

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS
D. Garrison Hill, Circuit Judge

APR 24 2012

S.C. Supreme Court

Case No. 07-CP-23-0779

Kenneth B. Jenkins,..... Respondent,

v.

Benjamin Scott Few, and
Few Farms, Inc.,..... Petitioners.

APPENDIX

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VOL. I

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The South Carolina Court of Appeals

Kenneth B. Jenkins,

Respondent

v.

Benjamin Scott Few and Few Farms,
Inc.,

Appellants

The Honorable D. Garrison Hill
Greenville County
Trial Court Case No. 2007-CP-23-00779

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

U. Ke J.

J. H. Hill

James E. Hill J.

Columbia, South Carolina

FILED

FEB 28 2011

APPENDIX 1

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Kenneth B. Jenkins, Respondent,

v.

Benjamin Scott Few and Few
Farms, Inc., Appellants.

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

Opinion No. 4763
Heard June 22, 2010 – Filed December 8, 2010

AFFIