please describe the nature of that
14 conversation that we heard on the video?

15 A. This is a common practice in law enforcement and we --
16 we -- any time we have an incident that's this complex we
17 try to get together and try to look at things from every
18 point of view. We bounce ideas off -- as you heard on the
19 video, Deputy Reed said, well, if it was my family, I may
20 have done this. And you heard Deputy Gwinn on the video
21 say, yeah, but this guy's going to say this. You hear me
22 say, yeah, but my point is this. We're basically bouncing
23 ideas off of each other to try to remain objective, to look
24 at things from all points of view, not just one piece of
25 the puzzle. We have to look at Mr. Faile, Mr. Carter, Mrs.

1 Carter, everybody's point of view in this case.

2 Q. Okay. In that segment we heard Deputy Reed get his
3 perspective, or first -- first-blush impressions.

4 A. Yes, sir.

5 Q. Okay. What were those?

6 A. Deputy Reed said -- and I can't quote it ---

7 Q. No, absolutely.

8 A. --- but I believe he said something to the effect of,
9 you know, if it was my house and my kids I may have gotten
10 a bat and went outside.

11 Q. And who responded next?

12 A. I did.

13 Q. And what, if anything, did you say in response to
14 that?

15 A. My point in this whole case is the fact that we've not
16 heard any testimony from Mr. Carter or Mrs. Carter about
17 Mr. Faile trying to gain entry into the residence, trying
18 to force the door open at any point. We've heard testimony
19 from Mr. Carter stating that the door was locked. And my
20 whole point in the whole situation was if the door was
21 locked why did he open the door and go out? If he was
22 secure inside the residence -- and that was my whole point
23 on the video when I said it. You know, you're secured
24 inside your house. You do not have to escalate the
25 situation at that time. Obviously if Mr. Faile does go

1 inside the residence you do have the right to defend
2 yourself. My whole point was the door was secure. He
3 stated to us that night, as he did testimony in here, that
4 he was afraid, that he had had these issues with the
5 neighbor, that, you know, he was afraid for his life, his
6 family's life and things like that, but those are not
7 actions of someone who's afraid of opening the door, you
8 know, opening the door and stepping outside.

9 Q So, that was my point on the videos what I was saying
10 there. That the -- what I actually said was something to
11 the effect of, yeah, but he said for five minutes he tried
12 to tell him to get off the porch and during that time he
13 never called law enforcement. It wasn't until after he
14 opened the door that his wife called law enforcement.

15 Q. Okay. So, you were bouncing things around off of each
16 other?

17 A. Yes, sir.

18 Q. Deputy Reed had his say, you had your say. Did Deputy
19 Gwinn say anything at that point?

20 A. Yes, sir.

21 Q. And what, if anything, did you -- What was your
22 impression of what he was saying?

23 A. Deputy Gwinn, you can hear him on the video -- and I
24 apologize, I trained Kevin. I tried to get him to talk up.

25 MR. MILLS: Your Honor, I have to object if he's going

1 to ask the witness what Deputy Gwinn was thinking.

2 A. No, sir. I was just going to --

3 THE COURT: No, let's start over with the question.

4 But no, he's not going to ask you what he was
5 thinking.

6 BY MR. GARFIELD:

7 Q. I didn't want you to speculate what someone else was
8 thinking, sir. But what was ---

9 A. No problem.

10 Q. --- you were having an understanding ---

11 A. Well --

12 Q. --- between people, you're talking, what was your
13 impression?

14 A. What he said on the video and what he said that night
15 was, yeah, but the other guy is going to say that Mr.
16 Carter came out with a bat and he hit him.

17 Q. Okay. To your knowledge had Mr. Faile ever made that
18 statement?

19 A. No.

20 Q. So again for clarification, to your impression what
21 did you understand, what was your thought process, when you
22 heard that from Deputy Gwinn?

23 A. At that point, or?

24 Q. Yes.

25 A. At that point, you know, we -- at that point we were

1 just bouncing ideas off of each other. That was a --
 2 situations where we were trying to look at it from
 3 everybody's perspective.

4 Q. There's a good bit of conversation on the video. Did
 5 you have a -- Were you in here when the videos were being
 6 played?

7 A. Yes, sir.

8 Q. Did you listen to it?

9 A. Yes, sir.

10 Q. Did you listen carefully to it?

11 A. Oh, yes, sir.

12 Q. Okay. Did you -- did you hear your voice talk any way
 13 about trying to state or cite the law on ---

14 A. Yes.

15 Q. --- the *Castle Doctrine*, and that kind of thing?

16 A. Yes, sir.

17 Q. And what were you saying at the time?

18 A. I misquoted the law. I did. I'm human, I made a
 19 mistake. I misquoted the law. That --

20 Q. What did you say though?

21 A. That particular night Mr. Carter was -- was asking me
 22 about *Stand your Ground*. During this particular incident
 23 there was a case in Florida, the *Zimmerman* case. I'm sure
 24 most of you read it or heard about it. There was a lot of
 25 discussion about that case. I -- That night I got so

1 focused in on *Stand your Ground* that I lost train of
2 thought and I went into explaining that we do not have a
3 *Stand your Ground*. I went into saying you have to retreat
4 and that is not the case. And I apologize to Mr. Carter
5 for telling him that night.

6 Later on in the video you do hear me talking to Mrs.
7 Carter explaining to her more about the *Castle Doctrine*,
8 that you do have a right to defend your house. That if
9 someone does come in the house that they, you know, you
10 have the right to defend yourself. I've -- I've tried to
11 learn from everything in law enforcement. I've learned
12 very quickly that as my career continues I learn
13 constantly. And that particular night, you know, I
14 misquoted the law. I did.

15 Q. Okay.

16 A. But it had no bearing on the case because I was not
17 the case agent.

18 Q. Why would it have had no bearing on the case because
19 you weren't the case agent?

20 A. Because I didn't --

21 Q. You need to be specific on that.

22 A. Because I didn't take any evidence to the magistrate.
23 I had no dealings with making charges or any of that kind
24 of stuff. That was Deputy Gwinn's case. Deputy Gwinn
25 collected the evidence. Deputy Gwinn wrote the report and

1 Deputy Gwinn went and spoke with the magistrate about
2 obtaining the warrant. I had no involvement in that.

3 Q. York County Sheriff's Office puts out their own and
4 holds out their own policies and procedures, I understand?

5 A. That is correct, sir.

6 Q. If a deputy violates a policy and procedure, or a
7 citizen complains about a deputy's conduct, what is the
8 protocol that someone could contact the Sheriff's Office
9 and complain?

10 A. We have an internal affairs department. It's called
11 -- And the reason why I say internal affairs that's not
12 what we call it. That's what most civilians understand
13 from seeing it on TV and stuff like that so I apologize.
14 Our -- ours is called Office of Professional Standards.
15 The civilian can file a complaint with the Office of
16 Professional Standards. It's easier to say IAT. That's
17 the only reason why I say it. They can contact them. They
18 can come in, file a formal complaint, and launch an
19 internal investigation.

20 Q. Say someone comes in files a formal complaint and
21 there's an investigation. Is there a separate individual
22 connected to the Professional Standards division that
23 investigates?

24 A. There are. There are several individuals that work
25 inside of the Office of Professional Standards. A

1 lieutenant, a sergeant, and I believe two other officers.

2 Q. Okay. Was there any type of internal affairs or
3 professional standards complaint in this case?

4 MR. MILLS: Your Honor, object to relevance. He is
5 not in Internal Affairs. I have no idea where this line of
6 questioning is going.

7 THE COURT: I sustain the objection.

8 MR. GARFIELD: And, your Honor --

9 THE COURT: I sustain the objection.

10 MR. GARFIELD: I beg the Court's indulgence.

11 Q. Did you ever become aware after April 25th, 2012 that
12 Mr. Carter had some sort of issues with the way you or your
13 subordinates handled things?

14 A. No, sir. There was never a complaint filed against
15 us.

16 MR. MILLS: Your Honor, he just went back and asked
17 the question you just overruled him and ask about a
18 complaint being filed.

19 MR. GARFIELD: I wasn't going -

20 May we approach, your Honor?

21 THE COURT: I sustain the objection.

22 Disregard whether a complaint was or was not filed.

23 That's not an issue in this case.

24 Go ahead.

25 BY MR. GARFIELD:

1 Q. What is the criminal investigative division of the
2 York County Sheriff's Office? Let me ask it this way. Are
3 you part of the CID or the Criminal Investigation Division?

4 A. No, sir.

5 Q. Okay. What typically happens when a report is
6 generated and the deputies clear the scene on one
7 particular event?

8 A. Okay. Our procedure is -- The criminal investigation
9 division is what most people would call a detective.
10 They're a different division than patrol. We have a
11 captain, lieutenant, and several detectives that would read
12 every single case that came through. Every time a report
13 is filed they'd read it the next morning. Those cases are
14 either then assigned to a detective or sent back to patrol
15 for further investigation.

16 Q. Do you have any knowledge one way or the other as to
17 whether there was further investigation done in this case?

18 A. It was done by patrol. These types of cases -- I know
19 I said earlier, and I say it now, there was a lot of
20 mechanical parts but this is a clear case of he said/he
21 said. It's pretty simple when you start -- when you stop
22 to look at it. There could be no further investigation in
23 this case, so, a detective would not have been assigned
24 this case. This would have been sent back to patrol
25 anyways. We, according to our policy, I know Mr. Mills

1 brought up the policy with Deputy Gwinn yesterday through
 2 testimony. Law enforcement, especially patrol, we're kind
 3 of the old saying jack of all trades master of none. We're
 4 marriage counselors. We're police officers. We're
 5 teachers.. We're medics. But one thing that all law
 6 enforcement are we're all investigators. That's what we
 7 do. That's our main function. That policy was meant that
 8 there would be a complete investigation done. So, there
 9 were -- there was a complete investigation in this case.
 10 Deputy Gwinn got statements from everybody. He wrote the
 11 report. He looked at both sides objectively.

12 MR. MILLS: Your Honor, I don't think he can start
 13 testifying about what -

14 THE COURT: Yeah.

15 MR. MILLS: --- Detective Gwinn did.

16 THE COURT: You can't testify to what somebody else
 17 did, so, disregard that part of his testimony.

18 MR. WRIGHT: I understand.

19 THE COURT: So disregard that part of his testimony.

20 MR. WRIGHT: I understand.

21 THE COURT: Thank you.

22 MR. GARFIELD: Yes, sir. Okay.

23 Q. As far as just the nature of whether there was an
 24 investigation or not.

25 A. Yes, sir.

1 Q. That's the procedure?

2 A. Yes, sir.

3 Q. Okay.

4 A. I apologize about that.

5 Q. Very good. Very good. And I probably should have
6 stopped you.

7 MR. GARFIELD: Thank you, Sergeant. Please answer any
8 questions one of these gentlemen might have for you.

9 MR. WRIGHT: Yes, sir.

10 CROSS-EXAMINATION

11 SERGEANT LEE WRIGHT, BY MR. MILLS:

12 Q. Good afternoon. Good morning, Sergeant.

13 A. Good morning, Mr. Mills.

14 Q. You said if they're in their house or somebody's in
15 their house they would have a right -- if they entered
16 their house they would have a right to throw them out and
17 have a defense, correct?

18 A. Yes, sir.

19 Q. Do you know how a dwelling is defined under the *South*
20 *Carolina Protection of Persons and Properties Act*?

21 A. Yes, sir, I do. You gave me that form in my
22 deposition, so.

23 Q. I've circled it here.

24 A. Yes, sir.

25 Q. Could you read how a dwelling is defined, sir?

1 A. Yes, sir. "Dwelling means a building or conveyance of
2 any kind including an attached porch whether the building
3 or conveyance is temporary or permanent, mobile, or
4 immobile which has a roof over it including a tent and is
5 designed to be occupied by people lodging there at night."

6 Q. So, is it fair to say that when Mr. Faile was on Mr.
7 Carter's covered porch he was in his dwelling?

8 A. Yes, sir.

9 Q. According to the statute?

10 A. According to the statute.

11 Q. So he had broken into his house already?

12 A. It's a matter of discretion, sir.

13 Q. When you say a matter of discretion you mean
14 discretion whether the law actually says that?

15 A. Well at that point we could not say that there was a
16 criminal act to be attempted because part of the burglary
17 statute says that there has to be a criminal act inside of
18 the residence. And at that point when he's just standing
19 on the porch there's no criminal act.

20 Q. Even after he's been told to leave?

21 A. Again, that's trespassing, not burglary.

22 Q. Is trespassing a criminal act?

23 A. Yes, sir.

24 Q. Is it happening at nighttime?

25 A. Yes, sir.

1 Q. And is it inside our client's dwelling?

2 A. Again, sir, that's officer discretion.

3 Q. Okay. But if -- if officers -- So you're saying it's
4 officer discretion whether the covered porch is considered
5 a dwelling or not?

6 A. No, sir.

7 Q. Okay. What is the officer ---

8 A. According to that statute --

9 Q. --- discretion ---

10 A. According to that statute --

11 Q. --- according to that statute?

12 MR. GARFIELD: Your Honor, I'd like for him to be able
13 to --

14 THE COURT: One at a time. Let's get answers --
15 questions, answers, questions, answers. Not two people
16 talking at the same time.

17 MR. WRIGHT: I understand, sir.

18 A. I read the paper, yes, sir.

19 Q. The porch is considered part of the dwelling.

20 A. Yes, sir.

21 Q. And that's not up to officer discretion to decide,
22 yes, the porch is in this case. No, it's not in another
23 case?

24 A. Not according to the law but it is whether or not the
25 officer is going to pursue charges. Yes, sir.

1 Q. Oh, I fully understand that.

2 A. Okay. That's where I was getting confused. I
3 apologize.

4 Q. Right. Right. No. We could agree that that
5 qualifies for discretion, it doesn't mean you have to
6 arrest him for it?

7 A. Right. That is correct. I apologize, sir.

8 Q. No, no, that's -- I mean just -- All right.

9 Now, you talked about referral to the detective
10 division, right?

11 A. Yes, sir.

12 Q. I believe you've been in the courtroom pretty much the
13 whole trial have you not?

14 A. Yes, sir.

15 Q. And you saw yesterday when I was cross-examining
16 Deputy Gwinn and there was no signature on the incident
17 report for a supervising officer, correct?

18 A. That is correct.

19 Q. All right. Now you also understand from Deputy
20 Gwinn's testimony I think this happened about -- the
21 incident at Mr. Carter's house happened around ten thirty,
22 eleven at night. Mr. Faile got taken to a hospital. You
23 all cleared the scene and I understand Mr. Gwinn went down
24 to the hospital to see him, right?

25 A. Yes.

1 Q. Checked on his injuries, and then went to see the
2 judge ---

3 A. Yes, sir.

4 Q. --- and got the warrant, correct?

5 A. Yes, sir.

6 Q. And that would have been done around three or four in
7 the morning looks like?

8 A. I don't know when.

9 Q. I think that's what he said. I think you just
10 testified that cases get assigned to the other division
11 when it's looked at by the supervisors the next day, right?

12 A. Uh-huh.

13 Q. Would they assign a case --

14 THE COURT: You've got to say yes or no.

15 A. I apologize. Yes, sir.

16 Q. Would they assign a case to a investigator when
17 there's already an arrest warrant issued?

18 A. In this case there -- in this case in my training and
19 experience and dealings with the Sheriff's Office for
20 fifteen years we would have got that case back anyways
21 because it was not considered -- there were not anything
22 else to investigate. We had already got those things. Can
23 I -- can I say something about why they -

24 THE COURT: You just have to answer questions.

25 MR. MILLS: No, sir.

1 A. But he ask a question -

2 THE COURT: No. If it has to do with the question, if
3 you're explaining the answer but -

4 A. It does -- it does -

5 MR. MILLS: Your Honor, I'll let him do it. If you
6 feel it's -

7 A. It's just about the --

8 Q. I don't want to be unfair to you. If you feel you
9 have to say something, go ahead.

10 A. It's just the report that you said didn't have a
11 signature.

12 Q. All right.

13 A. At that time we were flipping over systems into a new
14 -- I did sign that report off. In order for that report to
15 be merged it has to be approved by a supervisor. However,
16 the report didn't put a name at the bottom of it.

17 Q. So, -- All right.

18 A. But it has to be approved or it can't go through the
19 system, sir.

20 Q. Well, will you agree with me that this has no
21 designation of anybody on it, that it's the report we have
22 in this case?

23 A. But it can't go through and be merged without -

24 THE COURT: Well that's a yes or no question.

25 A. All right. I apologize.

1 Q. I think you said --

2 THE COURT: Well let him answer. He never did answer.

3 It was a yes or no question.

4 You want to ask it again?

5 MR. MILLS: No, sir.

6 Q. You told us you were not the case agent; is that
7 correct?

8 A. That is correct, sir.

9 Q. But you were the supervisor on the scene?

10 A. That is correct, sir.

11 Q. And they're looking to you for advice and for
12 experience because you've been with the force for a good
13 long time, correct?

14 A. Yes, sir.

15 Q. So, when you misquote the law and in fact I think when
16 Dawn disagreed with you about it, you said, well, I'll just
17 go ahead and arrest him and take him to jail anyway, right?

18 A. No, sir. I was saying -- I was -- I know that sounded
19 like that on the video but what I was saying is that I
20 could. If I was the case agent ---

21 Q. Uh-huh.

22 A. --- I could have went ahead and arrested him.

23 Q. And then --

24 A. I wasn't trying to say that we were going to arrest
25 him. We had already taken him out of handcuffs at that

1 time, allowed him to write the statement, and things of
2 that nature.

3 Q. All right.

4 A. Something that, during that time period Deputy Reed --

5 MR. MILLS: Your Honor. I'm sorry. He just seems to
6 be going on and not response to a question.

7 A. I'm just trying to explain the reason why the law was
8 misquoted, sir.

9 Q. All right. Go ahead.

10 A. But if you don't want me to I won't.

11 Q. All right. Let me just go on with my questioning.

12 A. Yes, sir.

13 Q. Thank you. Mr. Garfield come back and ask this
14 question ---

15 A. Okay.

16 Q. --- of you.

17 Q. Go ahead. Now, do you recall talking about --
18 explaining to the Carters that the warrant was going to be
19 taken to the judge so he could determine who were the
20 primary aggressor, right? Do you recall that?

21 A. Yes, sir.

22 Q. Okay. Because you -- I think you said that he said --
23 he said you couldn't determine who was the primary
24 aggressor, correct?

25 A. Uh-huh.

1 THE COURT: Yes or --

2 A. That is correct. Yes, sir.

3 Q. Now, you were here when we first played the 911 tape,
4 right?

5 A. That is correct.

6 Q. Now, that was in real time, right?

7 A. Uh-huh.

8 Q. That's going there -

9 A. Yes, sir.

10 THE COURT: Keep in mind ---

11 A. Yes, sir.

12 THE COURT: --- we've got to have a yes or no.

13 A. I apologize, sir.

14 Q. So in real time you hear Ms. Carter saying, he's
15 getting physical with my husband?

16 A. Yes, sir.

17 Q. Now, what was Mr. -- What is your understanding of Mr.
18 Faile's story of what happened?

19 A. Mr. Faile's?

20 Q. Yes, sir.

21 A. Mr. Faile stated that he went to the residence to ask
22 about the water, that Mr. Carter came outside, or came to
23 the door. Opened the door. Appeared to have something in
24 his hand behind the door and stepped out. He says he
25 turned around to walk to leave and he hit him in the back

1 of the head.

2 Q. So, -- so, his story was, Mr. Carter was asking you to
3 leave -- asking him to leave and when I turned around to
4 leave he came out. And how did he hit him? Did he take a
5 bat to the back of his head?

6 A. Yes, sir.

7 Q. Just wham! Huh?

8 A. I wasn't there so I don't know, sir.

9 Q. Okay. So, the injuries that you -- Let me ask you
10 this. And that made sense to you that a homeowner at home
11 with his children and a eight-month-old, pregnant wife, who
12 is asking somebody to leave, they leave, he's going to
13 follow them out the door and hit him on the back of the
14 head when they're doing what he says. That's -- that sound
15 logical to you?

16 A. Sir, in my experience I try to look at things from all
17 perspectives.

18 Q. But ---

19 A. I've had people call 911 and say lies. I've had
20 people call 911 and tell the truth. I've had people
21 assault people for no reason. I've had people assault
22 people for good reason. I try to look at things
23 objectively, sir.

24 Q. And I understand. And I'm not asking about everybody
25 else. I'm asking, in this case, did that make sense to

1 you?

2 A. In this case Mrs. Carter did not sound like she was
3 upset on the telephone. She sounded more upset when we
4 arrived on scene according to the 911 tape and the audio of
5 the in-car video. As you -- as you've heard, in my
6 opinion.

7 Q. Anyone that thinks a dispatcher doesn't try to keep
8 people calm?

9 A. Uh-huh.

10 Q. You didn't hear --

11 THE COURT: Yes or no.

12 A. Yes, sir. I apologize. I'm bad about that. I
13 apologize.

14 THE COURT: Well, now everybody in this conversation
15 will deal with yeses and no's.

16 A. Yes, sir.

17 Q. Now, that would have been some -- a little bit more of
18 an investigation you could have done. You could have
19 gotten the 911 tape.

20 A. Yes, sir.

21 Q. Listened to it, and --

22 A. But it's still -- it's still a he said/he said
23 incident.

24 Q. Okay. But there are some other -- okay. I understand
25 that. You -- Well, hold on a second. As I understand you

1 had no further dealings with the case after the scene?

2 After you left the scene?

3 A. There may have been more communication between the
4 three officers that night bouncing ideas off of one another
5 in an office somewhere or over coffee but I can't testify
6 to that, no, sir.

7 Q. And you may have talked to Officer Gwinn before he
8 applied for the warrant?

9 A. I mean, we may have spoke about the case more.

10 Q. Uh-huh.

11 A. But I can't testify to it or deny it. I can't say one
12 way or the other.

13 Q. But you never saw him personally?

14 A. Saw who personally?

15 Q. Gwinn personally afterwards? Before he got the
16 warrant.

17 A. Sir, we worked a six -- or a twelve-hour shift. I saw
18 him after ---

19 Q. I --

20 A. --- but I don't -- I mean I don't remember if we
21 talked about the case or not talk about the case.

22 Q. But you have no further role in specifically doing any
23 footwork to investigate the case, correct?

24 A. No, sir.

25 Q. All right. You know when dispatch 911 was -- 911 --

1 we've heard the recording but they also do a printout,
2 right?

3 A. Yes, sir.

4 Q. And that's called a CAD report, I think?

5 A. Yes, sir.

6 Q. And I'm going to hand you what's been marked as
7 Plaintiff's Exhibit Nine(b) which is the CAD report. And I
8 note here it's got a listing of the units that responded
9 and a call number. And I believe they have you as Radio
10 Number 340, Unit 340 -

11 A. Yes, sir.

12 Q. --- at that time; is that correct?

13 A. Should be. Yes, sir.

14 Q. Is that right?

15 A. Yes, sir.

16 Q. Okay. If you'd hand it back to me.

17 A. I apologize.

18 Q. No, that's fine. And on the next page toward the
19 bottom -- And you're 340, right?

20 A. Yes, sir.

21 Q. It says here at about -- On the bottom here it's got
22 340 arrive PMC. Is that you arriving at the Piedmont
23 Medical Center?

24 A. No, sir. According to this document if you look right
25 here, it says at 00:04:09 Burnett unit status action, Unit

1 340 arrive. This next thing is not until 04:18.

2 Q. Okay.

3 A. So, it could be something totally different.

4 Q. So, it could be something totally different or you
5 could have -- Oh, well, let's see. Hold on. 344. Oh,
6 that's Gwinn, right? Uh-huh.

7 A. Which -- which portion are you pointing to, sir?

8 Q. Okay. Gwinn, he's 344? Unit 344?

9 A. Yes, sir.

10 Q. Turn on the page. What time does Unit 344 get to the
11 PMC, Piedmont Medical Center?

12 A. 23:54.

13 Q. And -- I'm sorry, what was that?

14 A. 23:54.

15 Q. En route to Piedmont.

16 A. En route.

17 Q. En route unit. You're here.

18 A. I'm sorry.

19 Q. No, no. I want to make sure we're not confusing each
20 other. Okay? And if I'm wrong, I will -- certainly I will
21 make a mistake.

22 All right. So actually let me get this for the jury.

23 So you can see I'll try and put it up on the -

24 A. Okay.

25 Q. I -- let's see. The first one here says, and you told

1 me this is -- this is you, right? 409, 340 arrive at PMC,
 2 correct?
 3 A. Well, it says arrive.
 4 Q. Right.
 5 A. That could have been anywhere, because the next time
 6 is four eight -- or --
 7 Q. 409 and 418 PMC.
 8 A. I'm sorry. That's what I'm saying.
 9 Q. Okay. So, that means you're at the location?
 10 A. Yeah.
 11 Q. Okay. And then, Unit 344, which is Gwinn, correct?
 12 And he's arriving there. He's arrives at 04:21 and then he
 13 calls in PMC at 05:35, right?
 14 A. Those times don't makes sense, sir.
 15 Q. Well I'm saying, that's just what it says doesn't it?
 16 A. I understand but dispatchers make mistakes all the
 17 time, sir.
 18 Q. Okay.
 19 A. Just like you and I.
 20 Q. Okay. So --
 21 A. And this -- there's big time differences. If -- If he
 22 had arrived on the scene why would dispatch wait that long
 23 to log us out?
 24 Q. I don't know. Maybe he stayed there after you left.
 25 Did he? Did he investigate further? Did you ---

1 A. No, I'm saying --

2 Q. --- come and tell them and tell them about your --
3 continue with your misapprehension of the law about how he
4 had a duty to retreat into his house?

5 MR. GARFIELD: Objection, your Honor. Sort of
6 testifying and a it's a compound question.

7 THE COURT: Just -

8 MR. MILLS: I'm asking him a question. Did he show up
9 at the hospital and continue your misquoting of the law
10 flavoring the fact that somehow Mr. Carter -

11 THE COURT: All right. You're -- That is a -- that's
12 a compound question.

13 MR. MILLS: Sorry.

14 THE COURT: Just try to break it down.

15 MR. MILLS: Okay.

16 Q. Talk to you about credibility of the witnesses. All
17 right?

18 THE COURT: Yes.

19 A. Yes, sir.

20 Q. In determining this thing. And you said you really
21 don't -- doesn't matter about past conduct, right?

22 A. Yes, sir.

23 Q. But you did get a chance to observe Blackwelder and
24 Faile at the scene, right?

25 A. From my understanding Blackwelder was already in the

1 car, in Deputy Reed's car, so I never had any dealings with
2 Mr. Blackwater that I can remember.

3 Q. So, you didn't have any -- So there were times when
4 you may have been away from one officer when things are
5 going on?

6 A. Yes, sir.

7 Q. Okay. So in fact Deputy Gwinn could have talked to
8 Mr. Faile about what happened and you weren't around.

9 A. It's a possibility, yes. I can't testify that it's
10 not.

11 Q. Right. And so when Deputy Gwinn was talking in your
12 little circle and said, well, he's going to say that he hit
13 him first and then the guy came out with the bat so he hit
14 him first.

15 A. In my opinion, at that point, Mr. Faile wouldn't have
16 been able to tell us. I mean he was very excited. It was
17 a very, kind of one of those deals where you couldn't
18 really understand everything he was trying to say. We were
19 trying to repeat things to make sure we were understanding
20 what he was saying and he wasn't making a lot of sense
21 other than about the water issue.

22 Q. Well, I think they were putting a neck brace on him
23 when he told you, my neck doesn't hurt.

24 A. Oh, yeah.

25 Q. My neck's fine. Right?

1 A. Yeah.

2 Q. He told you his legs -- he can walk fine, didn't he?
3 He told you that, didn't he?

4 A. Uh-huh.

5 Q. I'm sorry, you have to say yes.

6 A. Yes, sir.

7 Q. And he was just concerned about the water or the
8 water, right?

9 A. Yes, sir.

10 Q. All right. Just kind of went on and on about the
11 water.

12 A. Yes, sir.

13 Q. Did that give you -- Did you smell alcohol any alcohol
14 on him?

15 A. I can't recall.

16 Q. Okay. Did he seem intoxicated, on drugs?

17 A. I can't recall.

18 Q. Is that something that you all could have found out on
19 investigation by getting a toxicology report from the
20 Piedmont Medical Center?

21 A. We may have been able to have it in the report. I
22 haven't looked at the report.

23 Q. I haven't seen it but it's something you could have
24 got, correct?

25 A. I'm not saying we didn't get it.

1 Q. Okay. But do you have -- I'd love to see it if you've
2 got it.

3 A. That's what I'm saying. I don't know, sir, I wasn't
4 the case agent in this particular case.

5 Q. Have you ever seen it? In your complete file you ever
6 seen the toxicology report on Mr. Faile?

7 A. Again, sir, I was not -- I was not the case agent so I
8 did not see any of those.

9 Q. Do you remember talking to Dawn afterwards?

10 A. I do.

11 Q. And she was upset and telling you about how they had
12 been harassed by those crack addicts from the trailer next
13 door?

14 A. Yes, sir.

15 Q. Okay. Now, I believe you told Dawn or Ms. Carter that
16 you thought that Mr. Faile might have broken legs?

17 A. I said he could.

18 Q. Okay.

19 A. Again, I -- I'm not a doctor, and I don't know.

20 Q. Did he have two ---

21 A. There were some marks and things.

22 Q. --- two busted kneecaps?

23 A. Uh-huh.

24 Q. Had you done any physical ---

25 THE COURT: We need a yes and no, not -

1 Q. --- examination --

2 A. Yes, sir.

3 THE COURT: I apologize but you've got to do that.

4 A. I apologize, sir. It's my fault.

5 Q. Had you done any examination, medical examination, to
6 try to make those statements?

7 A. Again, sir, I'm not a doctor.

8 Q. You said if he dies Mr. Carter ---

9 A. He could --

10 Q. --- could be charged with murder?

11 A. I said he could be.

12 Q. Okay. And I think you told the Carters at one point
13 that you're going to deal with Mr. Faile and he'll probably
14 get charged, too.

15 A. You mean --

16 Q. You're not saying he will or wouldn't I think is what
17 you said.

18 A. That's exactly what I said because at that point we
19 were still looking at the evidence. I said he could face
20 charges for trespassing or the assault.

21 Q. At one time on the tape I heard you say when he
22 stepped out, he hit him and then he went to town on him
23 with a bat. Do you remember saying that?

24 A. If it's on the video I said it, sir.

25 Q. What -- what -- what evidence did you have -- Where

1 did you get the information that he went to town on him
2 with a bat? Did Mr. Carter tell you that?

3 A. No, sir. You could see. I mean, you could -- you
4 could see the evidence. You could see that -- the multiple
5 injuries that Mr. Faile had.

6 Q. So you did an examination of his injuries?

7 A. I looked at him. I did not examine him, sir. I
8 looked at him.

9 Q. Okay. Now, did you look at Shane's injuries?

10 A. Yes, sir. I actually called for EMS for him. Yeah, I
11 --

12 Q. You sure did. And he got a -- You all described it as
13 a scratch on his eye, right?

14 A. Yes, sir.

15 Q. Okay. And that's the way you -- that's the way you
16 view that ---

17 A. Yes, sir.

18 Q. --- as a scratch on his eye? And that's after it had
19 been attended to by EMS, correct?

20 A. I -- I don't know when that picture was taken, sir.

21 Q. Okay. The video will show.

22 A. Yes, sir.

23 Q. Now, Mr. Carter described to you how -- He obviously
24 he was in this conversation about how he got hit, how they
25 grasped and tangled, and how the other guy was fighting

1 with him.

2 A. Uh-huh.

3 Q. Do you recall that?

4 A. Can you repeat that one more time, sir?

5 Q. Well, let me try and simplify it. Did Mr. Carter
6 describe for you how he -- his interaction?

7 A. Yes, sir.

8 Q. Okay. You said earlier on that you found fault with
9 Mr. Carter for not calling the police right away?

10 A. Yes, sir.

11 Q. Okay. Now, if it's not gotten to any kind of bad
12 blows or anything else like that, do you think somebody
13 should be picking up the phone and calling every time
14 they're in a conversation with somebody outside their
15 house?

16 A. Sir, in this testimony that night and to this time the
17 interaction he had with Mr. Blackwelder, him not knowing
18 who was out on his porch, after threats had been made
19 against his family, yes, I would have called law
20 enforcement before I opened the door.

21 Q. Well, --

22 A. He even -- he even testified in here that he couldn't
23 tell the difference between their voices. He thought that
24 that might be Mr. Blackwelder.

25 Q. But he also has testified that -- that whoever it was

1 complied with his requests and walked off the porch, didn't
2 he?

3 A. Yes, sir.

4 Q. And he -- And then he said, I opened the door to look
5 out to try and find out who it was, been dealing with the
6 water to try and tell them I've dealt with the water. I
7 can't do anything about it night, you need to leave.

8 MR. GARFIELD: Objection, your Honor.

9 Q. Do you have a problem with that?

10 THE COURT: Just -- What's the objection?

11 MR. GARFIELD: Just sort of testifying and then he's
12 asking a question after --

13 THE COURT: All right. Just rephrase the question.

14 MR. MILLS: Let me see, Ms. Nelson, can you help me
15 out, please?

16 MADAM COURT REPORTER: It'll take me a minute.

17 MR. MILLS: No. Then, I'll -- let me figure out where
18 I was. I apologize. All right. Let's see.

19 Q. You had a long discussion with Mr. Garfield about
20 officer safety. Did Mr. Carter's wife ever threaten any
21 officer at that scene?

22 A. No, sir.

23 Q. Were they completely cooperative with you?

24 A. No, sir.

25 Q. They were not?

1 A. No, sir.

2 Q. Oh, that's right. Mr. Carter came out of his house to
3 take a picture of Mr. Faile, right?

4 A. Yes, sir.

5 Q. But that's when he -- that was the transgression he
6 did that had him locked up -- put in detention rather.

7 A. Detained, sir.

8 Q. Detained. That's what -- I'm sorry. Put in handcuffs
9 placed in the car so there wouldn't be any issue?

10 A. Yes, sir.

11 Q. No problem. Nobody's complaining about that.

12 You mentioned excited utterances. What is an excited
13 utterance?

14 A. I can't -- I can't testify verbatim.

15 Q. Okay. But you understand --

16 A. But a statement is made under excited circumstances
17 freshly committed after a crime that you can use in court.

18 Q. Right. Because -- Do you know why you can use it?

19 A. I'd have to read the statute, sir.

20 Q. Well, would it surprise you to know that you can read
21 it or the reason it's done is because it's considered a
22 spontaneous utterance that has not been thought of of
23 reflection in time and therefore it has characteristics of
24 proof.

25 MR. GARFIELD: Objection, your Honor.

1 THE COURT: I overrule the objection.

2 MR. GARFIELD: Okay. Thank you.

3 A. Say that one more time, sir.

4 Q. I said an exciting -- excited utterance, would it
5 surprise you that an excited utterance is a statement made
6 under the heat of circumstances without reflection and
7 that's why it's considered an exception to hearsay and it's
8 so reliable because somebody hasn't had a chance --

9 THE COURT: All right. Now, you're just --

10 MR. MILLS: All right.

11 THE COURT: Just ask him if it's -- You gave a
12 definition.

13 BY MR. MILLS:

14 Q. Does it have a -- Does it indicate truthfulness if
15 somebody cannot reflect on a statement?

16 A. I'd have to read the statute.

17 Q. Okay. So, when Dawn's on the phone with 911 and she's
18 describing what's going on that sounds like an excited
19 utterance, doesn't it?

20 A. Again, under my opinion, I -- she didn't sound very
21 excited on that 911 tape, sir.

22 Q. Okay. So, -- I mean you don't think this was
23 traumatic for Ms. Carter? Is that it?

24 A. I believe it was a traumatic incident, yes, sir, for
25 all the parties that were involved. What I'm saying is

1 when she was on the phone she did not seem like she was
2 that excited.

3 Q. Is that helpful for the dispatch to have somebody
4 screaming and shouting and not making any sense?

5 A. Sir, in my experience I've listened to thousands of
6 911 tapes --

7 Q. Please answer my question first, and then --

8 A. I'm getting there, sir.

9 Q. It's a yes or no answer.

10 A. But there needs to be an explanation, sir.

11 THE COURT: You can answer, and then explain.

12 A. Okay. Ask your question again, sir.

13 Q. Does it help 911 operators if the person they're
14 talking to is screaming --

15 A. No, sir.

16 Q. Okay. So, you want somebody to be calm for the
17 information so they can get the police out there, right?

18 A. Yes, sir. But that rarely happens.

19 Q. So, you're kind of faulting now in this courtroom four
20 years later how Dawn reacted --

21 A. No, sir.

22 Q. --- to this man -- Let me finish, please -- to this
23 man punching her husband in the head in their home?

24 A. No, sir. I'm not saying that, sir.

25 Q. One moment please, Officer.

1 A. Yes, sir.

2 Q. Now, would it be true if you had evidence that Mr.
3 Faile was the original aggressor it would be a whole
4 different situation?

5 A. I really can't answer that question without seeing
6 some type of evidence that -- one way or the other.

7 Q. Pardon me?

8 A. I said, I really can't answer that question without
9 seeing evidence one way or the other. That particular
10 night there was evidence to support both sides. There was
11 evidence against both sides. There were inconsistencies in
12 stories just like there's been inconsistencies in stories
13 in here.

14 Q. Okay. All right.

15 MR. MILLS: Page 49, if I can open it.

16 THE COURT: You can open it.

17 A. You said forty-nine, sir?

18 Q. Is that good enough or do I -

19 A. Yes, sir. My eye sight is good. What page?

20 Q. Forty-nine. Forty-eight.

21 A. Okay. Forty-eight or forty-nine, sir?

22 Q. Actually go up to the bottom of page forty-six, line
23 twenty-three.

24 A. You said line twenty-three?

25 Q. Yes, sir, while I'm asking you a question.

1 A. Okay.

2 Q. And I believe I said "let me ask you this. "Whoever
3 was the primary aggressor was that a critical factor to
4 you?"

5 And what was your response?

6 A. No, sir.

7 Q. And I said, "All right. Well then why did you say
8 that then?"

9 And what did you say?

10 A. "Because it's one of the many factors that go into
11 making a decision not a critical one."

12 Q. And then moving down to the bottom of page forty-seven
13 at line twenty-two I ask you "So if the guy came at him and
14 he was defending him home he would be justified; is that
15 correct?"

16 And what was your response?

17 A. I said "Yes, sir."

18 Q. Okay. "So your position is when he came at him and he
19 should have pushed him back and out of the way and closed
20 the door?"

21 And what did you say?

22 A. I said "I think that was probable me mis-speaking."

23 Q. But that's what you said in the deposition. But in
24 the tape you told Dawn Carter when he hit your husband he
25 should have pushed him back out the door and closed the

1 door when somebody's coming in and punching him; is that
2 right?

3 A. Yes, sir.

4 Q. That's what you told her that night?

5 A. On the tape, yes, sir.

6 Q. I believe you told me if that was actually the case
7 that would change the situation completely; is that
8 correct?

9 A. Is that -- Which line is that, sir?

10 Q. If you're --

11 A. I just want to make sure that I --

12 Q. That's all right. If you're asking, it's on page
13 fifty.

14 A. Page fifty?

15 Q. At line seven.

16 A. "If they could prove that he hit him" that part?

17 Q. Yes, sir. Yeah. I said "Why would it change the
18 complete complexion?"

19 And what did you say?

20 MR. GARFIELD: Your Honor, this is -- We would object.
21 This is improper impeachment. Is he trying to impeach him
22 on a previous inconsistent statement here or just have him
23 read his deposition?

24 MR. MILLS: I asked him -- I asked him the question
25 and he ask me directly - if it's in there to ask him

1 directly so that's why I did it.

2 THE COURT: I overrule the objection.

3 Q. And then, I said "Well I understand. I've got you.

4 Well let's use it then for the jury. Line five I'll
5 ask the question.

6 "Why would it change the complete complexion?"

7 And what did you say?

8 A. I said "If we can prove that he hit him it would be a
9 hypothetical question -- or a hypothetical situation. At
10 that point, we couldn't" -- I apologize. Do I need to
11 read it word for word?

12 Q. That's -- you should, but it's okay.

13 A. Okay. I'll read it word for word. "If we could prove
14 that he hit him, but again, that's a hypothetical situation
15 we couldn't prove anything at that point."

16 Q. "I understand. I've got you."

17 A. "But if we could have proved he hit him, you know,
18 that could have changed the fact that he was the primary
19 person that he was causing the situation."

20 Q. And so, you felt that it was a tossup between Shane
21 and his wife giving two" -- they gave independent
22 statements away from each other, right?

23 A. Yes, sir.

24 Q. Yeah. Separated, so they didn't know what the other
25 was saying.

1 A. That's right.

2 Q. And they put it in writing so you could compare,
3 correct?

4 A. Yes, sir.

5 Q. And you can take their statements and compare it with
6 the forensic evidence, right?

7 A. Right.

8 Q. So, when -- so, if their statements matched that would
9 lend credibility to them, correct?

10 A. In some cases, yes, sir.

11 Q. But you thought it was a tossup between this crack
12 head from next door --

13 MR. GARFIELD: Objection, your Honor. It's the same
14 --

15 MR. MILLS: He's saying that -

16 THE COURT: Whoa, whoa, whoa. I sustain the
17 objection. There's no evidence that this person is a crack
18 head.

19 MR. MILLS: There is. It's in the tape. That's what
20 Dawn Carter called him in the tape.

21 THE COURT: Well, but that's -- I sustain the
22 objection.

23 MR. MILLS: All right.

24 Q. These folks from next door, these high upstanding
25 citizens from next door, okay, who are coming over to the

1 house, you think -- Those people are an equal par with
 2 Shane Carter in his home, that their story that they came
 3 up they complained and walked away and Shane came up and
 4 just nailed him on the back of the head, held equal weight
 5 with the Carter story; is that right?

6 MR. GARFIELD: Objection. That's Counsel testifying
 7 again. That's a compound question. He's including a lot
 8 of factors.

9 MR. MILLS: I was --

10 THE COURT: I overrule -- go ahead.

11 MR. MILLS: I was just trying to get the he said/she
 12 said. That's what they said/that's what he said.

13 Q. And you felt that was a tossup?

14 A. Sir, I treat everybody fairly. I try to treat
 15 everybody equally. It's not my -- I look at the facts of
 16 the case and what I can prove. I'm not going to treat the
 17 neighbor differently just because of her calling him
 18 whatever she called him, or you saying that they're well,
 19 upstanding citizens. Everybody needs to be treated fairly
 20 and objectively and look at things from all sides of the
 21 case.

22 Q. And so, Mr. Carter gets no presumptions being the
 23 homeowner in your mind?

24 A. Sir, if --

25 Q. Please just answer and then you can explain. If you'd

1 answer yes or no and then you can explain.

2 A. This being consideration, yes, sir, as I --

3 Q. Like I said, he gets no presumption from being the
4 homeowner?

5 A. Presumption, yes, sir.

6 Q. Okay.

7 A. Yes, sir. But I'd like to explain.

8 Q. Okay. Sure. Please.

9 A. In this situation, again, through his testimony he
10 stood inside the house with the door locked. There's no
11 testimony at that point Mr. Faile tried to force his way
12 inside the house to harm anyone inside the house. He was
13 knocking on the door, beating on the door, however it wants
14 to be described. However he didn't jiggle the door handle
15 or try to force his way into the home. At that point he
16 didn't have to open the door. The *Castle Doctrine* says
17 that you have no duty to retreat but it doesn't also give
18 you the duty to advance either. In this particular
19 --

20 Q. It doesn't give you the duty to advance but you
21 certainly have a right to walk around your own house, don't
22 you?

23 A. But if he was that afraid why would he open the door?
24 The crack heads next door or however you want to describe
25 'em why would he open the door?

1 Q. Well, you've heard the phrase Monday morning quarter
2 backing?

3 A. Absolutely, sir.

4 Q. Isn't that kind of what you're doing here?

5 A. That's kind of what we're all doing here in this
6 situation.

7 Q. Okay. No. What Shane Carter is -- Shane Carter
8 wasn't. He was dealing with it at the time under the
9 circumstances trying to open -- What if he was opening the
10 door, as he testified, to diffuse the situation? The man
11 was far away from him. Isn't that what he testified to?

12 A. Off the porch. Yes, sir.

13 Q. Yeah. And he said he opened the door so he could get
14 a face-to-face and try and diffuse the situation, correct?

15 A. But why would he do that if he was afraid of him?

16 THE COURT: Don't ask -- Just answer his question.

17 Don't throw a question back to him.

18 A. I apologize, sir.

19 MR. MILLS: That's all I have.

20 That's all I have. Thank you.

21 THE COURT: Any redirect?

22 (WITNESS LEAVES WITNESS STAND.)

23 REDIRECT EXAMINATION

24 SERGEANT LEE WRIGHT BY MR. GARFIELD:

25 Q. You just posed the question, or the issue came up, as

1 far as diffusing the situation. Based on your
2 qualifications and your training and your experience of
3 coming to these kind of scenes, did you form an opinion --

4 MR. MILLS: Judge, I think he's about to ask him --

5 MR. GARFIELD: Asking about his impression --

6 THE COURT: Let me hear what the question is.

7 BY MR. GARFIELD:

8 Q. What were your impressions as far as whether Mr.
9 Carter was diffusing the situation or not?

10 A. No, I do not feel like he was diffusing the situation.
11 I felt like Mr. Carter was escalating the situation.

12 Q. And tell us why you think he was escalating the
13 situation after the time -- or at the time they were on
14 their porch?

15 A. The time on the porch?

16 Q. Yes, sir. In other words, after the original physical
17 issue comes out and they're on the porch and he's got the
18 bat in his hand.

19 MR. MILLS: Objection, your Honor. There is no
20 evidence that says that he's out on the porch with a bat in
21 his hand. He is assuming facts that have never been
22 testified to before.

23 THE COURT: All right. Start the question over and
24 let me listen carefully.

25 MR. GARFIELD: Yes, sir. All right.

1 Q. On the video, you heard everybody's version of events

2 ---

3 A. Uh-huh.

4 Q. --- what took place after. What, if anything, did you
5 gain, or what were your impressions as to whether Mr.
6 Carter was diffusing the situation or whether he was not
7 diffusing the situation.

8 MR. MILLS: Objection, your Honor. There's no -- he's
9 asking him about what he had in the video and the question
10 he's asking him isn't on the video. It happened before a
11 video got there.

12 MR. GARFIELD: But Mr. Mills had just asked him what
13 --

14 THE COURT: I overrule the objection.

15 BY MR. GARFIELD:

16 Q. What were your impressions, Sergeant Wright, about
17 whether -- what you thought about whether Mr. Carter was
18 diffusing the situation or not?

19 A. Well, I go back to our force continuum. We're -- Mr.
20 Mills wanted to bring up the force continuum the other day
21 with Deputy Gwinn and some other officers. Our force
22 continuum is take a step higher of each case. However, all
23 of our policies and law states that you use the minimal
24 amount of force necessary to affect arrest. Since Mr.
25 Mills wants to bring that to light and to try to compare it

1 to this situation -

2 MR. MILLS: Your Honor, ---

3 THE COURT: Let's -- You don't need to be telling us
4 -- making those kind of editorial comments about what Mr.
5 Mills wants to do.

6 A. I apologize.

7 THE COURT: He's doing his job as an attorney.

8 A. Yes, sir.

9 THE COURT: You are a witness.

10 A. Yes, sir.

11 THE COURT: It doesn't matter what you think Mr. Mills
12 is or is not doing so just answer the question ---

13 A. Yes, sir.

14 THE COURT: --- and you'll be okay.

15 A. Yes, sir.

16 MR. GARFIELD: I would cure it and thank you, your
17 Honor.

18 Q. And how would your estimation of the use of force
19 continuum apply in this case?

20 A. I feel like if that was an officer beating a man with
21 a -- with a bat or a baton or anything like that that many
22 times that it wouldn't be justified. I believe it would be
23 deemed excessive force.

24 Q. Let me just go to a few points here. Mr. Mills was
25 asking you and you said you misquoted the law and you were

1 trying to explain yourself and he said that I may come
2 before you and ask what you meant by that.

3 A. Yes, sir.

4 Q. What did you mean by that?

5 A. The night of the incident, and I don't know if I can
6 say this. Please stop me if I can't.

7 Q. I will.

8 A. The night of the incident Deputy Reed was a SWAT
9 member. His car was full of SWAT gear. I was on canine.
10 My car is full of canine gear. Deputy Gwinn was on canine.
11 His car was full of canine gear. We have no way to have
12 that many law books in our cars, so that's strictly off
13 memory. I admit that I did misquote the law. However, I
14 did go into -- later on in the video I did go into the
15 Castle Doctrine with Mrs. Carter. That's what I was trying
16 to explain.

17 We -- There's no way to memorize every law that's in
18 the State statute book. There are so many we wouldn't have
19 the ability to put that many books in our car to research
20 on-scene. So, we were doing the best that we could, you
21 know, a very volatile situation all three of us.

22 Q. Mr. Mills asked you about the conversation you had
23 with Ms. Carter. Do you remember that?

24 A. Yes, sir.

25 Q. Did you have a conversation with Ms. Carter?

1 A. Yes, sir.

2 Q. Okay. Do we hear that on the tape anywhere?

3 A. Yes, sir.

4 Q. Okay. What, generally, were you talking to Ms. Carter
5 about?

6 A. I talked to her about numerous things. I talked to
7 her a little bit about the *Castle Doctrine*. I never named
8 *Castle Doctrine*, as you all heard in the video, but I did
9 speak about if someone tries to get inside the home you
10 have the right to defend.

11 I also talked to -- I believe I asked her how far
12 along she was. I was trying to calm her down. I even
13 asked at one point if she needed medical treatment because
14 I was concerned that in a situation like that she may get
15 so upset that it would affect the baby. I talked to her
16 about trying to clean off the blood off the porch. I tried
17 to, you know, use my experience of people trying to clean
18 stuff off, you know, blood off of things without trying to
19 ruin stuff. I was just trying to be a resource for her at
20 that point.

21 Q. Did you all talk about the water situation?

22 A. We did talk about the water situation as well.

23 Q. Well, why would you talk to her about the water
24 situation?

25 MR. MILLS: Your Honor, this is a re-cross its going

1 into a whole new matter.

2 THE COURT: It's --

3 MR. MILLS: I'm sorry, I apologize, I got myself --

4 THE COURT: Okay. Go ahead. Redirect.

5 MR. GARFIELD: Yes, sir.

6 A. Why would I talk to her about the water situation?

7 Q. Yes, sir.

8 A. Numerous things. I mean, one -- one thing would be
9 to -- this is -- the center point of the entire case was
10 the water issue. That guy would have never come over to
11 Mr. Carter's house. Mr. Faile would have never come over
12 to Mr. Carter's house if the water issue would have been
13 fixed. That's the main catalyst for this entire
14 investigation. Everything else stems from that issue.

15 The other thing is, is I was trying to explain to her
16 that --- Me personally I try to put myself in their shoes.
17 If me personally if I was in a situation like that I -- I
18 try to find something better.

19 Q. Let me go to another subject. Just because -

20 (CELL PHONE GOES OFF IN COURTROOM AT 11:38 AM.)

21 MR. GARFIELD: My apologies, Judge.

22 Q. We heard on the video and Mr. Mills asked you that Mr.
23 Faile reportedly said when the EMS was addressing him, that
24 he was fine or he didn't want to go to the hospital, or
25 whatever ---

1 A. Yes, sir.

2 Q. --- similar. I don't want to quote.

3 A. Right.

4 Q. You were there when he said that?

5 A. Yes, sir.

6 Q. We heard your voice on the tape after that telling him
7 something about, sit still, or?

8 A. Yes, sir.

9 MR. MILLS: Objection to leading, your Honor.

10 MR. GARFIELD: Okay. I'll rephrase that, your Honor.

11 Q. Okay. We heard your voice on the tape after that?

12 A. Yes, sir.

13 Q. What were you telling him and why were you telling him
14 that?

15 A. A lot of times when people take hard impacts to the
16 head, as you all have probably read in the news and stuff,
17 concussions, things of that nature, it could cause spinal
18 injuries. These are all things that I've seen while in the
19 profession of law enforcement. We're taught to basic CPR,
20 basic first aid. That stuff requires you to try to stay as
21 still as possible to avoid serious injury, things of that
22 nature.

23 Concussions may -- may make you feel like you're
24 perfectly okay. However, you could have brain bleeds,
25 things of that nature. You know, I've had people standing,

1 in my profession, in my experience, I've had people
2 standing and talking to me just like you and I are now and
3 person just fall over. They -- they don't -- you know,
4 they don't realize that they're injured.

5 And so at that point I was trying to make sure that he
6 stayed stable, still, get the medical attention that he
7 needed. Back to that first thing I told you our job is to
8 maintain life.

9 Q. How usual or unusual is it for someone to try to
10 resist or to go to the hospital or want to get up and leave
11 a situation like that?

12 A. It's very reasonable. A lot of -

13 MR. MILLS: Your Honor, objection to what something
14 happened to somebody prior.

15 THE COURT: Yeah, I sustain the objection. Let's
16 stick to what we've got. We've got enough.

17 BY MR. GARFIELD:

18 Q. As part of your investigation is to try to find out
19 who's telling you the truth?

20 A. Yes, sir.

21 Q. Try to find out if they were in a position to really
22 see what they say they saw?

23 A. Yes, sir.

24 Q. Mr. Mills asked you something about whether you find
25 fault with him not calling the police. Do you find legal

1 fault with that or do you find fault with that for some
2 other reason?

3 A. There's no -- there's no legal fault. You know, it's
4 not against the law not to do these things. However, in a
5 situation like this I find it -- it's not morally -- I'm
6 not really sure of the word I'm looking for but I think a
7 reasonable person, if they were put in the same situation
8 of being that afraid, would not open the door, would not
9 step outside.

10 Q. Two other points to make. He -- Also Mr. Mills
11 phrased it as a transgression. Was it a transgression that
12 his client was taking pictures. To your knowledge why was
13 he placed -- Mr. Carter -- excuse me -- why was Mr. Carter
14 placed in investigatory detention?

15 MR. MILLS: Your Honor, if he wasn't there --

16 MR. GARFIELD: Well, your Honor, it just -- there's a
17 --

18 THE COURT: I sustain the objection. If he didn't --
19 if he wasn't there to know why then he can't testify to it.

20 MR. GARFIELD: Thank you, your Honor.

21 Q. Was there a transgression in that?

22 MR. MILLS: Your Honor, objection. He's --

23 MR. GARFIELD: He -- Mr. Mills ask the question, your
24 Honor.

25 THE COURT: Well, I'll allow the question. Let's move

1 on.

2 MR. GARFIELD: Okay.

3 Q. He said was that his client's transgression? Is it --
4 was it done, to your knowledge, in a punitive way or is it
5 done for some sort of law enforcement reason?

6 A. Sir, can you explain to me what transgression means?

7 Q. Well, I used his word.

8 A. I'd ask --

9 Q. To your knowledge, was it done to punish him or is it
10 done for some police purpose?

11 A. It was not police purpose. We were going to
12 photograph everyone. I don't know. I don't know.

13 Q. As far as making him go back to his house or the place
14 him in detention.

15 A. Oh. Yes. We -- we -- Obviously in order to get
16 medical treatment to Mr. Faile we had to have all parties
17 separated.

18 Q. This call report that Mr. Mills asked you about, where
19 they come up with numbers of police officers, we saw your
20 designation on that, your police number? And we see Deputy
21 Gwinn's police number?

22 A. Uh-huh

23 Q. Okay.

24 Q. Does it -- To your knowledge just because someone's
25 number is or is not -- or is not on a service report --

1 MR. MILLS: Your Honor, --

2 MR. GARFIELD: I'd like to finish my question, your
3 Honor.

4 Q. To your knowledge whether or not someone's number is
5 on the report does that have any significance?

6 A. No, sir.

7 Q. And why not?

8 A. Because dispatchers make mistakes all the time. They
9 put us out on calls that we're not out on or put us out at
10 locations. It happens all the time.

11 Q. To your knowledge was Deputy Gwinn at the hospital?

12 A. To my knowledge he did respond to the hospital to take
13 those photographs and take a verbal statement.

14 Q. These photographs I'm holding in my hand?

15 A. Yes, sir.

16 MR. GARFIELD: Nothing further. Thank you, your
17 Honor.

18 THE COURT: Re-cross?

19 RE-CROSS EXAMINATION

20 SERGEANT LEE WRIGHT BY MR. MILLS:

21 Q. You talked about the force continuum?

22 A. Yes, sir.

23 Q. And one of the first things you want to do on the
24 force continuum is try and de-escalate things, use voice
25 control, right?

1 A. First thing is officer presence, sir. Second thing is
2 voice --

3 Q. I mean, that's one of the best tools you have as an
4 officer to try and de-escalate, calm people down, find out
5 what the problem is and sort it out, kind of like you did
6 at the scene, right?

7 A. Yes, sir.

8 Q. But you have a problem because Mr. Carter tried to do
9 the same thing?

10 A. I don't have a problem with that, sir. I'm just
11 saying that a reasonable person that was that afraid would
12 not have opened the door.

13 Q. But a reasonable person might try to de-escalate a
14 situation, wouldn't they?

15 A. May -

16 Q. Address the problem and try and have it go away
17 without having to involve police or involve anybody else.

18 That's not unreasonable, is it?

19 A. No, that's not unreasonable.

20 Q. Okay. Now, I understand you've got a kind of car that
21 you're not going to carry lots of law books in it.

22 A. Uh-huh.

23 Q. Do you have a smart phone?

24 A. Yeah. Sometimes but we're not allowed to use it for
25 those purposes.

1 Q. Okay. Do you have a computer in your car?

2 A. It doesn't have Internet access, sir.

3 Q. Okay. You got a computer back at -- Now, he wasn't
4 arrested at the scene, right?

5 A. No, sir, he wasn't.

6 Q. All right. Now, you said that Faile was there about
7 the water issue. You knew Mr. Faile had -- It wasn't his
8 water that was out, was it?

9 A. There's been many different people testifying to
10 different things at this point, sir, so, I don't know.

11 Q. Have you heard anybody testify that Mr. Faile was a
12 legal residence on that -

13 A. Mrs. Carter said that he lived next door at one point.
14 Her testimony.

15 Q. Pardon me?

16 A. Ms. Carter said he lived next door, stayed next door.
17 Not lived, but stayed. I apologize.

18 Q. Said she had seen him there a couple times, didn't
19 she?

20 A. Uh-huh.

21 Q. She didn't say he stayed there.

22 THE COURT: Just say yes or no.

23 A. Yes, sir. I apologize.

24 Q. You said that blows to the head can be bad and cause
25 concussion.

1 A. Yes, sir.

2 Q. And like a strike to the temple can be particularly
3 bad, right?

4 A. Yes, sir.

5 Q. Kind of like the one Shane Carter got, right?

6 A. Could be, yes, sir.

7 Q. And you heard him say that EMS told him he had a mild
8 concussion?

9 A. What, now?

10 MR. GARFIELD: Objection.

11 BY MR. MILLS:

12 Q. You heard -- you heard Mr. Carter testify that he got
13 medical treatment, that you called EMS, right?

14 A. Yes, sir.

15 Q. And you heard him say that they didn't take him there
16 although they told him he had a mild concussion.

17 A. No, sir. There's no way they could diagnose that on
18 the scene. They wouldn't do that.

19 Q. Okay. So, you're saying -- Well were you there and
20 present in the conversation with him?

21 MR. GARFIELD: Your Honor, this -- pitting witnesses.

22 THE COURT: I sustain the objection.

23 MR. MILLS: All right. That's all I have, your Honor.

24 Thank you.

25 THE COURT: Okay. You can step down and have a seat

1 with counsel.

2 (WITNESS LEAVES WITNESS STAND.)

3 THE COURT: Let's take a refresher break. We got one
4 more witness so we'll take about a ten-minute quick break.

5 (JURY EXITS COURTROOM 11:46 AM.)

6 THE COURT: We'll be at ease.

7 (COURT IN RECESS AT 11:46 AM.)

8 (COURT BACK IN SESSION AT 12:01 PM.)

9 THE COURT: Thank you. You may take your seats.
10 Let's see if we can round up the lawyers.

11 MR. GARFIELD: We're ready for our next witness.
12 Thank you, Judge.

13 THE COURT: Who will that be?

14 MR. GARFIELD: That would be Leon Yard.

15 THE COURT: Okay. All right. Just wait right there
16 so we can get the jury in.

17 MR. MILLS: Your Honor, I raised this back in chambers
18 and I think the Court's got some indication, I just want to
19 put it on the record that I would object to Judge Yard
20 testifying to any matters that were not sworn to including
21 the warrant.

22 THE COURT: Well, I have to see what he testifies to
23 and I think you're just going to have to object if you
24 think he's straying outside of the bounds of what's
25 admissible.

1 MR. MILLS: Okay. Thank you.

2 THE COURT: Bring the jury.

3 MR. MILLS: Your Honor, should I deal with Mr. Springs
4 before his testimony as well? We'll just wait?

5 THE COURT: Yeah. Let's go ahead. Let's -- What's
6 the issue with Mr. Springs?

7 Tell 'em -

8 MADAM CLERK: I will.

9 MR. MILLS: Mr. Springs -- in this case for summary
10 judgment saying that -- of course he dismissed this case.

11 THE COURT: I've seen this piece of paper.

12 MR. MILLS: You seen this paper. But he's got a thing
13 saying, I got the case I looked at it and I believe there
14 was probable cause to arrest and I went and dismissed in my
15 discretion as an -- you know -- as an officer of the Court.
16 If he wants to give an opinion on probable cause, which is
17 the ultimate issue, which I think is -- Well, I don't know
18 if he's going to be asked that, but he gave an affidavit to
19 that effect. And I don't think it's proper for him to give
20 testimony in support -

21 MR. GARFIELD: However, Judge, following what we
22 discussed back in chambers, if your Honor, we decide, or if
23 your Honor is inclined to charge the jury on the *Defense of*
24 *Habitation and Persons Act*, to the extent they do that,
25 there is that one portion to say that someone can avail

1 themselves to the immunity under the statute but for
2 probable cause. If he is the prosecutor and they have
3 already gotten into evidence his disposition sheet that
4 says he was within the law I think he can describe from his
5 standpoint, not as a matter of law, but he believed or
6 ascertained as to whether probable cause existed when he
7 determined as whether it was appropriate to go forward,
8 either decide that the case have prosecutorial merit or
9 otherwise dismiss the case and that's what he did.

10 Because your Honor is going to charge the jury the
11 probable cause, something that is really within the -- the
12 Solicitor's realm, I believe he has -- he should be able to
13 discuss that from his point of view as a prosecutor; not as
14 necessarily from an expert witness looking at this
15 independently because that would fall within --

16 THE COURT: I think he can testify based on the sheet
17 I've seen as to why he came to the conclusion that he did
18 ---

19 MR. GARFIELD: Yes, sir.

20 THE COURT: --- but not anything outside of that.
21 Because he can only testify as to what -- what premise he
22 decided not to go forward. Not whether he -- I mean he may
23 have made an analysis at the time, but that -- if that did
24 not -- if that did not factor into the reason that he
25 dismissed the case then I'm not going to allow him to go

1 into it.

2 MR. GARFIELD: And I don't know the extent of why he
3 dismissed the case. I'm just thinking.

4 THE COURT: I don't either. And that's what he'll
5 testify to.

6 MR. GARFIELD: Yes, sir.

7 THE COURT: He'll be under oath, and he's given a
8 piece of paper and if he testifies outside of that of
9 course Mr. Mills -

10 MR. GARFIELD: Very good, sir.

11 THE COURT: --- I think his former compadre will
12 impeach him. But I think he's got to state the reasons he
13 did what he did. That's the issue that he's here for. I
14 believe, I hope. Not to testify as an expert as to what
15 constitutes probable cause or whether probable cause, based
16 on his analysis, existed in this case.

17 MR. GARFIELD: But if the statute actually provides
18 the prosecutor the ability to assess as to the
19 appropriateness of prosecuting.

20 THE COURT: Right.

21 MR. GRIFFITH: And it says probable cause in the
22 statute from his perspective.

23 THE COURT: No. Well I don't know. I want him to
24 testify to it.

25 MR. GARFIELD: And I don't, either.

1 THE COURT: So I'll just have to see. But I think
2 he's restricted to testifying as to why he came to the
3 conclusion, you know, not -- you know, if he -- if he
4 dismissed it based on a lack of validity of the warrant or
5 if he -- or based -- not proessed it because the -- The note
6 says something about his first endeavor into the *Castle*
7 *Doctrine*. I'll just have to hear what he testifies to.

8 MR. GARFIELD: Thank you, your Honor.

9 THE COURT: Now bring in the jury.

10 (JURY RE-ENTERS COURTROOM AT 12:07 PM.)

11 THE COURT: Call your next witness.

12 MR. GARFIELD: Thank you, your Honor. The defendant
13 Sheriff calls Judge Leon Yard to the stand.

14 THE COURT: All right. Please come up and be sworn.

15 (WHEREUPON, LEON YARD, BEING
16 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 DIRECT EXAMINATION

18 JUDGE LEON YARD BY MR. GARFIELD:

19 Q. Please introduce yourself to the jury.

20 A. My name is Leon Yard York County Magistrate for the
21 past eighteen and a half years.

22 Q. Have you ever testified in open court like this,
23 common pleas?

24 A. Probably not to this extent.

25 Q. Okay. Let me ask you a little bit about yourself,

1 Judge, if I may. Originally where are you from?

2 A. I was born and raised in Marlboro County came to York
3 County for school and never left.

4 Q. When you say you came to school, where was that?

5 A. Winthrop College.

6 Q. And did you graduate from Winthrop?

7 A. I did, sir, with a business degree.

8 Q. Apologize to date you here, but when was that?

9 A. Graduated in '87.

10 Q. And you stated that you're a judge. You're a
11 magistrate judge in York County?

12 A. Yes, sir. Ministerial magistrate.

13 Q. Do -

14 A. I generally just hold bond court.

15 Q. Okay. And you've served as a magistrate, I missed
16 that part, you said eighteen years?

17 A. Eighteen and a half. Yes, sir.

18 Q. Eighteen and a half years. Is ministerial magistrate
19 that holds bond court, is that considered a full
20 magistrate's position?

21 A. Yes, sir. It just means I don't have my own township.

22 Q. And you said you preside over bond court. Could you
23 -- Can you tell us a little bit about that?

24 A. Yes, sir. Basically I work at night out of the
25 Detention Center. I conduct bond hearings, sign warrants,

1 collect fees for commitments, bench warrants, that kind of
2 stuff. Sign releases.

3 Q. Is that your only place of employment?

4 A. No, sir. I also work at Comporium Communications.

5 Q. How long have you worked at Comporium?

6 A. A little over nineteen years.

7 Q. You've got two full-time jobs?

8 A. Yes, sir. And I volunteer.

9 Q. In what capacity, Judge, do you work at Comporium?

10 A. Daylight hours, generally Monday through Friday, I'm
11 the materials and logistics manager for the enterprise.

12 Q. Let me ask you a little bit about the magistrate
13 system in your experience. In order to first become a
14 magistrate, would one attend any magistrate school?

15 A. In my case the rules changed after I became a
16 magistrate. But once you're selected then you attend a
17 magistrate school and then you have to take certification
18 tests which is what I did.

19 Since I have become a magistrate now you are basically
20 versed and blessed that you're competent, you know, you're
21 recommended to the governor for his appointment and
22 approved, signed off by the Senate as well.

23 Q. And you have re-certifications as a magistrate?

24 A. Yes, sir. We have to take re-certification tests
25 every eight years.

1 Q. And when's the next time you have to be re-certified?

2 Do you recall?

3 A. I'm hoping at least six years.

4 Q. Okay. What duties and responsibilities do you
5 personally have as a magistrate?

6 A. In general my duties is to actually run the bond court
7 at night. I make sure the office is open, make sure we
8 take care of bond hearings for those that are in the jail
9 and do the charges for those that are eligible for release
10 and working with the law enforcement in the event that they
11 need any kind of arrest warrants or search warrants.

12 Q. So, you issue arrest warrants as a magistrate?

13 A. Yes, sir.

14 Q. What police agencies do you normally issue arrest
15 warrants for?

16 A. Predominantly York Count Sheriff's Department. But on
17 the weekends from 6:00 pm on Friday until 6:00 am on Monday
18 we have a standing agreement with York City that we sign
19 warrants for. We also counter-sign for other
20 municipalities like Rock Hill City or Clover PD as needed.

21 Q. Are you directly affiliated or connected with any law
22 enforcement agency?

23 A. No, sir.

24 Q. Are you there to help law enforcement one way or the
25 other?

1 A. I'm there to provide equal and fair opportunity to
2 those that enter my office. So, not a rubber stamp if
3 that's what you're asking.

4 Q. And I wasn't suggesting that. I just wanted to
5 understand the parameters.

6 Q. Did you have an occasion to make contact with Deputy
7 Kevin Gwinn on April 25th, 2012, with the York County
8 Sheriff's Office?

9 A. Yes, sir.

10 Q. Your initial contact with Deputy Gwinn in what form
11 did that take?

12 A. That was by telephone.

13 Q. So, you called him; he called you?

14 A. No, sir. He called me basically as a courtesy call to
15 let me know that he had -- was on the scene of a pretty
16 serious situation and he needed to speak to me in reference
17 to obtaining a warrant.

18 Q. Did you form any opinions as to what he was telling
19 you at that time?

20 A. No, sir. But I did like the way he said it. I would
21 like to come speak to you about obtaining a warrant, which
22 is the proper -- that's the proper process.

23 Q. Okay. This -- I represent to you this occurred over
24 four and a half years ago. Do you have an independent
25 recollection of most of these events?

1 A. I do not have a photographic memory, sir.

2 Q. And that was not an artful way of asking the question,
3 so I will try it again. Nor are you supposed to have a
4 photographic memory.

5 A. Good.

6 Q. Do you basically have a recollection of your
7 interactions with Deputy Gwinn at this date?

8 A. Yes, sir.

9 Q. Okay. Deputy Gwinn. What was your understanding of
10 where he was employed?

11 A. York County Sheriff's Department.

12 Q. What was your impression as to what kind of officer
13 and I say *kind*, what class or type officer was he?

14 A. He was a Class 1 officer eligible to obtain warrants
15 and carry a firearm.

16 Q. Class -- Do you deal with Class 1 officers?

17 A. Generally that's what I deal with. Other classes as
18 well but the Class 1 officers are who are now able to sign
19 warrants.

20 Q. They can -- Okay. Sign warrants. Can a Class 1
21 officer make a warrant-less arrest?

22 A. I wouldn't say a warrant-less request, no. You have
23 to have --

24 Q. Warrant-less arrest. Can they make an arrest without
25 a warrant if -- in certain circumstances?

1 A. Yes.

2 Q. Have you had previous dealings with Deputy Gwinn?

3 A. I have dealt with Deputy Gwinn in the past, yes, sir.

4 Q. Before this date?

5 A. Yes, sir.

6 Q. What was your general impression --

7 MR. MILLS: Objection, your Honor, he's giving
8 character evidence of somebody else.

9 MR. GARFIELD: I'm not asking about his character. I
10 want to know -- I was going to ask him --

11 THE COURT: I overrule the objection.

12 BY MR. GARFIELD:

13 Q. And I don't want to know about his character. What
14 was your impressions of him as far as him being a -- in a
15 professional capacity as a law enforcement officer?

16 A. In my office?

17 Q. Yes, sir.

18 A. In my dealings with him, sir, he was very polite. He
19 had very good handwriting which is unusual and generally he
20 presented very good facts in his endeavors to seek a
21 warrant.

22 Q. Did you find him to be generally credible?

23 A. Yes, sir.

24 MR. MILLS: Your Honor, I object.

25 THE COURT: I sustain the objection.

1 Disregard that question and answer. The credibility
2 of the witnesses who have testified is for -- is up to you,
3 and I'll you that more but disregard his assessment, Judge
4 Yard's assessment, of the credibility of Mr. Gwinn.

5 BY MR. GARFIELD:

6 Q. Did you have any further contact with Deputy Gwinn
7 after the phone conversation?

8 A. Yes, sir. He came to my office.

9 Q. And when you met with Deputy Gwinn in person, did the
10 two of you have a conversation?

11 A. We did, sir. He explained what happened at his
12 situation which was what my question was what was your
13 situation?

14 Q. Were you able to listen to Deputy Gwinn and understand
15 what he was saying?

16 A. Yes, sir. Not without questions.

17 Q. What did he indicate to you at that time?

18 A. Basically that he had a situation where he had a
19 physical altercation between two people. There were other
20 people on the scene. One of the people involved had been
21 hurt seriously enough to have to be transported to Piedmont
22 Medical for treatment.

23 Q. Did he indicate one way or the other as if he took any
24 -- of there was any evidence in the case? Or like a
25 written statements and that sort of thing?

1 A. I guess?? he had written statements from Mr. Carter
2 and his wife.

3 Q. Did you have an occasion to review those statements?

4 A. Yes, sir.

5 Q. Did you have any questions about those statements to
6 Deputy Gwinn?

7 A. I thought they spoke for themself.

8 Q. Any other versions or written statements or oral
9 statements from anyone else?

10 A. Other than Deputy Gwinn, no, sir.

11 Q. Okay. Do you know about anybody -- do you know what
12 the name of the individual that was involved in the
13 encounter with Mr. Carter? Did you learn who that was?

14 A. I think a Mr. Faile.

15 Q. Okay. Do you know if he had a version of events that
16 you consider?

17 A. May have but I did not speak with him so I would not
18 have known it.

19 Q. Did you have an understanding about what Mr. Carter
20 was saying of why he had to use force in this case?

21 A. Yes, sir.

22 Q. And what -- what was your understanding -- what was
23 your understanding as to what Mr. Carter's position was in
24 this matter?

25 A. My understanding there was an intent for him to enter

1 his dwelling and from there it turned into a physical
2 altercation.

3 Q. Do you know who all the occupants were in Mr. Carter's
4 house?

5 A. No, sir, other than Mr. Carter and his wife at that
6 point.

7 Q. Do you know who the homeowner was?

8 A. No, sir.

9 Q. Do you know if this was Mr. Carter's house?

10 A. I do not.

11 Q. Okay. Do you know if Mr. Carter was taking any sort
12 of defense in this case or he did it for a certain reason?

13 A. I don't think Mr. Carter opened the door and went to
14 swinging the bat just for no reason.

15 Q. Well, you said a bat. Is that the weapon or object
16 involved?

17 A. Yes, sir.

18 Q. Okay. And what type of bat was this?

19 A. An aluminum bat, sir.

20 Q. What -- Not just as a magistrate, do you have any
21 experience with aluminum bats?

22 A. I played baseball in high school, sir. My general
23 question when somebody involves a bat is is it a wooden bat
24 or an aluminum bat but really neither one makes any
25 difference both of them would hurt you if it hit you.

1 Q. It could cause harm?

2 A. I would think so, yes, sir.

3 Q. Is it based on your personal knowledge or professional
4 knowledge that it could cause serious bodily injury or kill
5 someone?

6 MR. MILLS: Objection to the leading, your Honor.

7 THE COURT: Yeah. I sustain the objection.

8 BY MR. GARFIELD:

9 Q. What kind of harm could it cause based on your
10 knowledge?

11 A. It would be no different than being hit by a baseball
12 itself. I mean, it could crack bones. It could crack the
13 skull. It could hit you in the orbital socket mess up your
14 eye socket. Could cause concussion. It's a multitude of
15 physical things that it could cause.

16 Q. What, if anything, did you understand how a bat was
17 involved in this case? A baseball bat.

18 A. My understanding was that the bat was used against Mr.
19 Faile as they were in the altercation coming out the door.

20 Q. Okay. And did you have any indication as to how many
21 times Mr. Carter struck Mr. Faile with the bat?

22 A. From Mr. Carter's statement it said that he continued
23 hitting him until he stopped moving was the way I
24 understood it.

25 Q. Okay. Did you have an -- gain an understanding as to

1 what parts of Mr. Faile's body was struck?

2 A. Yes, sir. About the head and the torso I guess.

3 Q. And did you gain an understanding as to whether Mr.
4 Faile sustained any injuries?

5 A. He had to be transported to Piedmont by EMS.

6 Q. Do you know if he required medical attention?

7 A. They transported him by EMS to Piedmont then I would
8 assume, yes, sir, he had some type of injuries.

9 I would like to say something, if I could.

10 THE COURT: Well, you just ---

11 MR. GARFIELD: Just --

12 THE COURT: --- wait, Judge Yard. Thank you.

13 BY MR. GARFIELD:

14 Q. Did you have anything to clarify? If not, I'll go on.

15 A. The only other question was involving medical
16 treatment was the significance of the injuries. At that
17 point other than being transported I did not know anything.

18 Q. Going back to your conversation with Deputy Gwinn,
19 what do you normally do in your capacity as a magistrate
20 when you're talking to a police officer? When you're
21 talking to them, is there some sort of a technique you use
22 or is there something when you talk to them things you look
23 for when you're talking to the deputy?

24 A. Well generally I try to listen to their side of the
25 story. I ask questions, generally try to take notes. But

1 at the beginning I told you I didn't have a photographic
2 memory so I would have to go back a lot of times and ask a
3 lot of questions.

4 Q. Do you take what they say -- You said you don't
5 rubber-stamp things. I just needed a kind of -

6 A. That's correct. Once they go through their story then
7 I kind of repeat it back to them to make sure I have the
8 correct understanding in my mind. At that point that's
9 when I would proceed into the warrant once they determined
10 what charge they were asking for if I agreed to that.

11 Q. If you have a memory of this, if you don't, you don't.
12 So my question is this. Did you -- did you take what
13 Deputy Gwinn said at face value, or were you able to ask
14 questions, or pose any concerns to him at that time? Play
15 Devil's advocate, for instance.

16 A. Absolutely play Devil's advocate. I generally spend
17 more time trying to disqualify a warrant than issue one. I
18 had concerns based on the physicality of the altercation
19 basically.

20 Q. And what concerns were those?

21 A. Well, I don't remember -- today I don't remember from
22 then whether or not they said that Mr. Faile -- I've been
23 sitting out here listening so, you know, could influence
24 it. But I can't sit here and testify that Mr. Faile didn't
25 hit Mr. Carter first. And my concern at that point would

1 be when they're coming for a warrant would be what charges
2 are you looking for? Are you looking for an assault charge
3 against Mr. Faile or are you here for charges against Mr.
4 Carter?

5 Q. Did you get an understanding that Mr. Carter struck
6 him with the bat more than once?

7 A. Yes, sir.

8 Q. Did you get an understanding that he struck him with
9 the bat a certain number of times?

10 A. More than once was all that I can -

11 Q. Okay. The fact that an individual, in your mind, your
12 impression as a magistrate, in your capacity as a
13 magistrate -- okay. That's how I'm asking the question.
14 Somebody strikes someone with an aluminum bat multiple
15 times, what, if anything, do you do to consider whether
16 that is unlawful or that's an assault?

17 A. Did he ask permission could he hit him with it first.

18 Q. And --

19 A. So, if Mr. Faile had asked Mr. Carter, can I hit you,
20 and he said no, then he'd be in violation. So, if Mr.
21 Carter did not ask Mr. Faile can I hit you with this
22 baseball bat it would be the same thing.

23 Q. Did you come up with the impression that it was
24 unlawful?

25 A. Yes, sir.

1 Q. And you came up it was unlawful for what criminal
2 charge?

3 A. For assault and battery high and aggravated nature.

4 Q. Okay. Did you come up with that conclusion? You came
5 up with that on your own, or --

6 MR. MILLS: Objection to leading, your Honor.

7 THE COURT: Yeah. I sustain the objection.

8 BY MR. GARFIELD:

9 Q. Did anyone share your objection to that or was that
10 your opinion?

11 A. That was Deputy Gwinn's request for the charge.

12 Q. I understand that. But the warrant itself, was it
13 your professional judicial opinion that ABHAN had been
14 committed?

15 MR. MILLS: Objection. That was just asked and
16 answered.

17 THE COURT: Well, I overrule the objection.

18 BY MR. GARFIELD:

19 Q. I'm asking you as the magistrate.

20 A. Yes, sir.

21 Q. When you heard the facts and you reviewed the
22 evidence, did you come up with an opinion in your capacity
23 as a magistrate as to whether the law had been broken?

24 A. Yes, sir. It was my professional opinion that, based
25 on Deputy Gwinn's statements, that there was a violation of

1 the law.

2 Q. And you said Deputy Gwinn's statements. Would that be
3 Mr. Carter's statement? Mr. Carter's statement?

4 A. It was Deputy Gwinn's charge.

5 Q. Correct.

6 A. But it was based partially on Mr. Carter's statement.

7 Q. Did Mr. Gwinn -- Did Deputy Gwinn represent to you one
8 way or the other that he wanted someone to go to jail?

9 A. No, sir.

10 Q. Did he represent one way or the other that -- that
11 Deputy -- or excuse me, Mr. Carter or Mr. Faile had broken
12 the law or did he present the facts to you and the two of
13 you discussed this?

14 A. Yes, sir. He presented the facts that he -- and I
15 don't think that he had a preference. And by that I mean
16 anybody -- just somebody going to jail.

17 MR. GARFIELD: Beg the Court's indulgence.

18 (PAUSE.)

19 Q. Have you ever heard of a document or a form called a
20 Warrant Request or a Warrant Worksheet?

21 A. Yes, sir.

22 Q. What is that?

23 A. It's a warrant template that was created by the
24 Narcotics Unit here in York County to provide magistrates
25 when they needed multiple warrants.

1 Q. Okay. Was one prepared in this instance?

2 A. No, sir. That's not something I require.

3 Q. Who physically prepared the arrest warrant?

4 A. I did.

5 Q. That's -- Do you have an assistant helping you do that
6 or is that something you do yourself?

7 A. I do that personally.

8 Q. Okay. You type it up?

9 A. My clerical person does not type warrants. She
10 probably should but she doesn't.

11 Q. Okay. I'm old enough to remember onion paper. Do you
12 type it up on some sort of paper form or is this on
13 computer?

14 A. It's all computerized now.

15 Q. Okay. And this is in the warrant that was prepared in
16 this case. You typed this up personally?

17 A. Yes, sir.

18 Q. Okay.

19 A. In Deputy Gwinn's presence.

20 Q. Can you identify Plaintiff's Exhibit Number One?

21 A. Yes, sir. It's an arrest warrant for Russell Shane
22 Carter that I issued and signed for Deputy Gwinn on April
23 the 26th of 2012.

24 Q. So the questions I've asked you about pertain to the
25 document that you have, Plaintiff's Exhibit One?

1 A. Yes, sir.

2 Q. And the affiant on that warrant is?

3 A. Deputy Kevin Gwinn.

4 Q. That's his signature?

5 A. Yes, sir.

6 Q. And your signature is on that warrant, too?

7 A. Yes, sir.

8 Q. Okay. When he signs that warrant is that pursuant to
9 taking some type of an oath?

10 A. Yes, sir.

11 Q. And can you describe that for the jury, please?

12 A. Yes, sir. Basically what happens once the process of
13 typing the warrant begins several things are required. The
14 date's required. The person that is being charged is
15 required. Just a casual statement about willfully and
16 unlawfully breaking South Carolina law is in there. The
17 victim is listed and the element that is actually breaking
18 of the law is involved. If there's any victims their name.
19 If there's any kind of medical treatment as in the case on
20 this warrant. That person was treated by EMS to Piedmont.
21 And on this particular case the probable cause was based on
22 police investigation meaning that he had presented to me
23 what he found when he was there. And after that once we
24 have all those elements and it's typed up basically I read
25 that warrant to him and at that point I ask him is that

1 what you swear or affirm to in the court of law? And that
2 includes everything; the investigation, the warrant,
3 everything.

4 Q. And so he swears to or affirms that everything he told
5 you with the investigation. Beyond that, right there, is
6 the words probable cause on that warrant?

7 A. Yes, sir. It says probable cause based on police
8 investigation.

9 Q. And is there some type of -- and I'm sorry for taking
10 that back from you.

11 A. No problem.

12 Q. Can you just read that, "I further state that"?

13 A. It says, "I further state that there is probable cause
14 to believe that the defendant named above did commit the
15 crime set forth and that probable cause is based on the
16 following facts."

17 Q. And you absolutely agreed with that at the time?

18 A. Yes, sir.

19 Q. Have you learned anything since that time that would
20 change your opinion?

21 A. No, sir.

22 Q. Do you have any qualms about issuing that warrant in
23 this case?

24 A. No, sir, not based on the evidence that was presented
25 to me. Understanding this the narrative in a warrant is

1 meant to just indicate what happened to break the law, not
2 the entire scenario.

3 Q. The individual after you understood that this --
4 scratch that. This arrest warrant, this was served on Mr.
5 Carter at some point?

6 A. Yes, sir.

7 Q. And when you say when it's served, the person is taken
8 into custody at that time?

9 A. Yes, sir. Looks like a Deputy Steven Ramsey actually
10 served this warrant on him.

11 MR. GARFIELD: Judge Yard, I know you are a busy man.
12 I appreciate you coming down here today. Please answer any
13 questions Mr. Mills has.

14 JUDGE YARD: Absolutely.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 JUDGE LEON YARD BY MR. MILLS:

18 Q. Good afternoon, Judge Yard.

19 A. How are you doing, sir?

20 Q. Fine. Good to see you again. As I understand what
21 you just told us when Deputy -- First he called you up
22 there from the actual scene ---

23 A. Yes, sir.

24 Q. --- and was asking, kind of just talking to give him,
25 give me some information?

1 A. Basically just letting me know that he was on the
2 scene of a pretty confusing situation and he wanted to let
3 me know that he would be coming to the office to discuss
4 obtaining a warrant.

5 Q. But he wasn't under oath at that time, correct?

6 A. No, sir.

7 Q. And when he came to your office and you had this
8 extended conversation he was not under oath at that time,
9 was he?

10 A. No, sir. Not until we kind of sort through the facts.

11 Q. Right. And then I think what you've just told us is
12 that he swore to the information contained in the four
13 corners of that warrant, correct?

14 A. That the evidence that I presented on here in the
15 typing which was that Mr. Carter hit the other guy about
16 the face and the head with a baseball bat or head and the
17 body, I'm sorry.

18 Q. In fact remember when I took your deposition?

19 A. Yes, sir.

20 Q. And we were talking about Mr. Garfield asked you about
21 a baseball bat. And do you remember what you told me?

22 MR. GARFIELD: Objection, your Honor.

23 THE COURT: I sustain the objection.

24 BY MR. MILLS:

25 Q. Do you believe that -- You remember -- You've seen

1 these pictures, right, Mr. --

2 A. You showed them to me during our deposition.

3 Q. Did I or did Mr. Garfield show them to you?

4 A. We were sitting in the same room, sir.

5 Q. Okay. All right.

6 A. That was the first time I had seen 'em.

7 Q. Right. You hadn't seen those. They didn't bring
8 those to you there?

9 A. No, sir, not that I recollect.

10 Q. Do you remember what your comment was about which end
11 of the baseball bat he used?

12 MR. GARFIELD: Objection, your Honor. This --

13 THE COURT: I sustain the objection, unless it's -- If
14 it's in the deposition then you can impeach him with it.

15 MR. MILLS: All right.

16 Q. Well, what end of the baseball bat did it look like to
17 you?

18 A. Different -- different locations on the body looked
19 like different portions of the bat.

20 Q. Okay. Did it look like somebody was taking a full
21 swing with the fat end of the bat?

22 A. That part I couldn't tell you, sir.

23 Q. All right.

24 MR. MILLS: One moment, please.

25 Q. So, as I understand your job you don't hold court.

1 You don't hold trials like Judge Hayes, correct?

2 A. No, sir.

3 Q. Your actions and your dealings are when you deal with
4 the public and bond hearings they're -- you're setting a
5 bond on a criminal defendant, correct?

6 A. Correct.

7 Q. And then you deal with police officers who come
8 because you're the night magistrate; is that correct?

9 A. That's correct.

10 Q. And so, they're coming to talk to you. Are you right
11 over here?

12 A. In the basement ---

13 Q. Basically over there.

14 A. --- next door. Yes, sir.

15 Q. All right. Where law enforcement is, correct?

16 A. Right out - Well, the other side of the building.

17 Q. Yeah, but I mean that's over there. And there's no
18 question that it was Deputy Gwinn who made the decision to
19 ask for the warrant, correct?

20 A. That's my recollection, yes, sir. I have no reason to
21 throw charges out --

22 Q. All right. I understand. I mean that's the way it
23 works is they come in and they ask you for a warrant and
24 they're the one who's making the charge.

25 A. They have to substantiate what they're asking for.

1 Q. And so, you know, so if he doesn't ask you for a
2 warrant against somebody you won't give one, correct?

3 A. That's correct.

4 Q. And so, he never asked you for a warrant against Mr.
5 Faile, correct?

6 A. Correct.

7 Q. I think you said that you're there to help officers
8 when they call you up. Do you ever give them opinions or
9 help them with the law when they call you up?

10 A. That's not my job, sir.

11 Q. Okay.

12 A. I mean I can provide information to anybody that calls
13 but as long as it's not legal advice.

14 Q. Hold on a second. You obviously haven't been to law
15 school, correct?

16 A. That's correct.

17 Q. But as a judge you are required to know the law,
18 correct?

19 A. I have to be able to interpret the law. Yes, sir.

20 Q. I mean because ultimately you're issuing warrants and
21 you're determining if someone violated the law so you
22 certainly need to know what the law is, correct?

23 A. Yes, sir.

24 Q. And you have resources that are available to look it
25 up, correct?

1 A. Yes, sir.

2 Q. Judicial Website?

3 A. Judicial Website. We do have some legal books in the
4 office.

5 Q. Okay. And I think you have something like a
6 *Magistrate's Bench Book*, don't you?

7 A. We do.

8 Q. Okay. And does that book tell you that all warrants
9 must be sworn under oath?

10 A. Yes, sir.

11 Q. And any testimony outside that four corners has to be
12 given under oath as well, correct?

13 A. Yes, sir.

14 Q. And Mr. Gwinn was not under oath when you were having
15 that conversation, correct?

16 A. As far as?

17 Q. Before you typed up the warrant.

18 A. No, sir.

19 Q. Okay. So anything he told you that -- It wasn't
20 recorded, right?

21 A. No, sir.

22 Q. And we don't have a warrant application to know what
23 he said and what he was asking for, right?

24 A. No, sir.

25 Q. So it's based on your all's memory of what happened

1 years ago, correct?

2 A. Yes, sir.

3 MR. MILLS: Beg the Court's indulgence.

4 Q. Now, you said you were under the impression that Mr.
5 Carter beat him 'til he stopped moving. Did Gwinn tell you
6 that?

7 A. That was in Mr. Carter's statement.

8 Q. Okay. I'm going to ---

9 MR. MILLS: May I approach?

10 Q. --- hand this statement to you. Is this the statement
11 that you're referring to?

12 A. Yes, sir.

13 Q. All right. And what was it in that statement that led
14 you to believe he beat him until he stopped moving?

15 A. "As he hit the porch he was up-kicking and I continued
16 to strike him in the legs until he submitted. I instructed
17 him to roll over on his stomach and I would no longer
18 strike him."

19 Q. Okay.

20 A. To me that indicated he hit him more than once.

21 Q. All right. And if he's actively -- if the person is
22 actively fighting him and he's protecting himself, is that
23 a problem for you?

24 A. Sir, --

25 MR. GARFIELD: Objection. That's assuming facts not

1 necessarily in evidence, your Honor.

2 THE COURT: I overrule the objection.

3 A. I would say if one man's laying on the ground and one
4 man's standing over him with a bat swinging that's not
5 necessarily defending himself.

6 Q. Well how was it described to you how it went down?

7 How did Gwinn describe it to you?

8 A. I'm just going by the statement there, sir.

9 Q. Okay. And I believe -- You didn't look up the *Defense*
10 *of Habitation Act* did you?

11 A. No, sir, I did not.

12 Q. All right. And you didn't look up anything about the
13 *Castle Doctrine*, did you?

14 A. No, sir.

15 Q. And of course you're charged with knowing that as a
16 judge, correct?

17 A. My opinion at that time, sir, what we were dealing
18 with was the aggravated assault portion.

19 Q. All right. So you didn't think that really had any
20 relevance; is that right?

21 A. No, sir.

22 Q. The fact that he was defending his family at his home?

23 A. My whole problem with the whole situation is the I
24 will continue beating until you stop moving portion.

25 Q. Would you if he stopped fighting and assaulting him,

JUDGE LEON YARD: CROSS BY MR. MILLS
ELI BAXTER SPRINGS: DIRECT BY MR. GARFIELD

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1 is that a problem?

2 A. One man's laying on the ground; one man's standing
3 above him.

4 MR. MILLS: Thank you, Judge Yard.

5 THE COURT: All right. Redirect?

6 MR. GARFIELD: Nothing here. Can this witness be
7 excused, your Honor?

8 THE COURT: You can be excused. We appreciate your
9 time. Thank you.

10 JUDGE YARD: Thank you, Judge.

11 (WITNESS LEAVES WITNESS STAND.)

12 THE COURT: Call your next witness.

13 MR. GARFIELD: Yes, sir. The defendant Sheriff will
14 now call EB Springs to the stand, please.

15 THE COURT: Please come up and be sworn.

16 (WHEREUPON, ELI BAXTER
17 SPRINGS, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
18 FOLLOWS:)

19 DIRECT EXAMINATION

20 ELI BAXTER SPRINGS BY MR. GARFIELD:

21 Q. Good morning, Mr. Springs. I say it's morning. I
22 don't know if it still is if the clock is right.

23 A. It's not. My stomach will tell you its not.

24 Q. Good afternoon. Sorry. I know we'll get through
25 this. Could you introduce yourself to the jury?

1 A. Sure. My name is Eli Baxter Springs IV and I am a
2 former Assistant Solicitor. I worked here for many years
3 and I retired three years ago and I moved to the delightful
4 little mountain town of Blowing Rock up in the North
5 Carolina mountains.

6 Q. And you came down here to testify today from your
7 residence?

8 A. Yes.

9 Q. Okay. When -- How many years did you work with the
10 Sixteenth Circuit Solicitor?

11 A. I was here just under eighteen years.

12 Q. And you -- That meant you were a criminal prosecutor;
13 is that right?

14 A. Yes.

15 Q. What kind of cases did you prosecute while you were
16 the Assistant Solicitor here?

17 A. During those years I did everything but murders. I
18 don't like murders. I don't like autopsy pictures. So, I
19 -- I took anything but murders. And in the last few years
20 it seems like I was doing mostly armed robberies and first
21 degree burglaries but they were upper-level felonies is
22 what I handled the last five years.

23 Q. So, this would be General Sessions-level cases?

24 A. Yes.

25 Q. And could you, just in layman's terms, tell us what

1 General Sessions is?

2 A. Well, we've got two court systems in South Carolina.
3 The lower court is the Magistrate Court and they'll handle
4 anything that carries a penalty up to thirty days and there
5 are a few exceptions to that. Things that carry maybe
6 ninety days but generally the crimes that carry more
7 penalty than that, thirty days in jail, are up in General
8 Sessions. This -- this circuit court is General Sessions.
9 The criminal side of circuit court.

10 Q. Did you prosecute any cases in Magistrate's Court?

11 A. I did a couple. It was unusual, unusual circumstances
12 but only a couple.

13 Q. Can you just generally describe what happens to a
14 criminal case when it comes to you? In other words a file
15 comes to you. What if anything goes on as far as the
16 protocol?

17 A. Sure. To start with generally I and just about every
18 other prosecutor I've ever met you don't get just one file.
19 It's not like TV. You don't get one case and that's your
20 only case and you work on just it until the end of the TV
21 show. You get a bunch of cases. Crime's going on twenty-
22 four hours a day, seven days a week, and the cases come in
23 in bunches. You get the case and because you already have
24 bunches of cases and you have limited time and you have
25 limited court time you have to decide how you're going to

1 handle it. You have to evaluate it and decide how much
2 attention to give to it. It's a whole lot like medical
3 triage in a combat hospital you know. Is it hopeless? Can
4 I do something for it? You know you've got to -- you've
5 got to make that evaluation. So you get the case and the
6 first thing is to find out if the arrest was defective.
7 Take a look at it and see if there are problems with the
8 arrest. I've been sitting in the audience listening to the
9 testimony in this case and this case I was assigned this
10 case.

11 Q. Well before you talk about this case I just wanted to
12 generally ask about the protocol.

13 A. Okay.

14 Q. If I can.

15 A. Please continue

16 Q. If I can.

17 A. Please continue.

18 Q. I understand. Sorry for interrupting. Your first
19 thing is whether the arrest was defective.

20 A. Find out if the arrest was defective. If the arrest
21 was defective you have a huge problem obviously. If the
22 arrest is good then you start going through the case file,
23 the paperwork, the pictures, and so forth, and you evaluate
24 the case. Is it -- How serious is it? Did somebody get
25 hurt? How high a level crime is it? Is it a weak case?

1 Is it a strong case? Do you have a lot of evidence? Do
2 you have good witnesses? Do you have bad witnesses? Do
3 you have no witnesses? What kind of physical evidence do
4 you have? And you try to evaluate what you should do with
5 it. Should you go hard on that case? Should you go very
6 light on it because it's a weak case? Should you because
7 you have so many other cases that are important, are very
8 egregious, is this case so minor and so pathetic that
9 you're just not going to mess with it at all?

10 Yeah, the police did all right. They made a good
11 arrest but you know what, I'm too busy to -- to bother with
12 this case. It's trivial. No one got hurt. I'm going to
13 dismiss it. I'm going to put more of my attention, or the
14 rest of my attention, into the other good cases, important
15 cases, strong cases that I have. So you evaluate it and
16 you decide whether you're going to keep it and if you're
17 going to keep it how -- how strong it is and how much you
18 want to get out of it.

19 How much punishment do you think is fair for the
20 defendant to take? And you'll end up either offering a
21 plea bargain or not. In some cases you don't offer a plea
22 bargain. That's very rare. Almost all the cases are plea
23 bargain to get them through the system. We keep the
24 courtrooms going full-time in this system just like they do
25 all over the country and only four or five percent of the

1 cases actually go to trial. So how do you make them all go
2 away? You give the defendant an incentive to plead guilty,
3 a plea bargain, a deal, a better deal than he deserves to
4 plead guilty, get that case going, so that you can pay
5 attention to the cases that continue to come in on that
6 ever-running assembly line.

7 Q. And Mr. Springs, with all the scenarios that could
8 happen with a case you described several. Did it ever come
9 across your desk where you believed that actually someone
10 was innocent just generally speaking?

11 A. No. I came across many cases where I thought somebody
12 might be innocent.

13 Q. Maybe there was a better way for me to ask. I'm
14 sorry.

15 A. Could -- couldn't be sure.

16 Q. Right.

17 A. I've gotten -- I've gotten cases where there are four
18 guys in a car, and --

19 MR. MILLS: Your Honor, I --

20 THE COURT: I sustain the objection.

21 MR. MILLS: He's just going on and on about everything
22 but this case.

23 THE COURT: I sustain the objection.

24 MR. GARFIELD: Then I'll move on to the next question.
25

1 A. Okay.

2 Q. Okay. My -- So, you were assigned this particular
3 case.

4 A. Yes.

5 Q. Mr. Carter?

6 A. Yes, I was.

7 Q. Okay. What was the nature of the charge or what was
8 the classification of the criminal charge?

9 A. He was charged with assault and battery of a high and
10 aggravated nature.

11 Q. All right. And that came -- You were assigned this
12 file I understand?

13 A. Yes.

14 Q. Okay. So, can you describe what happened during your
15 prosecution of this particular case?

16 A. I got the materials, got the -- the case file, the
17 police reports and so forth and did the -- analyzed the
18 first step. Was the arrest good? I found the arrest to be
19 good. I actually found the police appeared to have done a
20 very thorough and a very thoughtful analysis and arrest
21 process. Then I started looking at the specific facts and
22 circumstances and how much evidence there was, what sort of
23 witnesses we had, and if there were any defenses to the
24 charge.

25 Q. And what did you, if anything, discern at that point

1 as far as defenses?

2 A. Because this incident happened at Mr. Carter's house I
3 had to then start factoring in the *Castle Doctrine* -- a
4 man's home is his castle -- and the defense of home,
5 *Defense Of Habitation* law, to see if he had a defense.
6 From the facts it appeared to me that clearly he had beat
7 this guy to a pulp with an aluminum baseball bat. It
8 happened at his home.

9 Then I had to start looking at was he justified? Was
10 he acting within the law, the *Castle Doctrine* or *Defense Of*
11 *Habitation*, when he hit this guy repeatedly with the
12 aluminum baseball bat? I could see that Mr. Faile had come
13 to Mr. Carter's house at night. Mr. Faile was evidently
14 trying to come in against Mr. Carter's wishes. Mr. Faile
15 appeared to have gotten physical with Mr. Carter and struck
16 him wanting to come into his house. It looked like Mr.
17 Carter was telling Mr. Faile, get out of here, leave, get
18 off my property, words to that effect and Mr. Faile wasn't
19 leaving. At that point Mr. Faile takes the aluminum
20 baseball bat --

21 Q. Mr. Faile did?

22 A. I -- Mr. Carter did. Thank you --- and begins to hit
23 Mr. Faile. That action appeared to be taking place at the
24 doorway at the threshold of Mr. Carter's house. And at
25 that point when he starts swinging the first time in the

1 doorway it looked to me like, okay, at this point Mr.
2 Carter is defending his home. He is repelling somebody who
3 appears to be forcefully trying to come into his home and
4 as he starts to swing the bat initially I think this guy
5 has a perfect defense under the *Castle Doctrine* and *Defense*
6 *of Habitation*. But then it gets messier.

7 It gets into a much more gray area because Mr. Carter
8 beats Mr. Faile out -- out on the porch, or the deck, beats
9 him down to the ground to where he's prone the ground and
10 continues to beat him as Mr. Faile evidently tries to rise.
11 And Mr. Carter has told Mr. Faile leave, go away, but Mr.
12 Faile is not allowed to get -- Mr. Faile at that point
13 wanted to leave. He couldn't leave. He was being kept
14 beat down on the deck. There's a problem there. Yeah, the
15 deck or the porch is part of the dwelling but after you've
16 beat somebody down after telling them leave, go away, but
17 you won't let them get up and leave and go away, to
18 continue to hit them repeatedly with the baseball bat,
19 that's getting into a very gray area, a very messy area.

20 Q. So what if anything did you do as a prosecutor based
21 on you viewing this as a messy kind of situation?

22 A. Well, I -- let me -- May I continue my thought
23 process?

24 Q. Yes, sir. I'm sorry for cutting -- I'm sorry if I
25 interrupted you.

1 A. I had to put myself into the position of the jury, be
2 the first juror. You know Mr. Faile starts trouble. He
3 starts the trouble at Mr. Carter's house. Mr. Carter is
4 defending his -- protecting his home and defending his
5 home. Beats Mr. Faile down. Did he go too far? The law
6 still says you've got to be reasonable. Was it reasonable
7 once Mr. Faile was down on the ground to continue to hit
8 him and not let him get up or was that unreasonable? Or
9 would it be within the bounds of permissible by a jury who
10 ultimately would decide the issue?

11 Maybe he -- maybe he went too far I'm thinking. He
12 should have quit hitting him, go back in and shut the door,
13 call the police. Maybe he was justified in continuing to
14 beat him down. What did I think a jury was going to do? I
15 had to ask myself that question because I wasn't going to
16 -- if I was absolutely positive I was -- I in my own heart
17 and mind what a jury would do with it if I thought the jury
18 would find he was within the law of defense of habitation
19 and the *Castle Doctrine*. I wasn't going to take him to
20 trial and waste my time on that.

21 So my own opinion as to whether he went too far and
22 continued to beat Mr. Faile as he was prone on the ground,
23 I had my own opinion but I wanted -- I wanted -- I asked
24 myself what would a jury do. Would a jury find that he was
25 within the parameters within the law of the *Castle Doctrine*

1 and *Defense of Habitation* and I felt like a jury would cut
2 him loose. In fact, if I -- I said to myself if I was
3 sitting on the jury I'd give him the benefit of the doubt.
4 Maybe he went a little bit too far but I'm going to -- I'm
5 going to -- I'm going to find him within the parameters of
6 the *Castle Doctrine* and the *Defense of Habitation* even
7 though when he continued to beat this guy when he was down
8 on the deck prone and I'm not going to take this to trial.
9 I'm going to find -- I did find as the prosecutor assigned
10 to the case that he had a defense, the *Castle Doctrine*,
11 *Defense of Habitation*, and I dismissed it based upon that.

12 Dismissed it saying that he had acted within the law
13 meaning he had acted in such a way that I thought a jury
14 would find that he came within the bounds of the *Castle*
15 *Doctrine* and *Defense of Habitation*.

16 Q. Did any of your evaluation from a prosecutorial sense
17 did that -- the actual reasonableness during the arrest
18 stage come into your thinking?

19 A. I thought the arrest had been -- I felt proud of the
20 officers. I thought they had done a fine investigation and
21 a very thoughtful investigation. That wasn't a problem.
22 They had done their job and done it. As part of the
23 evaluation I felt like they had done a good job and an
24 appropriate job.

25 Now, it was my job to start to look at it from a

1 prosecutorial and a courtroom trial point of view and --
2 and I looked it from that. So I got the case appropriately
3 but then I had to look at it, now what's going to happen?
4 Now what impacts it? Now what is the right thing to do
5 with it or the sensible thing to do with it?

6 MR. GARFIELD: Excuse me, sir.

7 One moment, your Honor.

8 Q. Did you -- Can you identify Plaintiff's Exhibit Number
9 Three for me?

10 A. Sure. This is a disposition sheet. This is the sheet
11 that where I signed off dismissing the assault and battery
12 of a high and aggravated nature against Mr. Carter. I nol
13 prossed it which is a Latin word for meaning no prosecution
14 of the case. And I wrote upon it the notation "nol prossed
15 Defendant's actions were within the law". And by that I
16 meant I thought a jury would find that even though I
17 personally thought he went too far I think a jury would
18 find that he acted within the law of the *Castle Doctrine*
19 and *Defense of Habitation*.

20 Q. Was it in any way, sir, nol prossed consistent with
21 your impression of whether he was innocent or not?

22 MR. MILLS: Objection to the leading question.

23 THE COURT: I sustain the objection.

24 BY MR. GARFIELD:

25 Q. Did you form an opinion one way or the other as to

1 whether he was innocent or not?

2 A. He wasn't innocent. No, no. He -- he had brutally
3 beaten Mr. Faile with an aluminum baseball bat, assault and
4 battery of a high and aggravated nature. Then it becomes a
5 question of whether he had a defense to that. You know if
6 you're going to use terms you're going to use guilty or not
7 guilty.

8 Well he had a defense, you know, most of these to the
9 defense of self-defense. Somebody does a shooting in
10 self-defense the other person had a gun on him pointed at
11 them. In this case he had the defense of the *Castle*
12 *Doctrine* and *Defense of Habitation*. But he certainly did,
13 from everything I saw, did take the -- did the actions of
14 assault and battery of a high and aggravated nature.

15 Q. Okay. Mr. Springs, thank you. And I thank you for
16 coming down but Mr. Mills or Mr. Postic will have an
17 opportunity to ask you questions.

18 CROSS-EXAMINATION

19 ELI BAXTER SPRINGS BY MR. MILLS:

20 Q. Hey, Mr. Springs.

21 A. Mr. Mills, how have you been?

22 Q. Fine. Good to see you again, sir.

23 A. Yes, sir.

24 Q. In that document you said you dismissed it because
25 it was within the law, right?

1 A. That is what I wrote.

2 Q. And you didn't add anything else to it? You didn't
3 say because it was juror confusion, burden of proof, in my
4 prosecutorial discretion. That's all you put on there,
5 right?

6 A. That is all I put on there.

7 Q. All right. In fact you were personally convinced that
8 his actions were within the law? Mr. Carter's actions.
9 That might ring the law. Would you?

10 A. I was personally convinced that his actions would, by
11 a reasonable jury, to have been found to come within the
12 confines, the parameters of the law, the *Castle Doctrine*
13 and *Defense of Habitation*, yes, sir.

14 Q. Do you recall that Mr. Postic was representing Mr.
15 Carter?

16 A. Yes.

17 Q. And do you remember sending him an email advising him
18 that you had dismissed the charges?

19 A. Yes.

20 Q. All right.

21 A. Yes.

22 Q. I'm going to hand you and ask you if you recognize
23 this, sir.

24 A. Yes, I recognize that.

25 MR. GARFIELD: I'd like to just see that, your Honor.

1 I'm not sure I have. Beg the Court's indulgence just
2 one moment.

3 THE COURT: Yes, sir.

4 (PAUSE AT 01:03 PM.)

5 MR. MILLS: Your Honor, he's got it. May I go ahead?

6 MR. GARFIELD: Well just -- just one moment, your
7 Honor. I appreciate it. Yes, sir.

8 THE COURT: All right.

9 BY MR. MILLS:

10 Q. Could you read what you wrote to Mr. Postic, please?

11 A. It says, "I have dismissed the ABHAN" -- A-B-H-A-N,
12 assault and battery of a high and aggravated nature --
13 "charge against Russell Shane Carter. It is a fascinating
14 case. My first brush with the Defense of Habitation and
15 the Castle Doctrine. After an exhaustive review of the
16 facts and the law I am convinced Mr. Carter's actions,
17 although brutally violent and potentially deadly, were
18 within the law."

19 I went on to say "I don't know how much discovery you
20 have if any" et cetera.

21 Q. Could you just finish reading it verbatim, please?

22 A. Sure.

23 Q. Thank you.

24 A. "I do not know how much discovery, if any, my
25 paralegal sent you. In addition to the paper discovery I

1 had the benefit of the recording of the 911 call and police
2 officer recordings of their conversations with the people
3 on the scene."

4 Q. Thank you, sir. In your role as a solicitor you
5 conducted preliminary hearings, correct?

6 A. Yes.

7 Q. Can you tell the jury what a preliminary hearing is?

8 A. A preliminary hearing is called in most states the
9 probable cause hearing. When someone gets arrested they're
10 arrested on a warrant. So a judicial official, a
11 magistrate usually, has issued that warrant and that
12 magistrate has found probable cause. This state gives
13 criminal defendants a second bite at the apple for another
14 different judge to sit in one of these courtrooms to hear
15 the case again just like the original magistrate heard it
16 from the police. The police get up on the stand in a
17 preliminary hearing and they go through it again and a
18 different judge decides if he agrees with the first judge
19 and there is probable cause for the case to continue.

20 Q. And if understand correctly, you dismissed this case
21 before there was a preliminary hearing, correct?

22 A. Yes, I did.

23 Q. Thank you very much, Mr. Springs.

24 THE COURT: All right. Redirect?

25 MR. GARFIELD: No redirect, your Honor. May this

1 witness be excused?

2 THE COURT: You may step down and be excused and we
3 appreciate your time. Thank you.

4 MR. SPRINGS: Yes, sir.

5 (WITNESS LEAVES WITNESS STAND.)

6 THE COURT: Where are we, Mr. Garfield?

7 MR. GARFIELD: Your Honor, that concludes the case on
8 behalf of the Defendant Sheriff.

9 THE COURT: Anything in reply?

10 MR. MILLS: No. We're going to go ahead and get this
11 to the jury today.

12 THE COURT: All right. Members of the jury panel, we
13 have lunch, it should be here so we'll take about forty-
14 five minutes since we're not having to go out somewhere and
15 getting toward the time when you'll be hearing the
16 arguments of the attorneys and my charge on the law. So,
17 we'll take about forty, forty-five minutes or so to enjoy
18 our lunch and then we'll send for you for the next phase
19 which will be the closing arguments of the attorneys.

20 (JURY EXITS COURTROOM ON LUNCH RECESS AT 01:08 PM.)

21 THE COURT: Anything from the plaintiff before we
22 break for lunch?

23 MR. MILLS: No. I assume we're going out and getting
24 our lunch though, right?

25 THE COURT: Okay.

1 MR. MILLS: Well, we're not going to be going. We'll
2 send somebody.

3 THE COURT: Anything from the Defense before we break
4 for lunch?

5 MR. GARFIELD: Judge, not before we break for lunch.

6 THE COURT: All right. We've got -- My clerk is going
7 to run off copies of our latest charge and verdict form and
8 give it to you. I have not looked over it for the last
9 draft so we'll all go look at it over lunch. Thank you.

10 MR. POSTIC: Thank you, Judge.

11 (COURT IN RECESS AT 01:08 PM.)

12 (COURT BACK IN SESSION AT 02:11 PM.)

13 THE COURT: Thank you. You may take your seats.

14 Anything before we get the jury in from the plaintiff?

15 MR. MILLS: Yes, your Honor. I'd just like to place
16 on the record, we had a jury charge conference in chambers.
17 We discussed it and there are three charges which I have
18 made a request for which the Court chose not to include.

19 I'd just like to place it on the record.

20 THE COURT: That's fine.

21 MR. MILLS: One is labeled Plaintiff's request of
22 charge one is the sufficiency of the warrant. The other
23 one is the law of self-defense. And the third is
24 Plaintiff's request of charge three is from *State versus*
25 *Hendrix* about the right to use deadly force until the

1 threat has ceased. I'm going to just give it to the court
2 reporter to make it a part of the record.

3 THE COURT: You may.

4 MR. MILLS: Thank you.

5 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO THROUGH THREE,
6 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

7 THE COURT: Anything else?

8 MR. MILLS: No, sir.

9 THE COURT: Mr. Garfield?

10 MR. GARFIELD: Thank you, your Honor. Similarly we
11 had disseminated or requested a charge on behalf of the
12 defendant, request to charge number eight. We did it in
13 two forms, one I had emailed to your Honor's clerk and then
14 another one -- I don't know if it was numbered, but just --
15 I'm just going to read this out for the record just for
16 completeness. And this was the one we discussed in
17 chambers.

18 The proposed charge states "I charge you that the
19 pertinent question here was not whether the plaintiff was
20 guilty of a crime but merely whether probable cause existed
21 to arrest him. Evidence required to establish guilt is not
22 necessary to authorize in a warrant. In other words the
23 finding of probable cause may be based upon less evidence
24 than would be necessary to support a conviction."

25 We've submitted three authoritative cites with

1 reference to number eight. We'd like for this to be
2 charged and for the reason is to give the jury some context
3 as to what the legal standards are.

4 THE COURT: Thank you.

5 MR. GARFIELD: Thank you.

6 MADAM COURT REPORTER: Might I ask?

7 MR. MILLS: Your Honor.

8 THE COURT: Just wait.

9 Go ahead, Wanda.

10 MADAM COURT REPORTER: There's was a Court's Exhibit
11 One that was supposed to be offered in. I think it was
12 coming from you. Something that was supposed to be -- you
13 had asked if -- I'm sorry, Judge, I can't remember the
14 documents you asked had been offered in and it had not and
15 you asked to have it placed into the record as a Court
16 exhibit.

17 THE COURT: That was the statement, the report.

18 MADAM COURT REPORTER: Right.

19 MR. GARFIELD: The statement.

20 MADAM COURT REPORTER: I have not gotten that yet.

21 MR. GARFIELD: Okay. Then we'll go ahead and --

22 MADAM COURT REPORTER: Thank you.

23 MR. GARFIELD: --- supplement that. Thank you.

24 THE COURT: All right. Yes, sir.

25 MR. MILLS: I assume I'm opening in full and then have

1 a chance to come back, if that's fine.

2 THE COURT: That's fine. Your assumption is correct.

3 MR. MILLS: Pardon?

4 THE COURT: Your assumption is correct.

5 MR. MILLS: Thank you.

6 MR. GARFIELD: May I be heard on a motion, your Honor?

7 THE COURT: Yes, sir.

8 MR. MILLS: Go ahead.

9 MR. GARFIELD: Are you ready, your Honor?

10 THE COURT: Yes, sir.

11 MR. GARFIELD: Thank you. I didn't want to start
12 speaking before your Honor was situated. Your Honor, the
13 -- we would renew our motion for a directed verdict. We
14 would respectfully pray reference to the -- to the grounds
15 and bases that we submitted after the plaintiff's case-in-
16 chief. But now this is after the Defense presented their
17 case.

18 Considering all the evidence from the plaintiff's
19 case-in-chief and our case-in-chief and all inferences
20 drawn therefrom, we believe that we're entitled to a
21 directed verdict in this case. I have three grounds with
22 respect to this. Your Honor, based on the *McBride* case,
23 *Broyhill Hill* case, and I think that malicious prosecution
24 has been defined within your Honor's charges. In order for
25 a malicious prosecution claim to go forward to the jury a

1 plaintiff would have to establish certain elements. I'd
2 like to address three of those that there's been a failure
3 of proof.

4 One being that he would need to prove the lack of
5 probable cause taking the facts in the light most favorably
6 to the plaintiff. The officer came to the scene. He saw
7 the plaintiff with an aluminum baseball bat in his hand
8 that's been identified as a Louisville Slugger-type bat.
9 He was standing over another man. The man was in a curled
10 up or similar position under him or near him on the ground.
11 He was covered with blood. He had bruises on his body. He
12 was in need of medical attention and the officer -- which
13 warranted -- prompted the officers to summons an ambulance.
14 At that time he went to the hospital.

15 The first statements by the plaintiff at the time that
16 the officer heard was something to the effect is, I'm going
17 to continue to hit him using -- he used the F word, some
18 profanity, to say that he was going to break his skull.
19 That fact alone, by his own admission, plus with the
20 plaintiff in his case-in-chief admitting that he had struck
21 him with the bat six, seven, eight, or more times clearly
22 under the requisite probable cause standards that the
23 plaintiff is unable to prove the lack of probable cause in
24 this particular case. That would be my first ground of the
25 elements.

1 Number two, they would need to show by a preponderance
2 of the evidence that based on the elements of malicious
3 prosecution, that his charge was terminated in his favor.
4 But the charge would have to be terminated in his favor
5 according to a very specific sense and here's where I'm
6 going with this. And I believe your Honor has also charged
7 this to the jury. This is based on the *McKenney v Jack*
8 *Eckerd Company* case, 304 S.C. 21.

9 In this case the Supreme Court identified the manner
10 in which a plaintiff would have to prove that the charges
11 were terminated. In this sense, your Honor, I go to the
12 second printed page. The Supreme Court stated, "in an
13 action for malicious prosecution the plaintiff must
14 establish that the criminal proceeding was terminated in
15 his or her favor. The minority rule followed by South
16 Carolina holds the entry of a nol pros is not such a
17 determination. The majority rule holds that entry of a nol
18 pros is sufficient provided it is entered under
19 circumstances which imply or are consistent with innocence
20 of the accused. We find the majority rule which accords
21 with the statements that reports to be sound. According
22 that we hold that where an accused establishes that charges
23 were nol prossed for reasons which implied or consistent
24 with innocence in an action for malicious prosecution may
25 be maintained."

1 Now, your Honor, that particular case was addressed
2 subsequently -- beg the Court's indulgence. And I know,
3 for persuasive purposes this is a, let's see, *Fourth*
4 *Circuit Court of Appeals* case but it certainly provides the
5 Court with some instructive language when it comes to this.
6 This is the *Nicholas v Walmart Stores* decided 2002. And if
7 you would just go to the portion -- I believe it's the
8 fourth printed page in which the Fourth Circuit not only
9 recognizes the black letter law of *McKenney* and I would
10 also state, your Honor, that *McKenney* is also been echoed
11 by other state appellate court cases that I think we have
12 addressed before and is also in your Honor's charge, that
13 they discuss that the Supreme Court held that where an
14 accused establishes that charges were not pressed for
15 reasons which imply or are consistent with innocence in
16 action for malicious prosecution may be maintained.

17 When they go forward they give an example and I'm
18 going to skip to the second paragraph where it says *this*
19 *testimony*. "This testimony is insufficient to allow a
20 juror to reasonably infer that the case had been dismissed
21 for reasons consistent with *Nicholas'* innocence. The
22 circumstances surrounding the abandonment of the criminal
23 proceedings must compel an inference that there existed a
24 lack of reasonable grounds to pursue the criminal
25 prosecution. Otherwise every time criminal charges are

1 dismissed by way of nol pros a civil malicious prosecution
2 action could result."

3 And the point here is, your Honor, the actual General
4 Sessions prosecutor that had been assigned this file, EB
5 Springs, testified in open court how he handled this file.
6 He stated in this particular case, he said -- when he was
7 asked, "He was not innocent? No. He beat this man. Then,
8 it becomes a question of whether he had a defense or not.
9 He did take the actions of assault and battery of a high
10 and aggravated nature."

11 So the second part of my motion is based that the
12 plaintiff has -- is required to make a showing that the
13 actual termination of the proceedings in his favor were
14 consistent or at least infer innocence. There's testimony
15 here absolutely to the contrary that it was terminated,
16 that it was based on the prosecution or the prosecutor's
17 judgment at the eleventh hour before or sometime previously
18 to an evidentiary hearing in which the plaintiff could
19 lawfully avail himself for the immunities in General
20 Sessions court. There is absolutely no evidence in this
21 court. There can only be one reasonable inference for this
22 jury and there is a failure of proof of this crucial
23 element.

24 The third and the last part of my motion is that he is
25 unable to show the institution or continuation of original

1 judicial proceedings in this case with respect to the
 2 defendant who is the entity in this case. This part of my
 3 motion is based upon the South Carolina *Tort Claims Act*.
 4 The South Carolina *Tort Claims Act* that I'd like to put on
 5 the record, and this portion I know your Honor has probably
 6 gotten paper cuts from copies from us on this, that this --
 7 I think this kind of brings it in -- it's 15-78-60,
 8 Subsection 23. We addressed this at the end of the
 9 plaintiff's case-in-chief but I'd like to be heard a little
 10 bit more on this and I appreciate it.

11 "In the element for the cause of action for malicious
 12 prosecution is the institution of criminal proceedings."
 13 Okay? This element falls squarely within the scope of 15-
 14 78-6023. We've had other cases with the Supreme Court. I
 15 know one I was directly involved with. I hate to even
 16 bring it up because it wasn't my finest hour which is the
 17 Shawn Swissgood case, *Swissgood v Lott*. We have copies of
 18 this and there's another case with -- involving the
 19 plaintiff's named El Deco.

20 The significance here is that the Supreme Court has
 21 applied *Tort Claims Act* immunity provisions where the
 22 element of the cause of action falls within the scope of
 23 the immunity provision. And this is precisely what we have
 24 in a malicious prosecution claim. Here's why. The
 25 government cannot be sued for instituting a judicial

1 proceeding. And as your Honor is aware a criminal
2 proceedings is a judicial proceeding. By this rationale
3 the government cannot be sued for instituting a criminal
4 proceeding. That results in an immunity for the entity
5 with respect to a malicious prosecution cause of action.

6 Now, I've argued this on the summary judgment stage at
7 the phase and Mr. Mills addressed this. And he did address
8 this again during our first directed verdict motion and I
9 did not respond. I'd like to respond. You know, I do call
10 this a little bit the plaintiff's Chicken Little argument
11 in that he says, well, if the *Tort Claims Act* undercuts the
12 ability of a plaintiff to bring a certain malicious
13 prosecution claim he says, well then therefore you'll have
14 blanket immunity which is suggestive that there is no
15 deterrent or compensation for cases for police misconduct.

16 That is absolutely not the case. Fourth Amendment and
17 causes of action brought pursuant to Section 1983 provide a
18 sufficient deterrent as well as compensation for victims
19 for police misconduct. Quite simply there doesn't need to
20 be concurrent state law liability in dual methods of
21 compensation under state and federal law for police
22 misconduct to be discouraged.

23 The example I have is that before the South Carolina
24 *Tort Claims Act* was codified and adopted in 1986, and where
25 sovereign immunity was at play, there really was the same

1 issue. If anybody had a redress against a law enforcement
2 officer they could always go to a Section 1983 suit. They
3 could allege *Fourth Amendment* in federal court. There was
4 only one avenue for which they could file their claim.
5 There's nothing to suggest that there is some sort of
6 blanket immunity. It's entirely permissible and sound
7 policy for the General Assembly to have placed reasonable
8 limits on the purported law enforcement negligence when the
9 police often work under the most difficult and trying
10 circumstances.

11 That goes back into what we argued earlier is that
12 there is no such viable cause of action in South Carolina
13 for a negligent investigation, a negligent arrest. So,
14 that the fact that the Supreme -- excuse me -- the General
15 Assembly used the exact same wording, almost exact same
16 wording, to carve out a waiver to the exceptions of
17 sovereign immunity, that the entity should be able to -- to
18 assert its own immunity in that particular case, as a
19 matter of law, your Honor, we believe that he -- he is --
20 that there is a failure of proof and the jury could only
21 come back with one reasonable inference on these three
22 issues for malicious prosecution. Thank you.

23 THE COURT: All right. Mr. Mills, you want to address
24 those three?

25 MR. MILLS: Would you like me to, your Honor?

1 THE COURT: Yes, sir.

2 MR. MILLS: I guess, let's see, the first one was --
3 I'll obviously start with the last one.

4 THE COURT: Okay.

5 MR. MILLS: Unlike Mr. Garfield was saying, the
6 language is not identical. One talks about judicial and
7 administrative hearings. The other one talks about civil
8 and criminal and those are two different things. So
9 therefore I don't believe exception twenty-three applies.
10 There's no case law in South Carolina, I mean by a South
11 Carolina court finding that.

12 Oh, yeah. As far as consistent with innocence, your
13 Honor, I hear Mr. Garfield's argument that the dismissal
14 sheet says his actions were in the law and I think that is
15 consistent with innocence. It doesn't have to be
16 innocence, it's got to be consistence with it or apply and
17 despite Mr. Smith's opinion, that's an issue for the Court
18 to determine.

19 THE COURT: What was the first one? I've gotten off
20 track.

21 MR. GARFIELD: It was the lack of probable cause was
22 the first one. The second one was ---

23 THE COURT: Right.

24 MR. GARFIELD: --- the third one was --

25 MR. MILLS: And of course, lack of probable cause,

1 we've kind of beat that to death, your Honor. And I would
2 just say that that is a question of fact for the jury under
3 South Carolina law and unless we see -- to the exclusion of
4 all other possibilities do they get -- on that ground

5 THE COURT: I deny the motion on all three grounds. I
6 feel like that there is enough evidence that the jury could
7 -- And I'm not saying they will -- determine that its not
8 probable cause under the standard that I will charge them.

9 As to number two, Mr. Springs, I don't recall he ever
10 said that he was actually innocent but that he had a
11 possible defense. And I think the possible defense is
12 consistent with or even if he said he was innocent still
13 the fact that he dismissed at least partially on the
14 grounds that there was a possible self-defense or *Castle*
15 *Doctrine*, and he even mentions *Castle Doctrine* in his note,
16 is enough to indicate that the dismissal was consistent
17 with Mr. Carter's innocence. And this is a criminal
18 proceeding and I find that it falls outside the immunity.

19 MR. GARFIELD: Thank you, your Honor.

20 THE COURT: All right. We ready for the jury?

21 MR. MILLS: Let's get it on. Let's do it.

22 THE COURT: All right. Bring in the jury.

23 (JURY RE-ENTERS COURTROOM AT 02:30 PM.)

24 THE COURT: Now the attorneys will make their closing
25 arguments. Unlike the opening statements that I told you

1 Talking about the warrant and Judge Yard. Judge Yard
2 said, yeah, you know, he says -- I think I heard him right
3 -- the videos have nothing to do with this case. Really?
4 We actually have a video that shows us what happened out at
5 the scene and everything that went on and its got nothing
6 to do with the case? When you heard Shane on the stand it
7 was amazing when we played that video afterwards.
8 Everything he said on the stand, he said that night. He
9 didn't change his story a lick.

10 And with all this information about protection of home
11 and everything else, remember I asked the judge, I said,
12 Judge, the only thing if you want a warrant is stuff that
13 when they raise their hand and they swear to it, right? He
14 said, that's right. Anything else doesn't count. And so,
15 what was the information ultimately that we were given?
16 And I'll see if I can just zoom this in a little bit.

17 It is "on April 25th, in the County of York, one
18 Russell Shane Carter did willfully and unlawfully violate
19 the laws of South Carolina -- excuse me - by striking
20 Michael Robin Faile about the head and body with an
21 aluminum baseball bat causing visible injuries that
22 required medical attention. The victim was transported to
23 the medical center. Probable cause is based on police
24 report." And above that it says, "please list the facts on
25 which it's done."

1 MR. MILLS: All right. Absolutely. Determine what
2 the value of this is. What is the value to one who is in
3 his home at eleven o'clock at night, ten thirty at night,
4 someone banging on your door? It's up to you to decide.

5 Thank you very much for all y'all's time. We
6 appreciate it.

7 CHARGE ON THE LAW:

8 THE COURT: All right. Members of the jury panel, I
9 appreciate your patience, as the attorneys have indicated
10 they have, also. It's now my duty to charge you on the law
11 that you are to apply in this case. If you will recall,
12 two days ago, I told you that Mr. Carter had brought two
13 claims against the Sheriff's Office, Bruce Bryant, the
14 Sheriff of York County. This is down to one.

15 The false arrest claim is not before you now and
16 you're not to infer from anything of why because it's not
17 important. It's got nothing to do with what's left, which
18 is the malicious prosecution claim. And so, I explain to
19 you the law about malicious prosecution here in a few
20 moments but the fact that the other claim is gone is of no
21 importance and you just don't even need to worry yourself
22 about that.

23 I remind you that, during the trial, I had certain
24 duties to perform. It's my responsibility to preside over
25 the trial, as I have told you, and I have the duty to rule

1 on admissibility of evidence and I've done that a few times
2 in this case. You are to consider only the evidence that's
3 before you. If I ordered any testimony or a question
4 stricken from the record, you must disregard it. You are
5 to consider only the testimony which has been presented
6 from the witness stand, and the exhibits which have been
7 introduced into the record. You will have the exhibits
8 with you in the jury room.

9 I have the additional duty to charge you the law which
10 applies to this case. It is your duty as jurors to accept
11 and apply the law as I charge it. This is true, even if
12 you think I charge the law different, or even if you think
13 the law should be different. You must take and accept and
14 apply the law as I charge it. That is what your oath
15 requires.

16 You are the sole judges of the facts in this case.
17 You are not to infer from anything I say or do at any time,
18 or anything I have said or done during this trial, as
19 indicating an opinion of mine on the facts. Our law does
20 not allow a trial judge to formulate or express to a jury
21 any opinion about the facts. That is your job. It is
22 solely your job to examine the evidence and give to the
23 evidence the effect, the value, the weight, and the truth
24 you believe it should have.

25 In doing this, you may believe one witness as opposed

1 to several; several witnesses as opposed to one. You may
2 believe all, part, or none of the witness's testimony. Use
3 your common sense, your sense of logic, your sense of
4 reason. Use your experiences in life as you analyze the
5 evidence. As judges of the facts, you necessarily must
6 judge the credibility, that is, the believability of the
7 witnesses who have testified.

8 In assessing credibility, believability, use the
9 things I have just talked about. Use the things that you
10 find in your day-to-day life as being indicators of
11 truthfulness, and you can use certain evaluators. That is,
12 how a witness acts on the stand, their demeanor. Whether a
13 witness has any reason to help or hurt one side of the
14 other, that is, any bias or prejudice.

15 You can consider other witness's testimony as
16 straightforward or hesitant, or whether it was consistent
17 or inconsistent. And you can consider the opportunity a
18 witness had to know those things to which the witness has
19 testified. All of these things you consider, determine the
20 true facts and apply the law, and you will be able to
21 return a verdict that speaks the truth.

22 Cases like this start when an individual believes they
23 have a claim against another individual, and they file
24 what's called a Summons and Complaint. In that Summons and
25 Complaint, they make certain allegations. Here, the

1 allegation is that Sheriff Bryant, through his officers --
2 and that is what's called an agency relationship; that is,
3 the Sheriff's Office would be responsible for the acts of
4 deputies and others acting in the course and scope of their
5 employment with the Sheriff. And that's not an issue here.
6 It's admitted that at the time of this particular incident,
7 the deputies were acting within the course and scope of
8 their employment as law enforcement officers with Sheriff
9 Bryant's office. So, you do not have to wrestle with that
10 issue. It is admitted that, whatever they did, they did as
11 agents of the Sheriff.

12 Now to that claim by Mr. Carter, Mr. -- Sheriff Bryant
13 has entered an answer denying that his officers and his
14 office committed any malicious prosecution and asked that
15 the case be dismissed, and puts what we call the burden of
16 proof on the plaintiff to prove their case. That is, the
17 plaintiff must prove his claims. He must prove that the
18 claim of malicious prosecution. He must also, if you
19 determine he has proven that, prove his claim for damages.

20 He must do this by what is called the greater weight
21 or a preponderance, of the evidence. I can best explain
22 that to you by asking if you will to imagine with me
23 blindfolded justice, Lady Justice. If you recall, she
24 holds scales that are even. Now, as this case starts, when
25 this case starts, and even now as I'm talking to you,

1 between the parties these imaginary scales are balanced.
2 Now, of course, you can't weigh evidence other than
3 mentally. So, what you have to do is mentally weigh the
4 evidence and place it on these scales. If the scales do
5 not tip either way, or if they tip toward the Sheriff, the
6 weight of the evidence, then Mr. Carter has failed to carry
7 his burden of proof by the greater weight or a
8 preponderance of the evidence.

9 However, if, when you weigh -- mentally weigh this
10 evidence, and the scales -- the weight of the evidence tips
11 the scales toward Mr. Carter to any degree whatsoever, he
12 has carried his burden of proof by the greater weight or a
13 preponderance of the evidence.

14 In this trial you have had depositions read to you and
15 there have been some questions of witnesses about what has
16 happened in depositions earlier. I explained to you that
17 depositions is -- are testimony that was taken in another
18 time, in another place, outside the courtroom, by the
19 attorneys, under -- and the witness was under oath and that
20 testimony was transcribed into a booklet, and under certain
21 circumstances that testimony can be presented in the trial.
22 Either in questioning another witness, or as the testimony
23 of the witness themselves, as one was in this case.

24 You must consider those depositions as evidence, along
25 with the testimony of the witnesses who did appear, and you

1 are to determine from all of the evidence in the case,
2 whether by a witness who was here, or by depositions, or
3 whether by exhibits what the truth of the controversy is
4 according to the facts as you find them to be. And again,
5 once you have determined the true facts, apply the law, and
6 your verdict will speak the truth.

7 As judges of the facts, you must necessarily judge the
8 credibility of the witnesses, and I've already talked to
9 you about that and told you that -- and you can believe one
10 witness as opposed to several; several witnesses as to one;
11 and you can use your common sense, your sense of logic,
12 your sense of reason, your experiences in life, in
13 analyzing the evidence.

14 Here, Mr. Carter claims that the Sheriff's Department,
15 and again, I remind you that the Sheriff would be liable if
16 you find there is liability based on the acts of his
17 deputies. But here, Mr. Carter claims that the Sheriff's
18 Office is guilty of malicious prosecution. An action from
19 malicious prosecution protects an individual's interest in
20 being free from unjustified litigation and the resulting
21 injury to reputation, financial expense, and interference
22 with property.

23 I'm sorry. I was just being told I'm off, I keep
24 saying Carver and it's actually Carter. I apologize.

25 In order to recover in an action for malicious

1 prosecution, Mr. Carter must prove by a preponderance or a
2 greater weight of the evidence the following elements.

3 First, he must prove that civil or criminal judicial
4 proceedings against him were begun or continued. He must
5 also prove that the proceeding were begun or continued by
6 the defendant, or at the defendant's request. Next, Mr.
7 Carter must prove that the prosecution has ended in his
8 favor, and cannot be reinstated or further maintained
9 without beginning a new proceeding.

10 He must further prove that the defendant acted with
11 malice in instituting or continuing the proceedings. In
12 this cause of action malice is the deliberate, intentional
13 doing of a wrongful act without just cause or excuse.
14 Malice does not necessarily mean a defendant acted out of
15 spite, for revenge, or with a malignant disposition.
16 Malice may also proceed from an ill-regulated mind which is
17 not sufficiently cautious before causing injury to another
18 person.

19 Moreover, malice may be implied when the evidence
20 reveals a disregard for the consequences of an injurious
21 act without reference to any special injury. That is,
22 without any pressing injury that may be afflicted on
23 another person. In an action for malicious prosecution,
24 malice may be inferred from a lack of probable cause. And
25 I'll explain -- define probable cause for you in just a

1 moment. But in an action for malicious prosecution, malice
2 may be inferred from a lack of probable cause to institute
3 the prosecution.

4 Next, the plaintiff must prove that the defendant
5 lacked probable cause in instituting or continuing the
6 action. In determining whether probable cause existed, you
7 should focus on whether the defendant -- and again, when I
8 use the word defendant, I'm talking about the Sheriff's
9 Office -- you should focus on whether the defendant had
10 reasonable cause to believe that Mr. Carter committed the
11 act about which the complaint was made, and not whether Mr.
12 Carter as actually guilty or innocent. Whether the
13 plaintiff, Mr. Carter, was or was not guilty of the charge
14 set forth in the warrant is of no importance.

15 Probable cause is determined by the facts and
16 circumstances present in the mind of the defendant or his
17 agents, here the deputies, at the time of the institution
18 or continuation of the proceedings, not by any later
19 events. If the facts and circumstances would lead a person
20 of ordinary intelligence, caution, and prudence acting
21 conscientiously, fairly, and without prejudice to believe
22 that a plaintiff was guilty, that would be probable cause.
23 Probable cause is something more than mere suspicion.

24 Probable cause is a commonsense, non-technical
25 conception that deals with the factual and practical

1 consideration of everyday life on which reasonable and
2 prudent men, and not on legal technicalities -- I'm sorry.
3 Let me say that again.

4 Probable cause is a commonsense, non-technical
5 conception that deals with the factual and practical
6 considerations of everyday life on which reasonable and
7 prudent men, not legal technicians, act.

8 The proper standard for determining probable cause is
9 an objective standard. That is, whether the facts known to
10 the arresting officer at the time of the arrest, viewed
11 from the standpoint of an objectively reasonable police
12 officer, amounted to probable cause.

13 The probable cause analysis that you must go through
14 includes a realistic assessment of the situation from the
15 law enforcement officers' perspective.

16 Finally, the plaintiff must prove the injury or damage
17 resulted from the proceedings.

18 I charge you that an action for malicious prosecution
19 may be maintained only when an accused establishes the
20 charges were not pressed or dismissed for reasons which
21 imply or are consistent with innocence.

22 The plaintiff may recover those damages which are a
23 direct, natural, and proximate result of the prosecution by
24 the defendant. Damages which may be awarded include
25 deprivation of liberty, and any circumstances of

1 aggravation such as injury to reputation, character,
2 health, mental or physical pain and suffering, and mental
3 and physical pain and suffering have no monetary value.
4 Those damages, if you award any, are left to you
5 conscientious consideration.

6 They may include general impairment of social
7 standing, fright, nervousness, indignity, humiliation,
8 embarrassment, hardship, discomfort, bodily pain, and
9 mental anguish. Damages may also include expenses such as
10 the amount of attorney fees paid in defending the
11 prosecution.

12 You are not required to award the amount of damages
13 requested. Instead you should award those damages you find
14 the evidence has shown that Mr. Carter has suffered or will
15 suffer as a proximate result of the defendant's conduct.

16 Now he was charged with the crime of assault and
17 battery of a high and aggravated nature. I'm going to tell
18 you what that law is, so you can have that knowledge while
19 you are assessing the things I just discussed with you.

20 The person commits the offense of assault and battery
21 of a high and aggravated nature if the person unlawfully
22 injures another person, and great bodily injury to another
23 person results, or, the act is accomplished by means likely
24 to produce death or great bodily injury.

25 To prove assault and battery of a high and aggravated

1 nature, the State must first prove beyond a reasonable
2 doubt. That is a higher standard. In this case, the
3 standard that you use in assessing what your verdict should
4 be is the preponderance of the evidence, the lady with the
5 scales. You do not use the beyond a reasonable doubt
6 standard, which applies to criminal cases. This is not a
7 criminal case.

8 The State must prove -- In order to prove assault and
9 battery of a high and aggravated nature, in that case, the
10 State must prove beyond a reasonable doubt that the
11 defendant unlawfully injured another person. Next, the
12 State must prove beyond a reasonable doubt that either
13 great bodily injury resulted, or that the act was
14 accomplished by means likely to produce death or great
15 bodily injury.

16 Great bodily injury is defined by our law as bodily
17 injury which causes a substantial risk of death, or, which
18 causes a serious permanent disfigurement, or protracted
19 loss or impairment of the function of a bodily member or
20 organ.

21 Now, it's been discussed and mentioned of what they
22 call the *Castle Doctrine*. Our legislature has enacted a
23 law that's actually not titled the *Castle Doctrine*. It's
24 titled the *Protection of Persons and Property Act*. As used
25 in this act, dwelling is defined, and when you did this

1 act, means a building or conveyance of any kind, including
2 an attached porch, whether the building or conveyance is
3 temporary or permanent, mobile or immobile, which has a
4 roof over it, including a tent, and is designed to be
5 occupied by people lodging there at night.

6 Great bodily injury means bodily injury which creates
7 a substantial risk of death or which causes serious,
8 permanent disfigurement, or protracted loss or impairment
9 of the function of a bodily member or organ.

10 Residence means a dwelling in which a person resides,
11 either temporarily or permanently.

12 Next, the law sets forth that there is a presumption
13 of reasonable fear of imminent peril when using deadly
14 force against another unlawfully entering a residence,
15 occupied vehicle or a place of business. I garbled that,
16 so let me say it again. A presumption of reasonable fear
17 or imminent peril when using deadly force against another
18 unlawfully entering a residence or occupied vehicle or
19 place of business.

20 A person is presumed to have a reasonable fear of
21 imminent peril of death or great bodily injury to
22 themselves or another person when using deadly force that
23 is intended or likely to cause death or great bodily injury
24 to another person, if that person who uses the force
25 against whom the deadly force is used is in the process of

1 unlawfully and forcefully entering, or has unlawfully and
2 forcefully entered a dwelling, residence, or occupied
3 vehicle, or if that person removes or is attempting to
4 remove another person against their will from the dwelling,
5 residence, or occupied vehicle; and if that person uses
6 deadly force knows or has reason to believe that an
7 unlawful and forcible entry or unlawful or forceful act is
8 occurring or has occurred.

9 A law enforcement agency may use standard procedures
10 for investigating the use of deadly force as described, and
11 that I just mentioned to you. But the agency may not
12 arrest a person for using deadly force unless probable
13 cause exists that the deadly force used was unlawful.

14 If you decide that Mr. Carter was entitled to a
15 verdict, your next step would be to decide how much money
16 he should be required -- the State -- the Sheriff's Office
17 should be required to pay Mr. Carter.

18 Actual damages are damages which are meant to
19 compensate one for their injuries or losses and to put
20 them, as near as possible, in the same position they were
21 in before the incident occurred. In other words, the
22 actual damages would be the actual losses and expenses
23 which Mr. Carter has suffered because of the Defendant's
24 actions.

25 Now, your verdict must be unanimous. All twelve

1 jurors must agree on the verdict before you, Mr. Foreman,
2 enroll it. And you, Mr. Foreman, will preside over the
3 jury's deliberation and enroll the unanimous verdict.

4 If you have questions while you are deliberating, just
5 write them on a note, and send them out to me, and I will
6 confer with the attorneys. And I'm not going to start
7 something else so I can do that promptly, and once I have
8 conferred with the attorneys, I will respond to the note.

9 It may be that I can write an answer on a note and
10 send it back. If I do that, keep the note and turn it back
11 in with the exhibits, because it has to be a part of the
12 record. If I need to explain the -- answer the question in
13 person, I will bring you back here in open court, address
14 it.

15 If you want testimony replayed, we can do that. If
16 you wish to have the videos played, we can bring you in and
17 do that; and if we do that, we will not -- no one will say
18 anything to you other than me, to introduce it to you.
19 That is, we will not be invading your providence. By
20 bringing you back in here we will simply show the portions
21 that you wish to see.

22 Again, your verdict cannot be based on sympathy,
23 passion, prejudice, emotion, or other considerations which
24 are not in evidence in this case. When you have agreed on
25 a verdict, and I will go over the verdict form in just a

1 moment, Mr. Foreman, you will write it on the verdict form,
2 knock on the door and tell the bailiff, and the bailiff
3 will come and get us, and we will send for you.

4 You should, again, be able to do that promptly,
5 because we're not starting any more work, so we should be
6 able to send for you.

7 Mr. Good and Mr. Marshall, I'm going to ask you two to
8 say in when the jury goes out. You are the alternates, and
9 we will not need your participation any further.

10 When you first go into the jury room at this time, do
11 not start deliberating. I have to go over with the
12 attorneys my charge. If I have made any error, I will have
13 to bring you back in and correct it. If I have not made
14 any error, I will send in the exhibits and the verdict
15 form, and the bailiff will tell you to start deliberating.
16 But don't start deliberating until you get that cue, and do
17 not get too comfortable, because if I have to send for you,
18 it will be in just a few minutes.

19 Now, there are two forms to the verdict. The way they
20 are set forth on the verdict form are of no importance. I
21 have to set them one before the other, because just --
22 that's the way you have to do it. And I always put the
23 same order. So, the fact that one verdict is higher on the
24 page than the other does not mean it has any greater
25 validity, or any greater weight. They both are of equal

1 consideration for you.

2 If you find that Mr. Carter has proven, by the greater
3 weight or preponderance of the evidence, that the Sheriff's
4 Office committed malicious prosecution, by the greater
5 weight or the preponderance of the evidence, and has proven
6 actual damages to you to your unanimous satisfaction, you
7 would put an X or a checkmark on the first line that says,
8 "We, the jury, find for the plaintiff against the defendant
9 as to malicious prosecution, in the amount of actual
10 damages, totaling" and there's a line. And write any
11 amount, like on the second line of a check, with the words,
12 like you do on the second line of a check, as opposed to
13 figures.

14 The other option, and if you choose it, is, "We, the
15 jury, find for the defendant" and you would put an X or a
16 check in front of that, if you find that Mr. Carter has not
17 carried his burden of proof, and you find that he is not
18 entitled to any award. There's a place for you to sign,
19 and there's a place for you to date. Of course, the date is
20 the 9th.

21 Now, everybody but Mr. Good and Mr. Marshall, I'm
22 going to let you go to the jury room, but do not start
23 deliberating until you hear from me.

24 (JURY EXITS THE COURTROOM TO DELIBERATE AT 04:09 PM.)
25

1 THE COURT: And I'll be with you in just a minute.

2 Anything from the State?

3 MR. MILLS: Nothing from the State.

4 THE COURT: Anything from the Defense?

5 MR. GARFIELD: There is, your Honor.

6 THE COURT: Yes, sir.

7 MR. GARFIELD: Just a point to clarify. And to the
8 extent that I may have missed this in the charge
9 conference, I apologize in advance, but just hearing your
10 Honor's charge, I believe I heard your Honor charge that --
11 I did write it down, but to the extent that when they
12 evaluate or assess probable cause they would have to assess
13 probable cause for the charge complained of. And then,
14 your Honor went into the assault and battery of a high and
15 aggravated nature charge, and you did qualify that to say
16 that this is not a --

17 THE COURT: Criminal matter.

18 MR. GARFIELD: Right. Its -- But I did want to be
19 heard on this issue, and I noticed the alternates are still
20 in here.

21 THE COURT: Well, they're not going to be for just -

22 MR. GARFIELD: Okay. Your Honor,

23 THE COURT: You'll hear what we do all the time.

24 MR. GARFIELD: Your Honor, the case law, *Jackson*
25 *versus City of Abbyville*, and I can print this out, it's a

1 Court of Appeals case of South Carolina from 2005. 623
2 S.E.2d, 656. It's really mirrored off of kind of a long-
3 standing U.S. Supreme Court case named *Devon Peck versus*
4 *Alford*, which your Honor may be familiar with. In this
5 case, it was the City of Abbyville gave the defendant and
6 the Court states that the dispositive issue before us is
7 whether the probable cause to arrest determination is
8 confined to the actual charges, or whether a consideration
9 of an uncharged offense is appropriate.

10 What they determined in this case, again, and it's
11 really predicated on the *Devon Peck* matter, it says, "we
12 hold to the exacting summary judgment standard that the
13 city police officer had probable cause to arrest Jackson
14 for trespass after notice in an uncharged offense. We
15 further hold that the city's reliance on the uncharged
16 offense is sufficient to defeat Jackson's claims.

17 When they go into more than the heart of this, I guess
18 the upshot is that because this is not a criminal case,
19 because we don't have the burden, the question isn't for
20 this jury is to whether the officers had probable cause to
21 arrest him for assault and battery of a high and aggravated
22 nature in order to meet all of those elements. But it is
23 probable cause to believe that a crime had been committed,
24 and I was just a little concerned that if just the way it
25 just was sort of laid out that they heard the elements of

1 the crime. And I know we've -- we've sort of had the
2 Freudian slip of calling it the State the whole time,
3 although we've all done it; I've done it, too. And since
4 this is not a criminal case, I don't think the law requires
5 them to have probable cause to prove elements of a ABHAN as
6 far as probable cause; but just that they believe from a
7 realistic assessment would an objectively reasonable
8 officer that any crime would have been committed. I would
9 like your Honor with all due respect, to re-charge the jury
10 on that point.

11 THE COURT: Well, let me hear from Mr. -- I'm looking
12 through my charge. Let me hear from Mr. Mills on that.

13 MR. MILLS: First of all, that was about as confusing
14 as a charge as I've ever heard.

15 THE COURT: I'm sorry.

16 MR. MILLS: No, I'm talking about Mr. Garfield's
17 recitation, not yours.

18 THE COURT: Okay. Thank you.

19 MR. MILLS: And more specifically that is the issue.
20 That's what probable cause to arrest for a high and
21 aggravated nature. Its hard to understand his point.

22 THE COURT: Well, I understand his point but I agree
23 with you.

24 MR. MILLS: The point is, there's no more testimony -

25 THE COURT: I agree with you, that I -- Plus there's no

1 evidence that there was any ---

2 MR. MILLS: No --

3 THE COURT: --- any other crime other than the ones
4 allegedly committed by Mr. Faile. And don't take offense
5 to you or the Appellate Court, but in order to fully charge
6 that charge some -- I would have to go into all of the
7 possible charges that -- that may have arisen from what
8 they found. In that case you mentioned they say he could
9 have been charged with trespass.

10 Well, this jury, they may have some idea that he could
11 be charged with something else, but unless I tell them --
12 excuse me -- tell them, use that charge and then tell them,
13 well, he could have been found guilty of assault and
14 battery first degree, assault and battery second degree,
15 assault and battery third degree, and charge all those,
16 I've left them in a vacuum. So, you're on the record, and
17 I'm not going to -

18 MR. GARFIELD: And the only point I was making more of
19 a philosophical standpoint on that. I know I'm on the
20 record. This isn't even trying to bicker. It was just
21 that it said it was charged with the -- the charge
22 complained of and that was just my --

23 THE COURT: Yeah.

24 MR. GARFIELD: It was that issue, as well.

25 THE COURT: I understand.

1 MR. GARFIELD: Yes.

2 THE COURT: But I think that's correct. I mean, in
3 spite of -- I mean, I understand. And had there been some
4 other evidence in the case that said -- that would give
5 this jury something to hang their hat on that perhaps he
6 didn't commit -- that they overcharged him so to speak.

7 MR. GARFIELD: Yes, sir.

8 THE COURT: And quite frankly, they may have in this
9 case, I don't know, when you look at the definition of
10 great bodily injury. But I tell them what those options
11 are, I find, in order to maybe that made any sense.

12 So, look at the verdict form and the exhibits, and if
13 everything's all right, we can tell them to start
14 deliberating.

15 Now, you're through for the week. You can stick
16 around if you wish, but you're free to go, and you'll be
17 mailed a check. Do either of you need an excuse to take to
18 work or your spouse to let them know this is where you
19 really were and stuff? All right.

20 Ms. Straight will get that for you. All right. You
21 all are free to go. Thank you so much.

22 (ALTERNATE JURORS DISMISSED AT 04:15 PM.)

23 (COURT IN RECESS AT 04:15 PM.)

24 (WHEREUPON, COURT'S EXHIBIT NUMBERS FOUR AND FIVE,
25 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

1 (COURT BACK IN SESSION AT 04:59 PM.)

2 THE COURT: Thank you. You may take your seats.

3 We've received a note from the jury that they have reached
4 a verdict. We will send for the jury.

5 Bring in the jury.

6 (JURY RE-ENTERS COURTROOM AT 05:00 PM.)

7 THE COURT: Mr. Foreman, I understand you've reached a
8 verdict. If you'll hand it to the bailiff, he'll hand it
9 up to me.

10 (VERDICT RECEIVED UP BY THE COURT.)

11 MADAM CLERK: State of South Carolina, County of York,
12 in the case of *Russell Shane Carter versus Bruce Bryant*,
13 *Representative for the Office of the York County Sheriff*,
14 Case Number 2014-CP-46-1307, we, the jury, find for the
15 plaintiff against the defendant as to malicious prosecution
16 in the amount of actual damages totaling One hundred and
17 fifty thousand dollars. Signed this day by Richard Gray
18 II, November 9, 2016.

19 Ladies and gentlemen of the jury, if this is your
20 verdict, please indicate so by raising your right hand.

21 Thank you. Let the record reflect all hands are
22 raised.

23 (WHEREUPON, ALL JURORS AFFIRMED THE VERDICT.)

24 THE COURT: Anything before the jury is dismissed on
25 behalf of the Plaintiff?

1 MR. MILLS: Nothing from the plaintiff, your Honor.

2 THE COURT: Anything from the Defense?

3 MR. GARFIELD: Just like to poll the jury, please.

4 THE COURT: All right. Members of the jury, the Clerk
5 is going to ask you to confirm your verdict.

6 MADAM CLERK: If you all please stand. When your name
7 is read, I'll ask you a question. Once you answer that
8 question, you can sit down.

9 Juror Number Nine, Angela Q. Belk. Ms. Belk?

10 MS. BELK: You want me to raise my right hand? Okay.

11 MADAM CLERK: Just so we know who you are. Is this
12 your verdict?

13 MS. BELK: Yes.

14 MADAM CLERK: Is it still your verdict?

15 MS. BELK: Yes.

16 MADAM CLERK: Thank you. You may be seated.

17 Shawn C. Crisp, Number Forty.

18 MR. CRISP: Yes, ma'am.

19 MADAM CLERK: Number Forty Mr. Crisp, is this your
20 verdict?

21 MR. CRISP: Yes, ma'am.

22 MADAM CLERK: Is it still your verdict?

23 MR. CRISP: Yes, ma'am.

24 MADAM CLERK: Thank you. You may be seated.

25 Number Eighty-six, Brandi N. Kinley. Ms. Kinley, was

1 this your verdict?

2 MS. KINLEY: Yes.

3 MADAM CLERK: Is it still your verdict?

4 MS. KINLEY: Yes.

5 MADAM CLERK: Thank you. You may be seated.

6 Juror Number One sixteen, Benjamin A. Rankin.

7 MR. RANKIN: Here.

8 MADAM CLERK: Mr. Rankin, was this your verdict?

9 MR. RANKIN: Yes.

10 MADAM CLERK: Is it still your verdict?

11 MR. RANKIN: Yes, it is.

12 MADAM CLERK: Thank you.

13 Juror Number One forty-five, James M. Willis.

14 Mr. Willis, was this your verdict?

15 MR. WILLIS: Yes, ma'am.

16 MADAM CLERK: Is it still your verdict?

17 MR. WILLIS: Yes, ma'am.

18 MADAM CLERK: You may be seated. Thank you.

19 Juror Number Six Jessica L. Aires.

20 Ms. Aires, was this your verdict?

21 MS. AIRES: Yes, ma'am.

22 MADAM CLERK: And still your verdict?

23 MS. AIRES: Yes, ma'am.

24 MADAM CLERK: Thank you.

25 Juror Number Ninety-nine, Jonathon D. Maples.

1 MR. MAPLES: Yes, ma'am.

2 MADAM CLERK: Mr. Maples, was this your verdict?

3 MR. MAPLES: Yes, ma'am.

4 MADAM CLERK: And still your verdict?

5 MR. MAPLES: Yes, ma'am.

6 MADAM CLERK: Thank you.

7 Juror Number One forty, Sarah T. Tolodziecki.

8 Was this your verdict?

9 MS. TOLODZIECKI: Yes.

10 MADAM CLERK: And still your verdict?

11 MS. TOLODZIECKI: Yes, it is.

12 MADAM CLERK: Thank you.

13 Juror Number Twelve, William S. Bowman.

14 Mr. Bowman, was this your verdict?

15 MR. BOWMAN: Yes.

16 MADAM CLERK: And still your verdict?

17 MR. BOWMAN: Yes.

18 MADAM CLERK: Thank you.

19 Juror Number Ninety, Jamie M. Kontol.

20 Is this your verdict?

21 MS. KONTOL: Yes.

22 MADAM CLERK: And still your verdict?

23 MS. KONTOL: Yes, ma'am.

24 MADAM CLERK: Thank you.

25 Number Eighty-nine, Laquavia B. Knox.

1 Ms. Knox, was this your verdict?

2 MS. KNOX: Yes.

3 MADAM CLERK: And still your verdict?

4 MS. KNOX: Yes.

5 MADAM CLERK: Thank you.

6 And Juror Number Sixty-eight, Richard B. Gray II.

7 Mr. Gray, was this your verdict?

8 MR. GRAY: Yes, ma'am.

9 MADAM CLERK: And still your verdict?

10 MR. GRAY: Yes, ma'am.

11 MADAM CLERK: Thank you. You may be seated.

12 THE COURT: Anything further from the plaintiff?

13 MR. MILLS: Nothing, your Honor.

14 THE COURT: The Defense?

15 MR. GRIFFITH: No, your Honor.

16 THE COURT: Members of the jury panel, thank you for
17 your help. This finishes your work for the week. You will
18 be mailed a check. Do any of you need an excuse to take to
19 work, or somewhere? If you do, just come up here before
20 you leave, and the Clerk will get you one.

21 Thank you. You are free to leave. Thank you.

22 (JURY DISMISSES AT 05:03 PM.)

23 THE COURT: Plaintiff, the jury has been dismissed.

24 Anything from the plaintiff?

25 MR. MILLS: Just want to go home.

1 THE COURT: All right. Anything from the Defense?

2 MR. GARFIELD: Your Honor, I would respectfully ask
3 for ten days.

4 THE COURT: Granted.

5 MR. GRIFFITH: For post-trial motions.

6 THE COURT: That will be granted. If you'll will send
7 them to me. You will, of course, serve it on the other
8 side and they can have five days to respond.

9 I appreciate everybody's courtesy during the trial.
10 Thank you very much for the way --

11 (COURT ADJOURNED AT 5:05 PM.)
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ARREST WARRANT

M-604594

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE
against

201200013457

Russell Shane Carter

Address: 3001 Lesslie Hwy

Rock Hill, SC 29730-

Phone: SSN: [REDACTED]
Sex: M Race: W Height: 5 10 Weight: 250

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: K. Gwinn - GWINN

Offense: Assault/Assault & Battery of a High & Aggravated Nature

Offense Code: 3411

Code/Ordinance Sec: 16-03-0600(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Russell Shane Carter
on 04/26/2012

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant K. Gwinn

who

being duly sworn deposes and says that defendant Russell Shane Carterdid within this county and state on or about 04/25/2012

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE Assault/Assault & Battery of a High & Aggravated Nature

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On April 25, 2012, in the county of York, one Russell Shane Carter did willfully and unlawfully violate SC Laws by striking
Michael Robin Faile about the head and body with an aluminum baseball bat causing visible injuries that required medical
attention. The victim was transported to Piedmont Medical Center in Rock Hill by EMS. Probable cause based on a police
investigation. REPORT # 201200013457

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address Moss Justice Center
York 29745-7428

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/25/2012 defendant Russell Shane Carter

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Assault/Assault & Battery of a High & Aggravated Nature

/Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 04/26/2012

Signature of Issuing Judge (L.S.)

Dean E. Yard

Judge Code: 5945

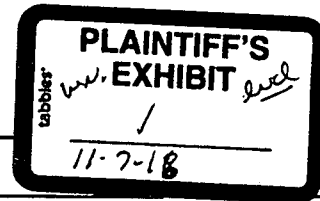
Judge's Address Moss Justice Center
York, SC 29745-7423Judge's Telephone (803)628-3029Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

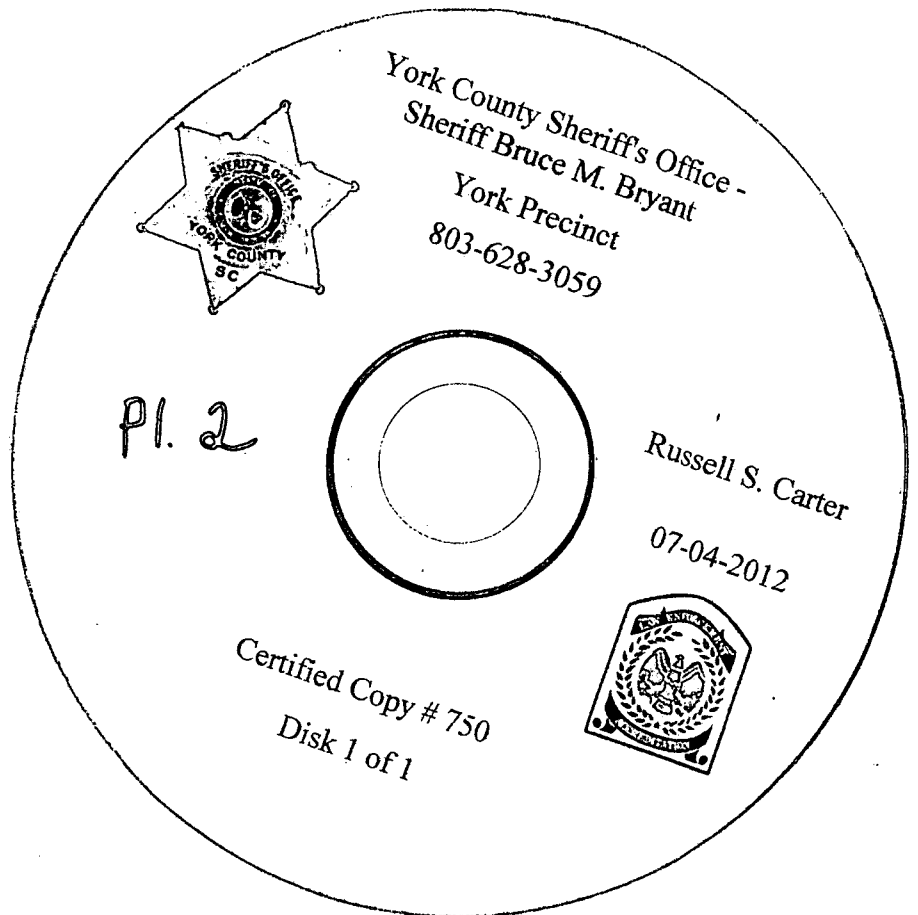
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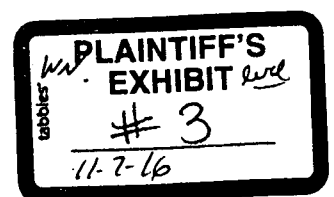
ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 218

To Be Transferred from the York County Court of Common Pleas





General Sessions Tracking Sheet
Indictment # 0000GS46

Name: Carter, Russell Shane
AKA:
Addr: 3001 Lesslie Hwy
Rock Hill, SC 29730

Warrant/Ticket # M604594
Date of Arrest: 04/26/2012
Date of Offense: 04/25/2012
Date Rev by Clerk 04/30/2012
Magistrate: Clerk Of Court
Counts: Code: 3411/Assault/Assault & Battery of a
High & Aggravated Nature

SSN# [REDACTED]
Sex: M Race: W
DOB: [REDACTED]
DL# [REDACTED]

Indictment # 0000GS46

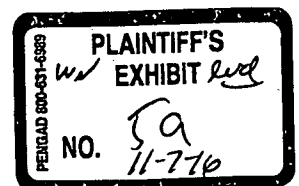
Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition: June 5, 2012

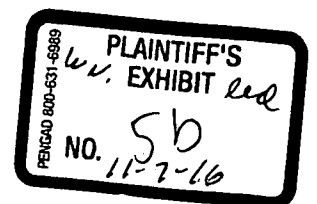
Disposition	☐ 1. Guilty plea	
	☐ 2. Trial -- guilty	
	☐ 3. Trial -- not guilty	
	☒ 4. Dism/Not Pros/Pros Ended	Explain: <u>Nol pros, defendant's actions</u>
	☐ 5. Judicial Commitment	Explain: <u>were within the law.</u>
	☐ 6. Judicial Dismissal	
	☐ 7. Remanded	Explain: _____
	☐ 8. Dismissed at Prelim	
	☐ 8. No Bill	
	☐ 9. Failure to Appear	Explain: _____
	☐ 10. Other	Explain: _____

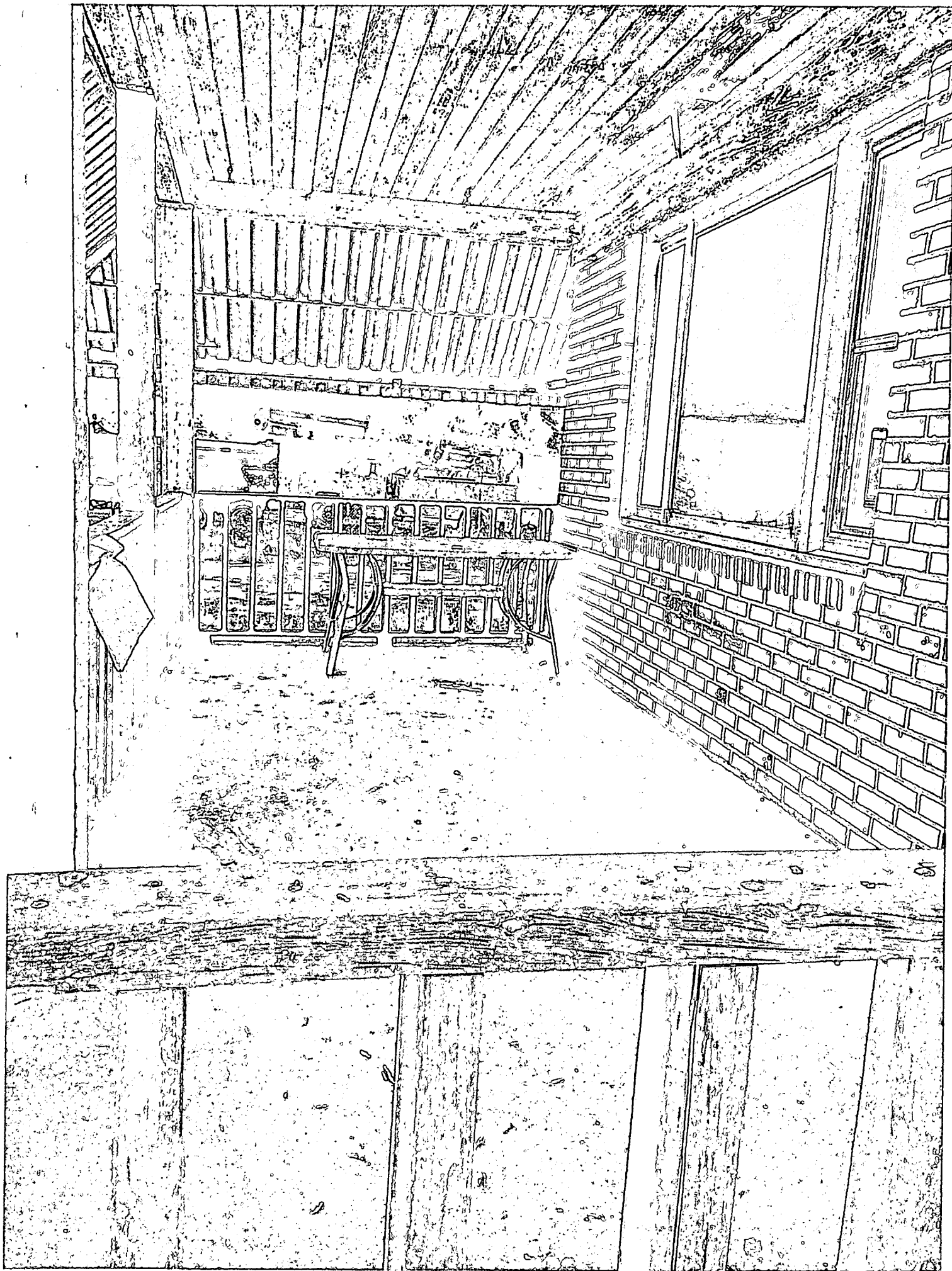
Judge: _____ Court Reporter: _____
Defense Atty: _____ Solicitor: E B Spangola
Counts: _____ Code: _____
Sentence: _____

9486-D-02



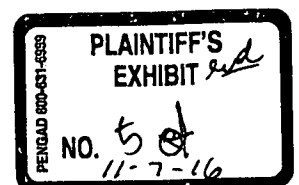




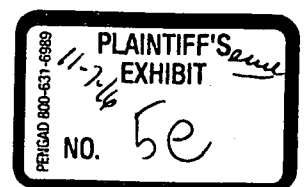








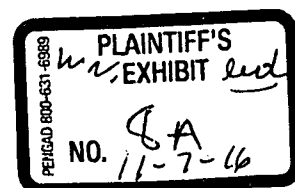


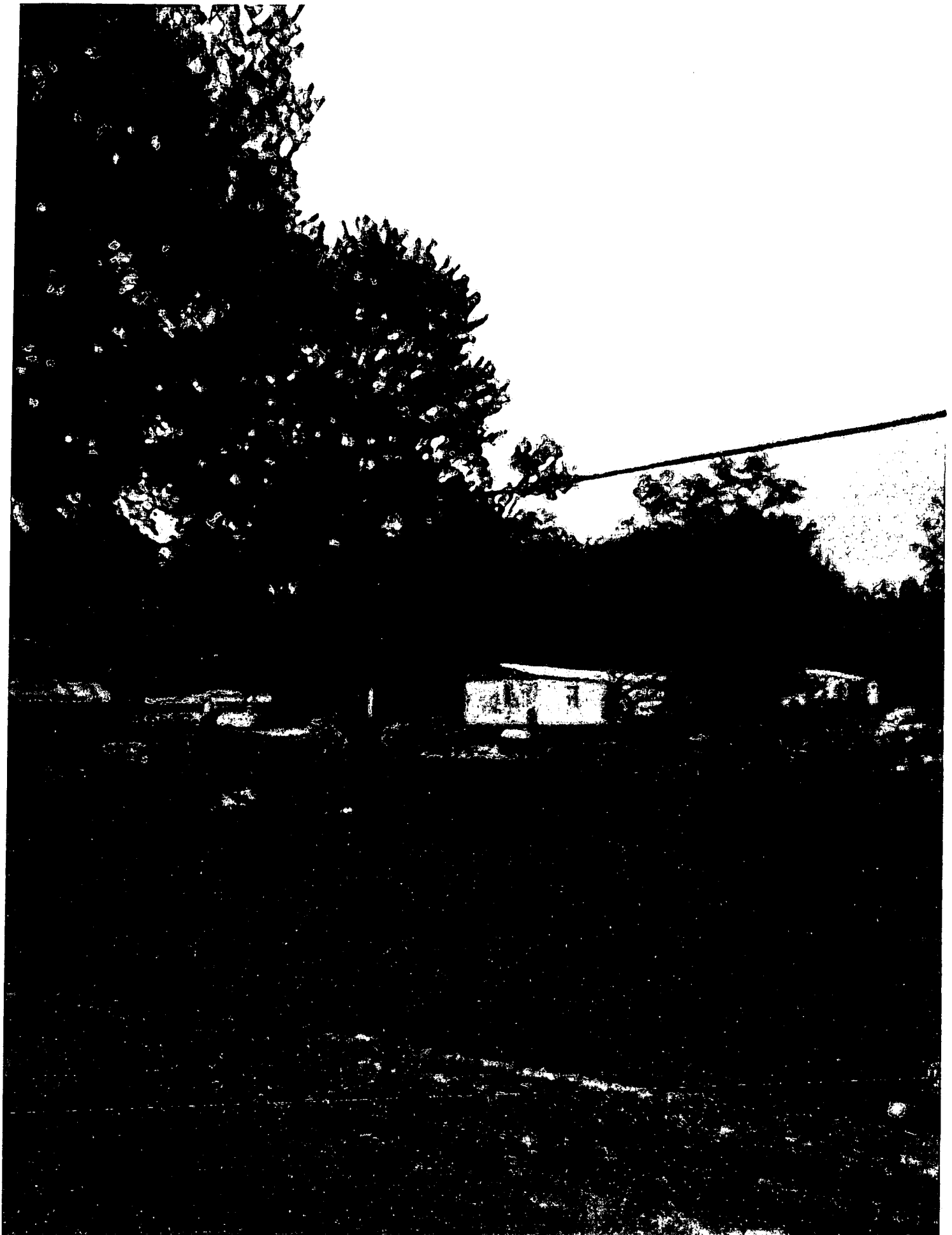


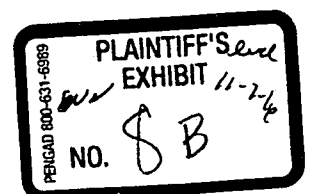


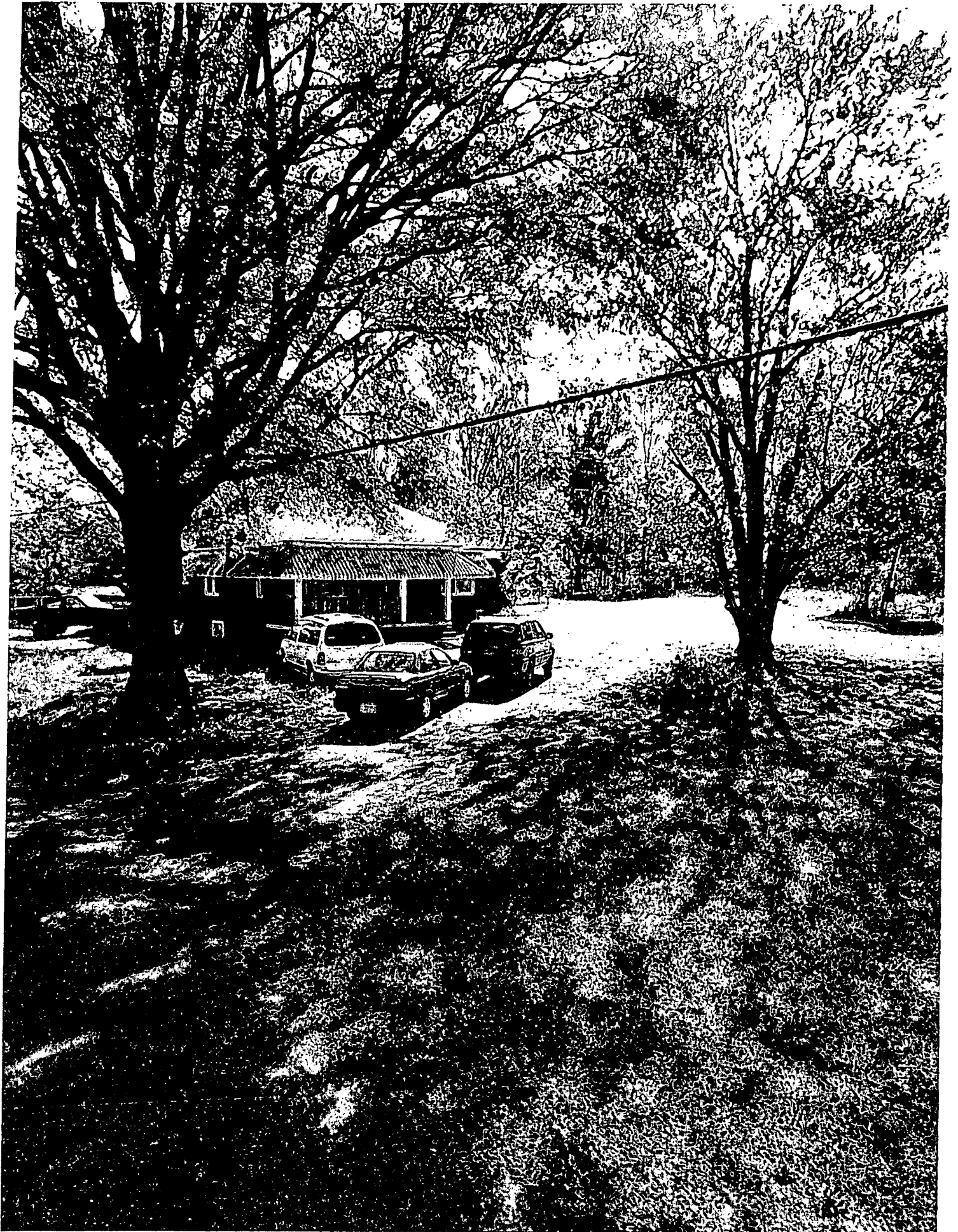


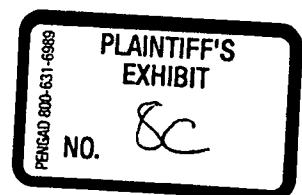


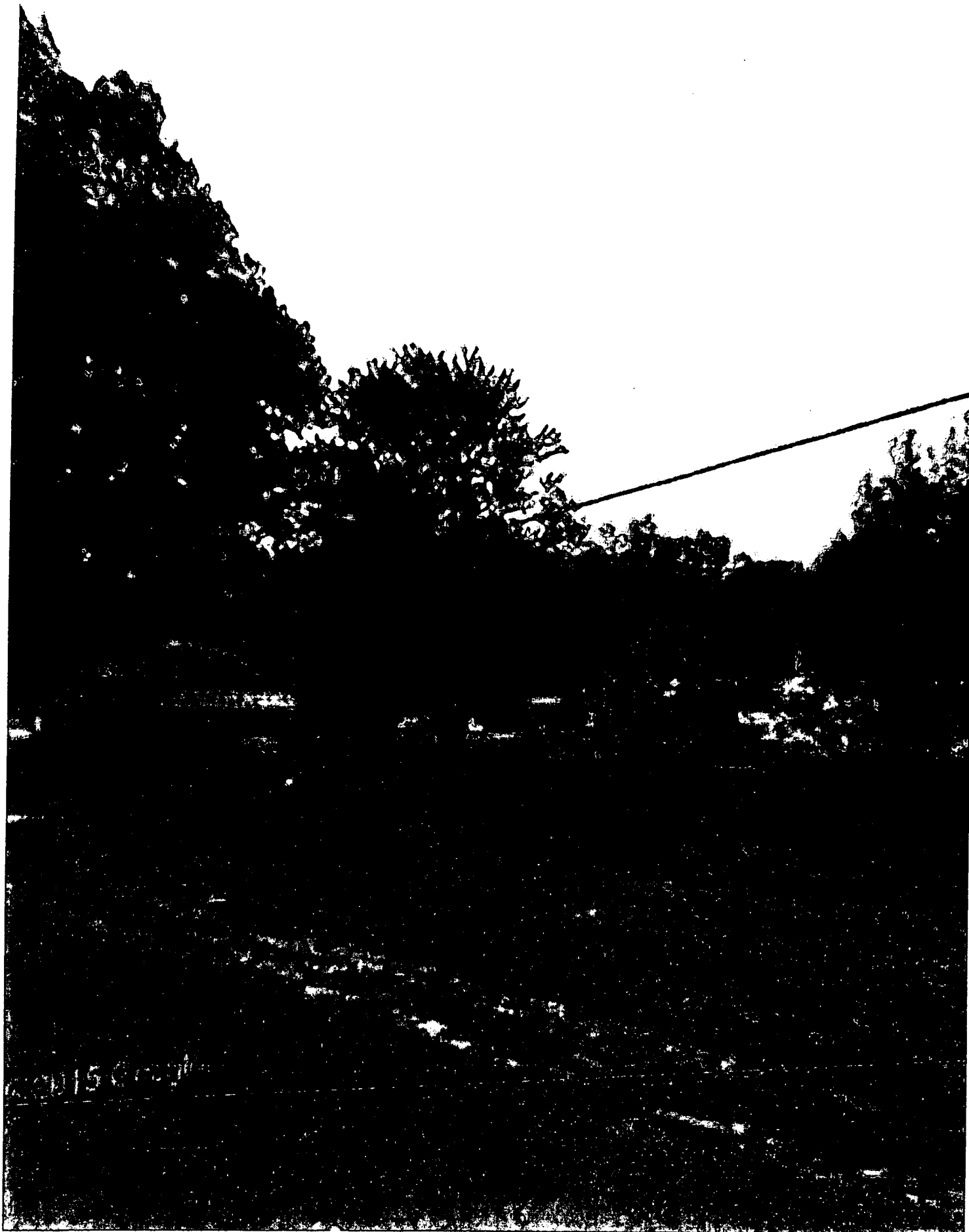




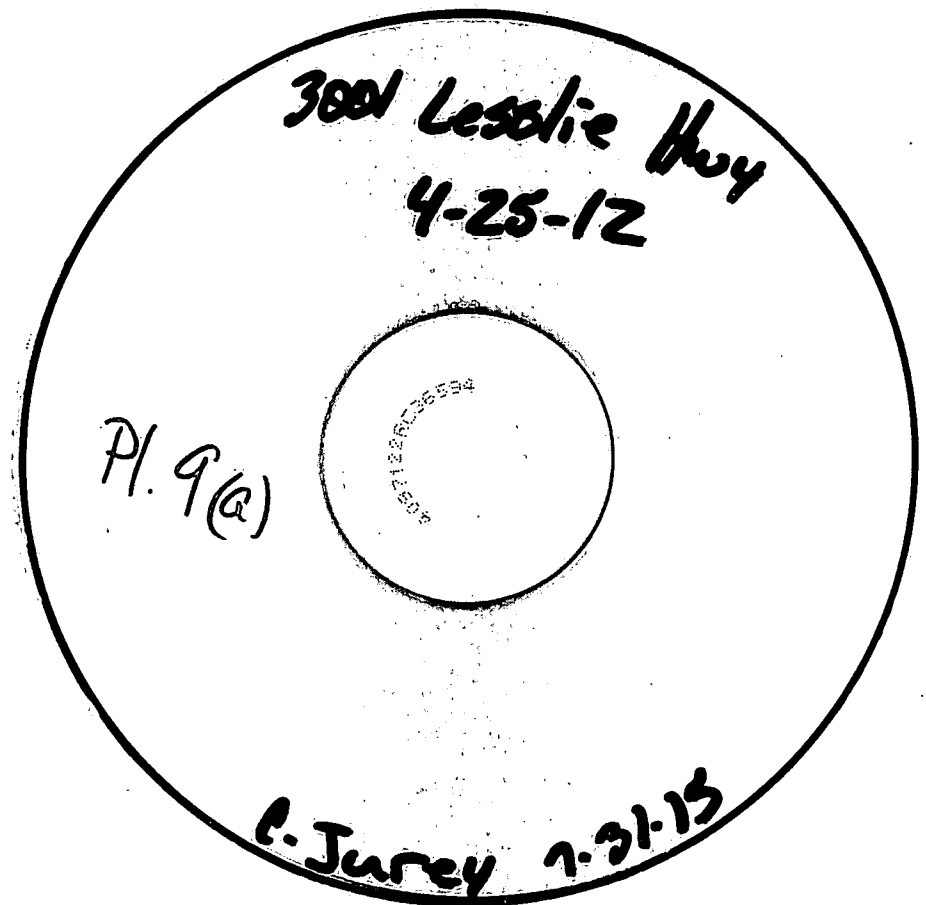








To Be Transferred from the York County Court of Common Pleas



Detail Call For Service Report

Login ID: mcclurek

Print Date/Time: 11/04/2016 14:08

From CFS: 21395 From Date: 04/25/2012 22:28 CFS Type: All
To CFS: 21395 To Date: 04/25/2012 22:28 Agency Type:
Layer: All Areas: All

CFS Number: 21395 Call Date/Time: 04/25/2012 22:28:15 Primary Incident: 2012-00013457

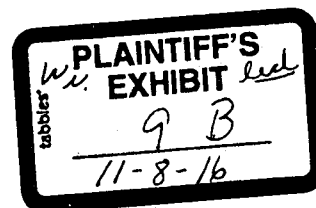
Location: 3001 LESSLIE HWY ROCK HILL, SC 29730 , Rock Hill Dispatch Time: 04/25/2012 22:30:37
Additnl Loc Info: Arrive Time: 04/25/2012 22:33:18
Common Name: Clear Date/Time: 05/02/2012 15:12:05
Phone: Nature Of Call: CODE Q/PHONE CALL Created By: Connolly, Matthew - connollym
Call Type: Disorderly Conduct Report Required: No Canceled: No
Status: Not In Progress Priority: 2 Source: 911
Police ORI: SC0460000 EMS ORI: PIEDMONT Fire ORI:

Person Information

Name	Person Type	Address	Phone	Race	Sex	DOB	Age	SSN
OCSKASY, DAWN	Caller	<UNKNOWN>	(704)340-8979					

Narrative, Questionnaire Responses, TDD Text

Create Time	Created By	Narrative
04/25/2012 22:29:15	Connolly, Matthew - connollym	MALE LIVES NEXT DOOR IS FIGHTING WITH HER HUSBAND AT THIS TIME
04/25/2012 22:29:28	Connolly, Matthew - connollym	UNKNOWN ON WEAPONS
04/25/2012 22:30:49	Connolly, Matthew - connollym	WHITE TSHIRT SHORTS AND BLACK SHOE
04/25/2012 22:30:50	Connolly, Matthew - connollym	WM
04/25/2012 22:31:05	Connolly, Matthew - connollym	IN THE YARD WITH THE HUSBAND AND THIS TIME
04/25/2012 22:31:17	Connolly, Matthew - connollym	IN THE FRONT YARD
04/25/2012 22:31:40	Connolly, Matthew - connollym	WHITE HOUSE
04/25/2012 22:31:56	Connolly, Matthew - connollym	THE DRIVEWAY IS OFF OF BENSON
04/25/2012 22:32:40	Connolly, Matthew - connollym	HUSBAND NAME IS SHANE CARTER
04/25/2012 22:35:03	Hill, Tammy - hillt	344 REQ EMS PRI 1/REF ASSAULT/HEAD WOUND



Dispositions

Disposition	Disposition Count
R	1
N	1

Detail Call For Service Report

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Layer: All Areas: All

CFS Number: 21395 Call Date/Time: 04/25/2012 22:28:15 Primary Incident: 2012-00013457

Associated Areas

Area Type Code	Description
Quadrant	209A
Station	Lesslie
Beat	3C
District	E209
Police ORI	SC0460000
EMS ORI	PIEDMONT
Fire ORI	

Incident Number(s)

Incident Number	ORI Number	Primary Unit	Department Name	Agency Type
2012-00013457	SC0460000	Yes	York County Sheriff's Office	Police

Unit(s)

Unit	Primary Unit	Radio Number	Personnel
344	No	344	G4689 Gwinn
343	Yes	343	R2393 Reed
340	No	340	W7342 Wright
323	No	323	G5279 Green

Call Log

Log Date/Time	Entered By	Action	Description
04/25/2012 22:28:15	Connolly, Matthew - connollym	Call Created	New call created. Call Type: *New Call, Location: , Phone Number: , Name:
04/25/2012 22:28:15	Connolly, Matthew - connollym	Person Added	Name:
04/25/2012 22:28:26	Connolly, Matthew - connollym	Location	Location: 3001 LESSLIE HWY, Venue: Rock Hill
04/25/2012 22:28:26	Connolly, Matthew - connollym	Reset Alarm Level	Fire Alarm Level Reset EMS Alarm Level Reset
04/25/2012 22:28:33	Connolly, Matthew - connollym	Call Type	NewCallType: Trespass, Status: In Progress, Priority: 2
04/25/2012 22:28:37	Connolly, Matthew - connollym	Call Updated	Nature of Call: IN PROGRESS
04/25/2012 22:28:40	Connolly, Matthew - connollym	Call Type	NewCallType: Disorderly Conduct, Status: Not In Progress, Priority: 2
04/25/2012 22:28:53	Connolly, Matthew - connollym	Person Updated	Name: DAWN,,, Location: <UNKNOWN>
04/25/2012 22:28:57	Connolly, Matthew - connollym	Person Updated	Name: DAWN,,, Location: <UNKNOWN>, Contact Phone: (704)340-8979
04/25/2012 22:28:58	Connolly, Matthew - connollym	Call Updated	Call Source: 911
04/25/2012 22:29:15	Connolly, Matthew - connollym	Narrative Added	MALE LIVES NEXT DOOR IS FIGHTING WITH HER HUSBAND AT THIS TIME
04/25/2012 22:29:28	Connolly, Matthew - connollym	Narrative Added	UNKOWN ON WEAPONS
04/25/2012 22:30:37	Hill, Tammy - hillt	Incident Created	Added Incident Number, ORI: SC0460000, Number: 2012-00013457

Detail Call For Service Report

Login ID: mcclurek

Print Date/Time: 11/04/2016 14:08

From CFS: 21395 From Date: 04/25/2012 22:28 CFS Type: All
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 Layer: All Areas: All

CFS Number: 21395 Call Date/Time: 04/25/2012 22:28:15 Primary Incident: 2012-00013457

Call Log

Log Date/Time	Entered By	Action	Description
04/25/2012 22:30:37	Hill, Tammy - hillt	Unit Status Action	Unit 343 Dispatched
04/25/2012 22:30:42	Hill, Tammy - hillt	Unit Status Action	Unit 343 Enroute
04/25/2012 22:30:49	Connolly, Matthew - connollym	Narrative Added	WHITE TSHIRT SHORTS AND BLACK SHOE
04/25/2012 22:30:49	Hill, Tammy - hillt	Unit Status Action	Unit 344 Dispatched
04/25/2012 22:30:50	Connolly, Matthew - connollym	Narrative Added	WM
04/25/2012 22:30:51	Hill, Tammy - hillt	Unit Status Action	Unit 344 Enroute
04/25/2012 22:31:05	Connolly, Matthew - connollym	Narrative Added	IN THE YARD WITH THE HUSBAND AND THIS TIME
04/25/2012 22:31:17	Connolly, Matthew - connollym	Narrative Added	IN THE FRONT YARD
04/25/2012 22:31:40	Connolly, Matthew - connollym	Narrative Added	WHITE HOUSE
04/25/2012 22:31:56	Connolly, Matthew - connollym	Narrative Added	THE DRIVEWAY IS OFF OF BENSON
04/25/2012 22:32:40	Connolly, Matthew - connollym	Narrative Added	HUSBAND NAME IS SHANE CARTER
04/25/2012 22:33:18	Hill, Tammy - hillt	Unit Status Action	Unit 343 Arrive
04/25/2012 22:35:03	Hill, Tammy - hillt	Narrative Added	344 REQ EMS PRI 1/REF ASSAULT/HEAD WOUND
04/25/2012 22:35:43	Hill, Tammy - hillt	Unit Status Action	Unit 344 Arrive
04/25/2012 22:38:18		Unit Timer Expired	Unit 343;Arrive
04/25/2012 22:39:35	Hill, Tammy - hillt	Unit Status Action	Unit 344 Under Control
04/25/2012 22:39:39	Hill, Tammy - hillt	Unit Status Action	Unit 343 Under Control
04/25/2012 22:40:09	Hill, Tammy - hillt	Unit Status Action	Unit 340 Dispatched
04/25/2012 22:40:11	Hill, Tammy - hillt	Unit Status Action	Unit 340 Enroute
04/25/2012 22:46:50	Hill, Tammy - hillt	Unit Status Action	;1 DETAINED
04/25/2012 23:16:17	Hill, Tammy - hillt	Unit Status Action	Unit 340 Arrive
04/25/2012 23:21:16		Unit Timer Expired	Unit 340;Arrive
04/25/2012 23:51:58	Hill, Tammy - hillt	Unit Status Action	Unit 340 cleared from call
04/25/2012 23:52:04	Hill, Tammy - hillt	Unit Status Action	Unit 344 cleared from call
04/25/2012 23:53:58	Hill, Tammy - hillt	Unit Status Action	Unit 340 Dispatched
04/25/2012 23:54:00	Hill, Tammy - hillt	Unit Status Action	Unit 344 Dispatched
04/25/2012 23:54:07	Hill, Tammy - hillt	Unit Status Action	;ENRT TO PMC
04/25/2012 23:54:07	Hill, Tammy - hillt	Unit Status Action	;ENRT TO PMC
04/25/2012 23:54:15	Hill, Tammy - hillt	Unit Status Action	Unit 344 Enroute
04/25/2012 23:54:18	Hill, Tammy - hillt	Unit Status Action	Unit 340 Enroute
04/26/2012 00:04:09	burnetter	Unit Status Action	Unit 340 Arrive
04/26/2012 00:04:18	burnetter	Unit Status Action	;PMC
04/26/2012 00:04:21	burnetter	Unit Status Action	Unit 344 Arrive
04/26/2012 00:05:35	burnetter	Unit Status Action	;pmc

Detail Call For Service Report

Login ID: mcclurek

Print Date/Time: 11/04/2016 14:08

From CFS: 21395 From Date: 04/25/2012 22:28 CFS Type: All
 To CFS: 21395 To Date: 04/25/2012 22:28 Agency Type:
 Layer: All Areas: All

CFS Number: 21395 Call Date/Time: 04/25/2012 22:28:15 Primary Incident: 2012-00013457

Call Log

Log Date/Time	Entered By	Action	Description
04/26/2012 00:07:56	burnetter	Unit Status Action	Unit 340 Under Control
04/26/2012 00:07:58	burnetter	Unit Status Action	Unit 344 Under Control
04/26/2012 00:37:35	Hill, Tammy - hillt	Unit Status Action	Unit 340 cleared from call
04/26/2012 00:45:51	Hill, Tammy - hillt	Unit Status Action	Unit 344 cleared from call
04/26/2012 00:51:17	reedj	Unit Status Action	Unit 343 cleared from call
04/26/2012 00:53:31	Hill, Tammy - hillt	Call Cleared	
05/02/2012 14:52:58	McMurray, Cynthia - mcmurrayc	Call Reactivated	
05/02/2012 14:53:22	McMurray, Cynthia - mcmurrayc	Call Updated	Nature of Call: CODE Q/PHONE CALL
05/02/2012 14:53:34	McMurray, Cynthia - mcmurrayc	Person Updated	Name: OCSKASY, DAWN,, Location: <UNKNOWN>, Contact Phone: (704) 340-8979
05/02/2012 14:53:52	McMurray, Cynthia - mcmurrayc	Call Stack	Call placed on unit 323's stack
05/02/2012 15:01:37	Green, Glenn - greeng	Unit Status Action	Unit 323 Dispatched
05/02/2012 15:12:05	Green, Glenn - greeng	Call Updated	Dispositions Changed
05/02/2012 15:12:05	Green, Glenn - greeng	Unit Status Action	Unit 323 cleared from call
05/02/2012 15:12:05	Green, Glenn - greeng	Call Cleared	
07/28/2015 15:18:07	jureyc	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident

Unit Log

Log Date/Time	Entered By	Unit	Status	Action	Description	Location
04/25/2012 22:30:37	Hill, Tammy - hillt	343	Dispatched	Unit Status Change		3001 LESSLIE HWY, Rock Hill
04/25/2012 22:30:42	Hill, Tammy - hillt	343	Enroute	Unit Status Change		
04/25/2012 22:30:49	Hill, Tammy - hillt	344	Dispatched	Unit Status Change		3001 LESSLIE HWY, Rock Hill
04/25/2012 22:30:51	Hill, Tammy - hillt	344	Enroute	Unit Status Change		
04/25/2012 22:33:18	Hill, Tammy - hillt	343	Arrive	Unit Status Change		
04/25/2012 22:35:43	Hill, Tammy - hillt	344	Arrive	Unit Status Change		
04/25/2012 22:38:18	default_nws - default_nws	343	Arrive	Unit Timer Expired		3001 LESSLIE HWY, Rock Hill
04/25/2012 22:39:35	Hill, Tammy - hillt	344	Under Control	Unit Status Change		

Detail Call For Service Report

Login ID: mcclurek

Print Date/Time: 11/04/2016 14:08

From CFS: 21395 From Date: 04/25/2012 22:28 CFS Type: All
 To CFS: 21395 To Date: 04/25/2012 22:28 Agency Type:
 Layer: All Areas: All

CFS Number: 21395 Call Date/Time: 04/25/2012 22:28:15 Primary Incident: 2012-00013457

Unit Log

Log Date/Time	Entered By	Unit	Status	Action	Description	Location
04/25/2012 22:39:39	Hill,Tammy - hillt	343	Under Control	Unit Status Change		
04/25/2012 22:40:09	Hill,Tammy - hillt	340	Dispatched	Unit Status Change		3001 LESSLIE HWY, Rock Hill
04/25/2012 22:40:11	Hill,Tammy - hillt	340	Enroute	Unit Status Change		
04/25/2012 22:46:50	Hill,Tammy - hillt	343	Under Control	Unit Location	;1 DETAINED	;1 DETAINED
04/25/2012 23:16:17	Hill,Tammy - hillt	340	Arrive	Unit Status Change		
04/25/2012 23:21:16	default_nws - default_nws	340	Arrive	Unit Timer Expired		3001 LESSLIE HWY, Rock Hill
04/25/2012 23:51:58	Hill,Tammy - hillt	340	Available	Unit Cleared	Unit cleared from call	
04/25/2012 23:51:58	Hill,Tammy - hillt	340	Available	Unit Status Change		
04/25/2012 23:52:04	Hill,Tammy - hillt	344	Available	Unit Cleared	Unit cleared from call	
04/25/2012 23:52:04	Hill,Tammy - hillt	344	Available	Unit Status Change		
04/25/2012 23:53:58	Hill,Tammy - hillt	340	Dispatched	Unit Status Change		3001 LESSLIE HWY, Rock Hill
04/25/2012 23:54:00	Hill,Tammy - hillt	344	Dispatched	Unit Status Change		3001 LESSLIE HWY, Rock Hill
04/25/2012 23:54:07	Hill,Tammy - hillt	344	Dispatched	Unit Location	;ENRT TO PMC	;ENRT TO PMC
04/25/2012 23:54:07	Hill,Tammy - hillt	340	Dispatched	Unit Location	;ENRT TO PMC	;ENRT TO PMC
04/25/2012 23:54:15	Hill,Tammy - hillt	344	Enroute	Unit Status Change		
04/25/2012 23:54:18	Hill,Tammy - hillt	340	Enroute	Unit Status Change		
04/26/2012 00:04:09	burnetter	340	Arrive	Unit Status Change		
04/26/2012 00:04:18	burnetter	340	Arrive	Unit Location	;PMC	;PMC
04/26/2012 00:04:21	burnetter	344	Arrive	Unit Status Change		
04/26/2012 00:05:35	burnetter	344	Arrive	Unit Location	;pmc	;pmc
04/26/2012 00:07:56	burnetter	340	Under Control	Unit Status Change		
04/26/2012 00:07:58	burnetter	344	Under Control	Unit Status Change		
04/26/2012 00:37:35	Hill,Tammy - hillt	340	Available	Unit Cleared	Unit cleared from call	

Detail Call For Service Report

Login ID: mcclurek

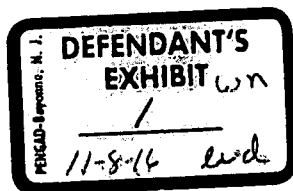
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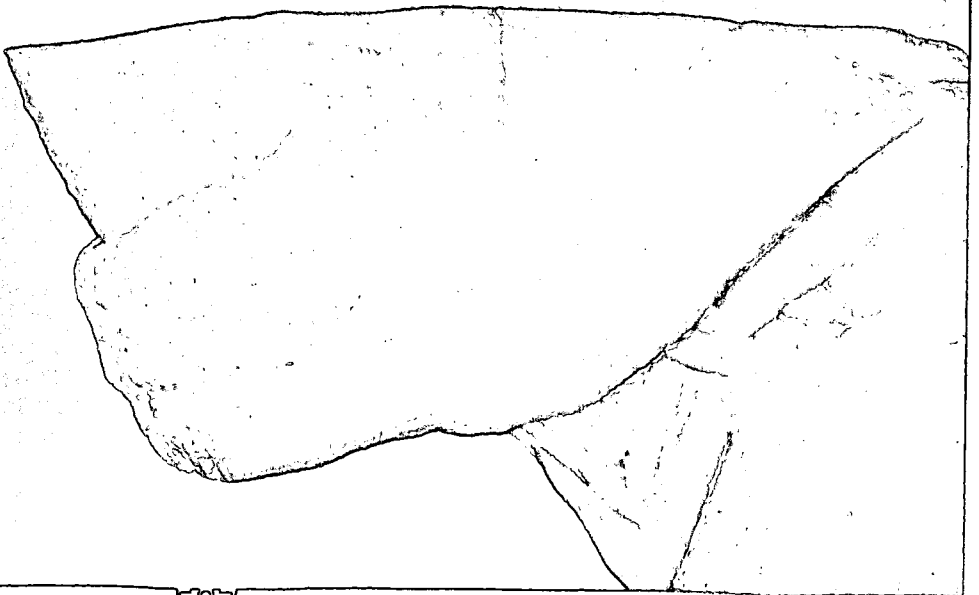
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 Layer: All Areas: All

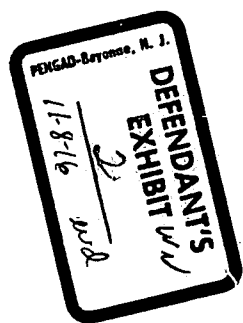
CFS Number: 21395 Call Date/Time: 04/25/2012 22:28:15 Primary Incident: 2012-00013457

Unit Log

Log Date/Time	Entered By	Unit	Status	Action	Description	Location
04/26/2012 00:37:35	Hill, Tammy - hillt	340	Available	Unit Status Change		
04/26/2012 00:45:51	Hill, Tammy - hillt	344	Under Control	Disposition Added	R	;pmc
04/26/2012 00:45:51	Hill, Tammy - hillt	344	Available	Unit Cleared	Unit cleared from call	
04/26/2012 00:45:51	Hill, Tammy - hillt	344	Available	Unit Status Change		
04/26/2012 00:50:59	reedj	343	Under Control	Unit Check In		;1 DETAINED
04/26/2012 00:51:17	reedj	343	Available	Unit Cleared	Unit cleared from call.	
04/26/2012 00:51:17	reedj	343	Available	Unit Status Change		
05/02/2012 14:53:52	McMurray, Cynthia - mcmurrayc	323	Dispatched	Call Stack	Call number 21395 placed on stack	3004 TIMBER RIDGE LN, Rock Hill
05/02/2012 15:01:37	Green, Glenn - greeng	323	Dispatched	Unit Status Change		3001 LESSLIE HWY, Rock Hill
05/02/2012 15:01:37	Green, Glenn - greeng	323	Dispatched	Unit Check In		3001 LESSLIE HWY, Rock Hill
05/02/2012 15:12:05	Green, Glenn - greeng	323	Dispatched	Disposition Added	No Report	3001 LESSLIE HWY, Rock Hill
05/02/2012 15:12:05	Green, Glenn - greeng	323	Available	Unit Cleared	Unit cleared from call	
05/02/2012 15:12:05	Green, Glenn - greeng	323	Available	Unit Status Change		







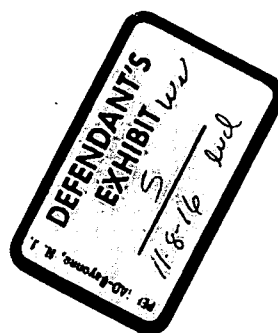


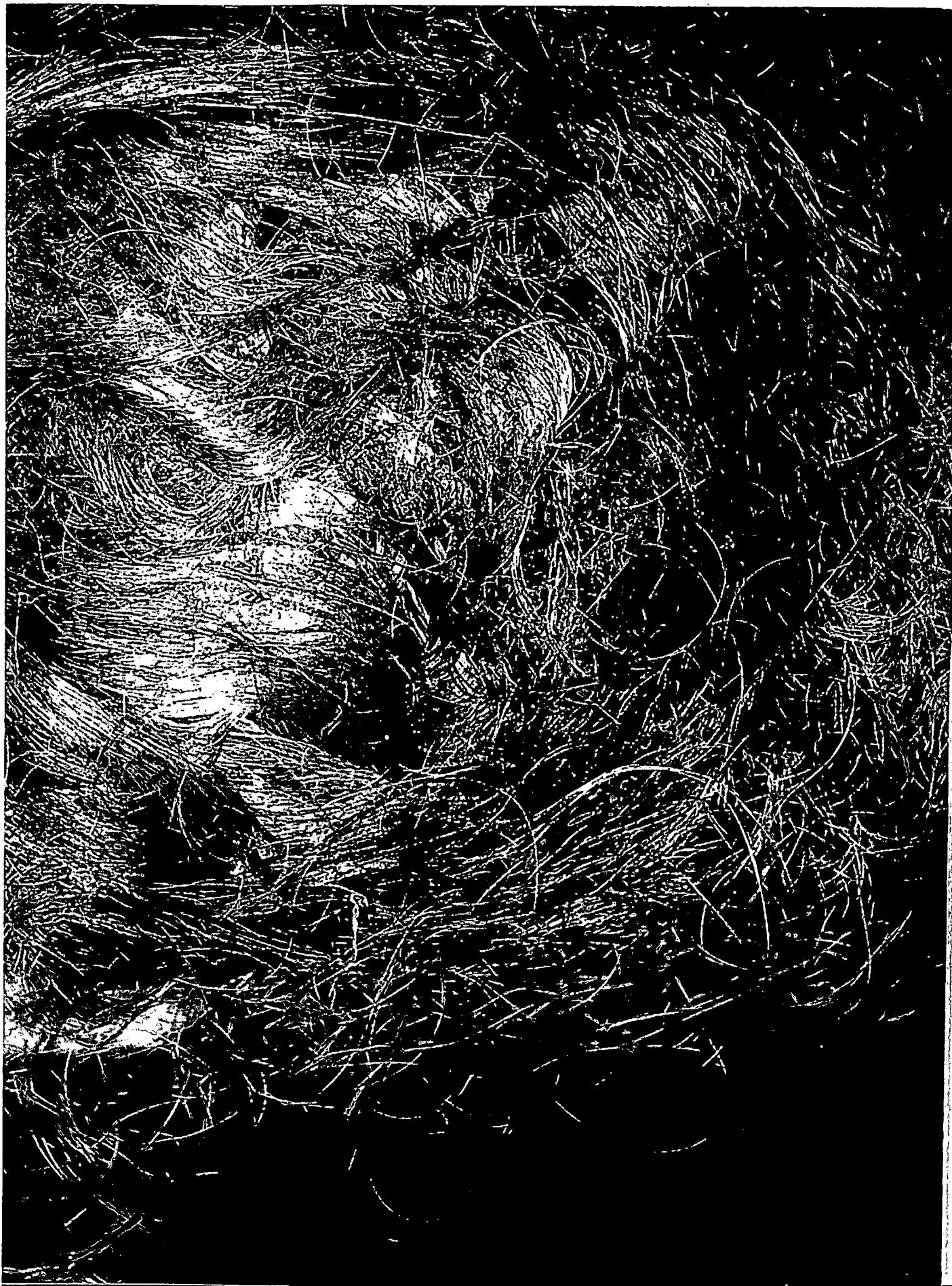


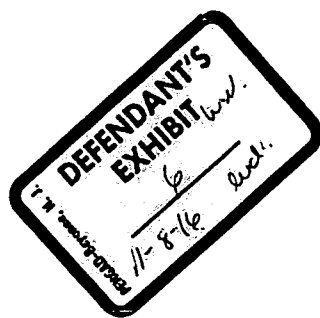


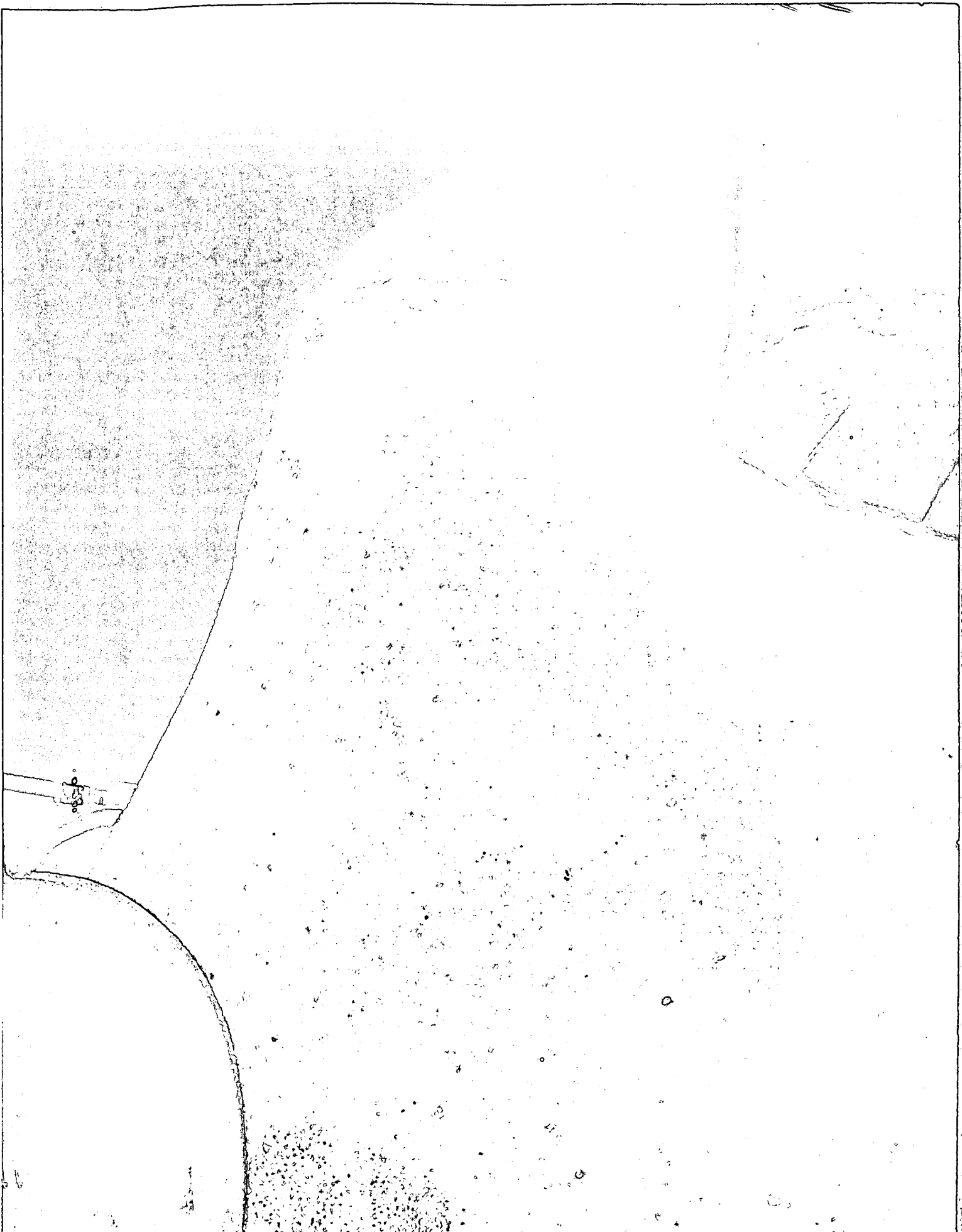








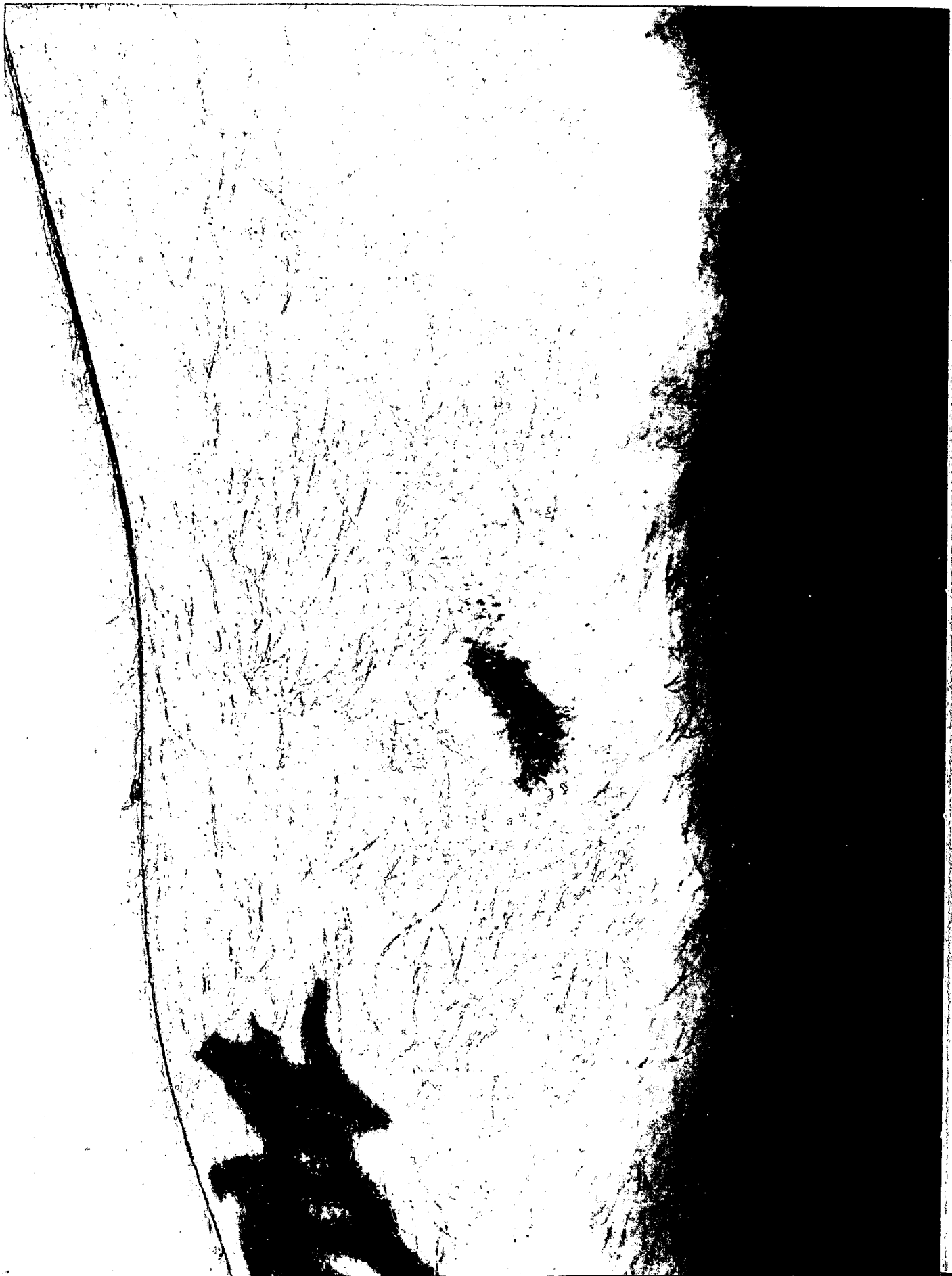




DEFENDANT'S
EXHIBIT *wp.*
7
11-8-16 *end*

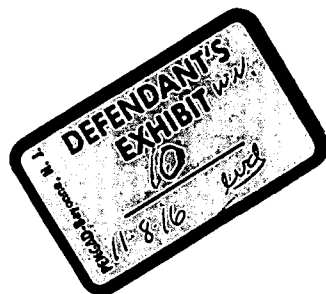




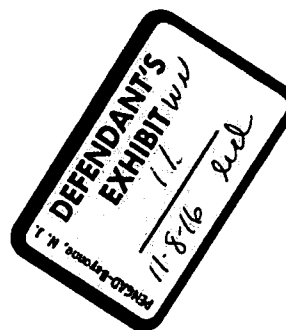








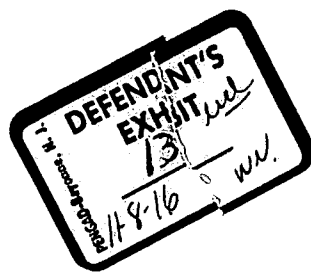




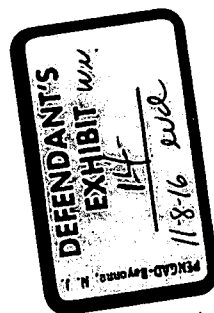






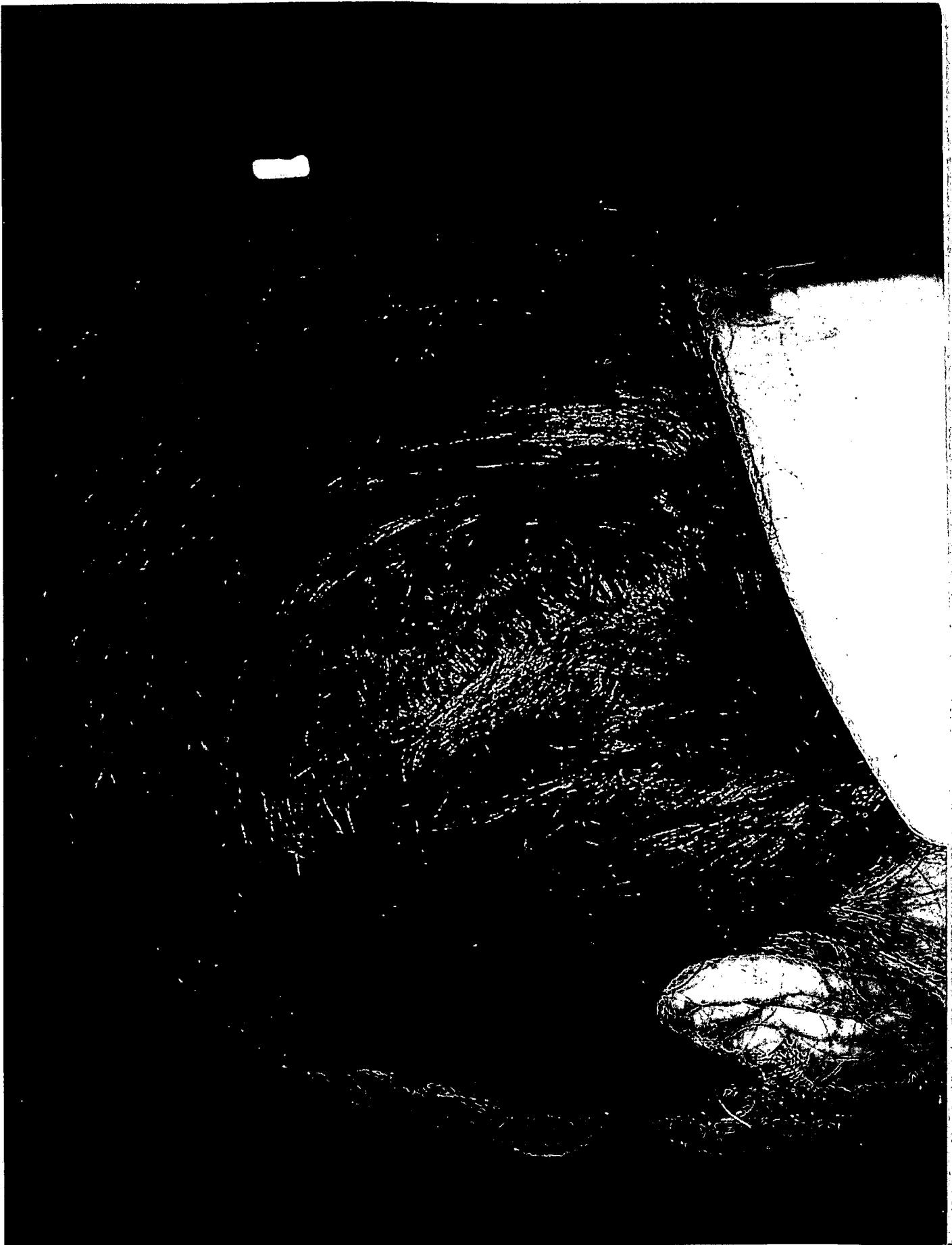






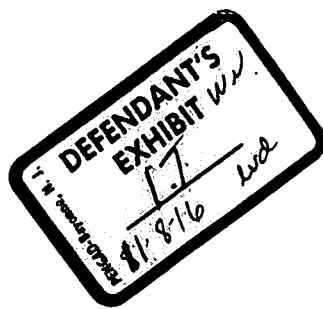




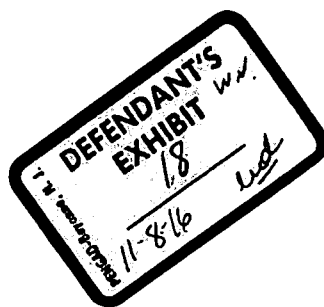


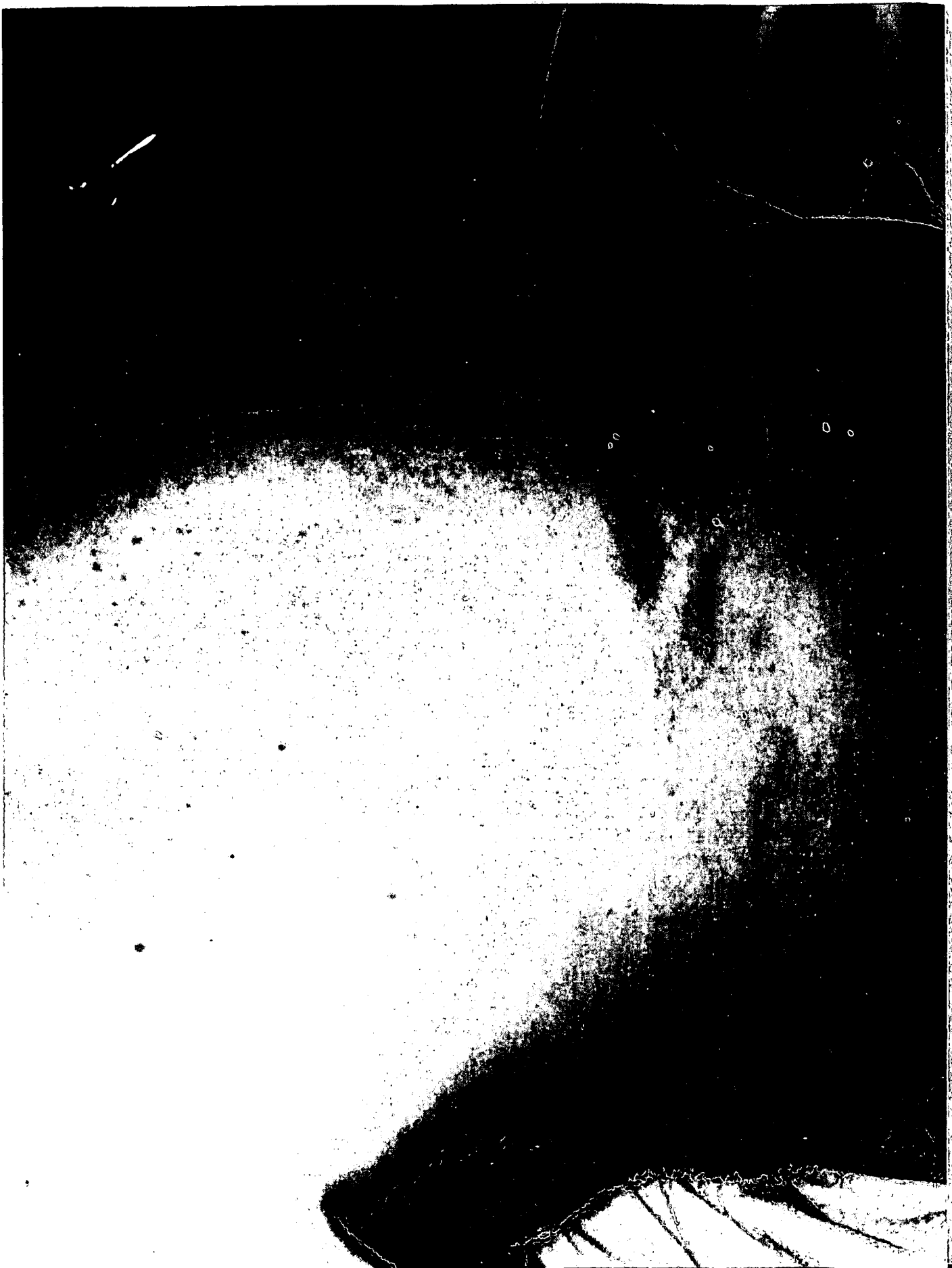


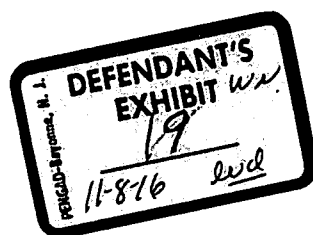




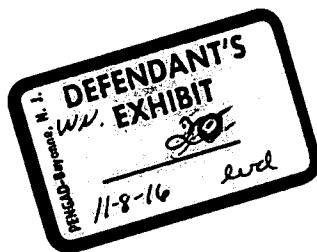


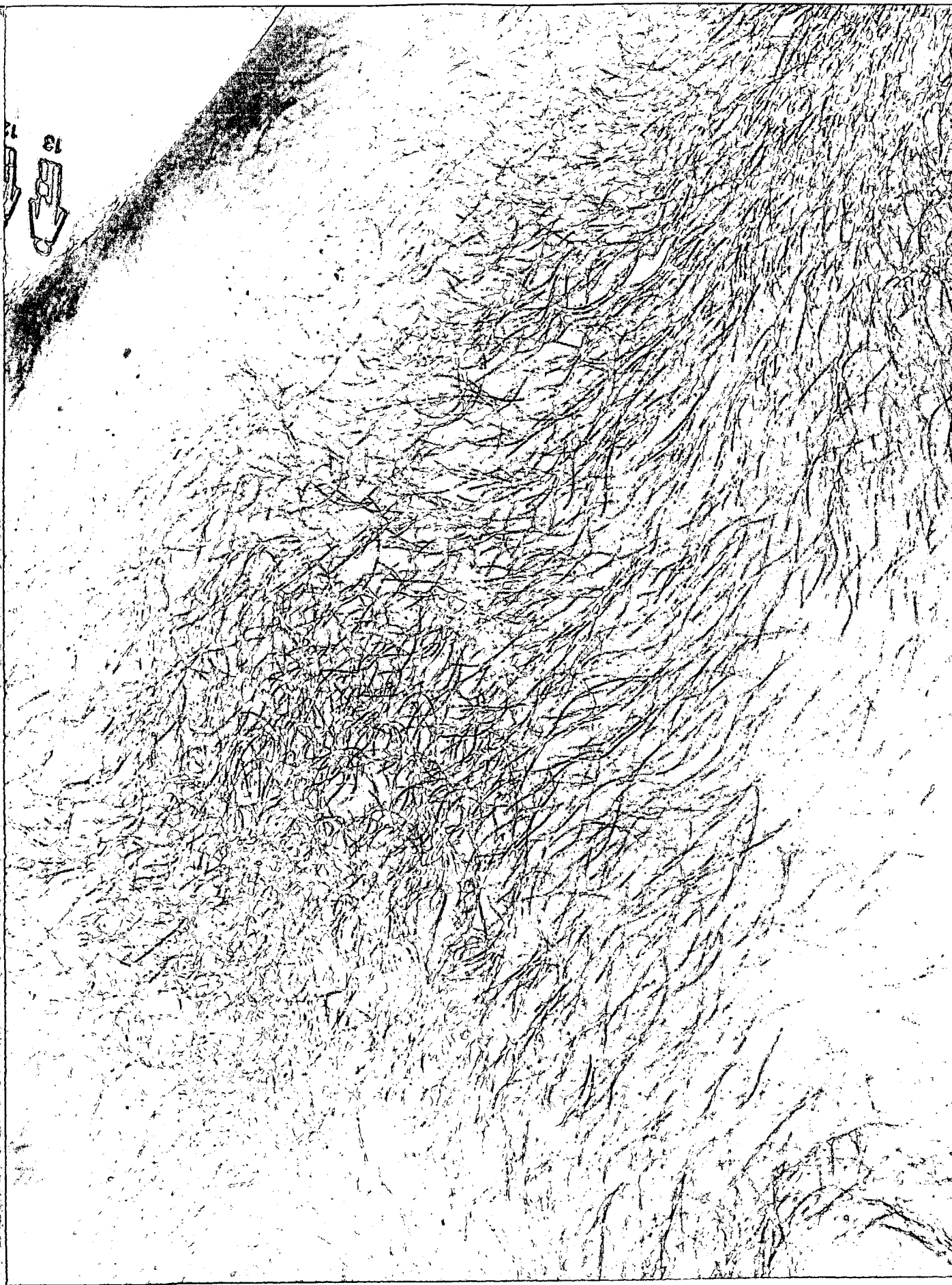


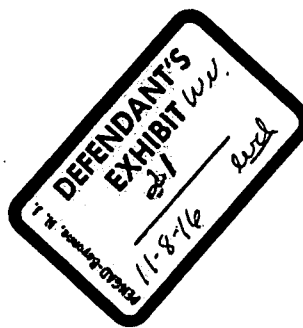


















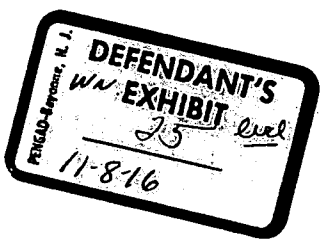


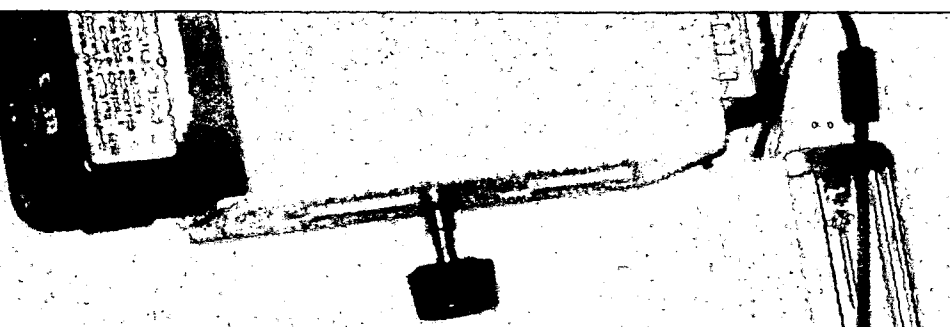
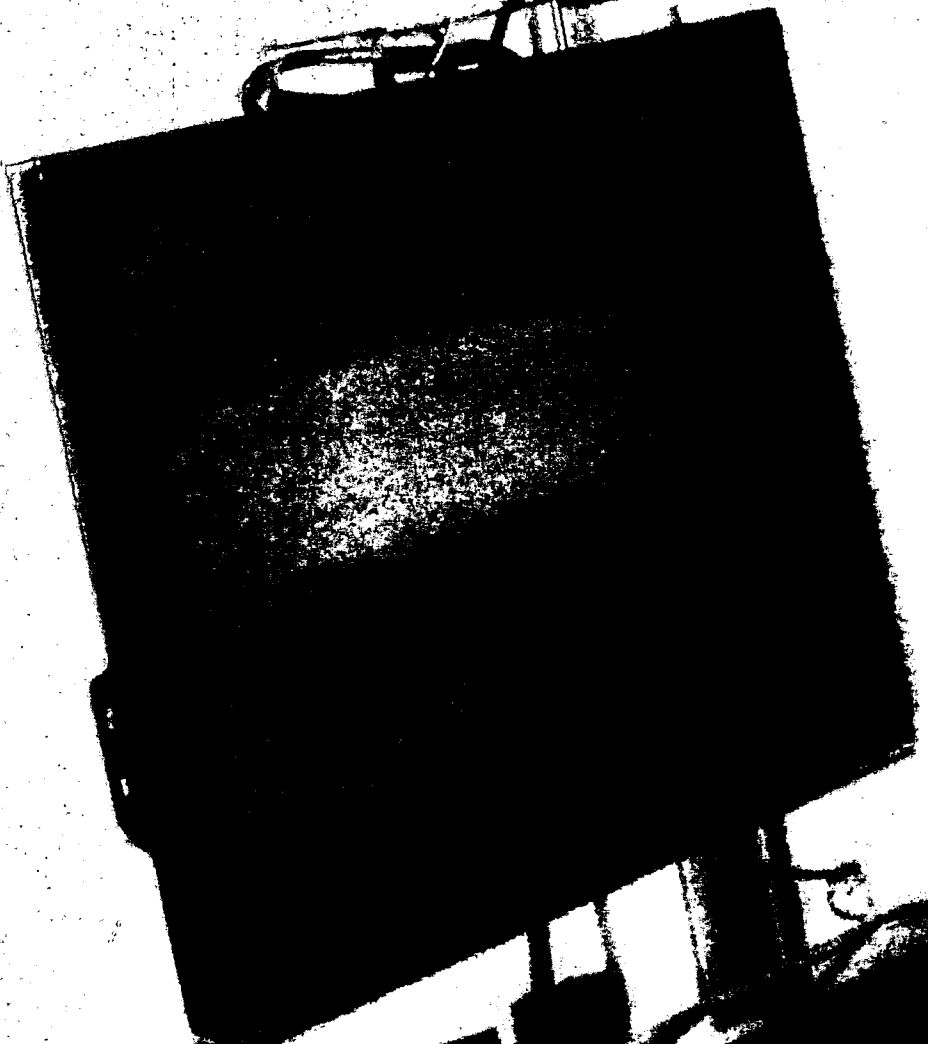


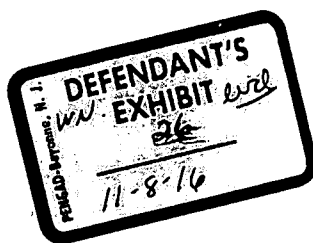
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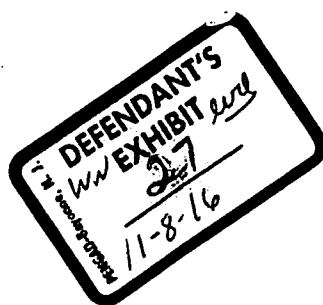




01/01/2007

04





01/01/2007



YORK COUNTY SHERIFF'S OFFICE
GENERAL SESSIONS CASE FILE SUMMARY

Incident Report #: 201200013457

Lead Investigator: K. Gwinn

Defendant(s): Carter, Russell, Shane

Charges / Warrant #: ABHAN/ M-604594

Witness List:

Summary:

On 4/25/12 I was dispatched to 3001 Lesslie Highway in the county of York in reference to a disorderly. Upon arrival I heard someone yelling for an individual to get off their property. I saw a man standing in the yard, and on the porch there was a man with a bat in his hand. There was also a pregnant female standing on the porch. I walked up on the porch and saw a man laying on the porch covered in blood and bleeding from his head. I advised dispatch that I needed EMS for a head injury. I took the bat from Russell and asked him what happened. He stated that he was in bed and heard a knock at the door. He stated that when he went to the door it was someone, who was later identified as Michael, from next door asking him what was wrong with the water. He stated that he asked him who he was and got no reply. Russell reported that the Michael insisted to know what was wrong with the water. He told him to go ask his landlord. Michael stated that he wasn't leaving until he found out what was wrong with the water. Russell stated that he asked Michael to leave and he just held the screen door open. He stated that's when he stepped outside and when he did Michael hit him. That's when he grabbed his bat and starting hitting Michael with it. He stated that he kept hitting him because he kept trying to get up. I advised Russell and Dawn to go inside, and I would come inside and get their statement. Russell then came outside with his camera phone and tried to take pictures of Michael. I then detained him and placed him in my patrol vehicle. Dawn stated that everything happened the way Russell said except when Michael wouldn't let go of the screen door. She reported that's when Michael pushed Russell back through the door and that's when Russell grabbed the bat and defended himself. Michael was lying on his stomach wedged against the side of the house and the porch. EMS came out and transported him to PMC. I went to PMC and spoke to Michael. He stated that he was at his friends house and the water wasn't working. He reported that they couldn't even flush the toilets. He stated that his friend had been having problems with his neighbor about the water so he told him that he would go over and see about the water. He stated that he knocked on the door and asked the neighbor (Russell) about the water. He stated that Russell told him that he might turn it on tomorrow. He reported that Russell then said that there might be something wrong with the well. Michael stated that he told him that he wanted to look at it because he might could fix it. He stated that Russell told him that he couldn't and to get off his property. Michael stated that he was turning around to leave and that's when he felt something hit him in the back of his head. He then turned around and hit him back. He stated that the neighbor (Russell) then began hitting him over and over again with an object. He didn't know if it was a bat or a stick. Michael's head was swollen in some parts, and sunken in other parts. He had bruises all over his body. The doctor stated that he was going to run test on him to see what the extent his injuries are. Russell had a bruised left eye. He also had a small laceration above his left eye. I went to see the magistrate and let him read my report and the statements that were obtained. He issued me a warrant for ABHAN on Russell. Warrant number M-604594. I contacted PMC to check on Michael. They stated that he received staples in his head, and he had several bumps and bruises. The bat was placed into evidence.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 2014-CP-46-1307

REQUEST TO CHARGE ON
BEHALF OF DEFENDANT

Bruce Bryant, as representative for
the Office of the York County Sheriff,

Defendant.

Defendant's Request to Charge No. 8

I charge you that the pertinent question here was not whether the Plaintiff was guilty of a crime, but merely whether probable cause existed to arrest him. Evidence required to establish guilt is not necessary to authorize an arrest. In other words, a finding of probable cause may be based upon less evidence than would be necessary to support a conviction.

Lapp v S.C. Department of Motor Vehicles, 387 S.C. 500, 692 S.E.2d 565 (Ct. App. 2010); Summersell v. S.C. Dep't of Pub. Safety, 334 S.C. 357, 368-69, 513 S.E.2d 619, 625 (Ct. App.1999); Henry v. United States, 361 U.S. 98, 102, (1959).

RECEIVED

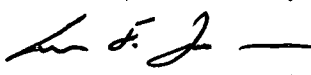
CERTIFICATE OF COUNSEL

FEB 26 2018

SC Court of Appeals

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN #13030

ROBERT D. GARFIELD #6557

1611 Devonshire Drive

Post Office Box 8568

Columbia, South Carolina 29202

(803) 806-8222

*Counsel for Counsel for Appellant-Respondent
Bruce Bryant, as Representative for the Office
of the York County Sheriff*

Columbia, South Carolina

January 16, 2018

CERTIFICATE OF COMPLIANCE

RECEIVED

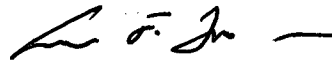
FEB 26 2018

SC Court of Appeals

The undersigned counsel for the Appellant-Respondent Bruce Bryant, as Representative for the Office of the York County Sheriff, certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

DAVIDSON & LINDEMANN, P.A.

BY:



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ROBERT D. GARFIELD #6557
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
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*Counsel for Counsel for Appellant-Respondent
Bruce Bryant, as Representative for the Office
of the York County Sheriff*

Columbia, South Carolina

January 16, 2018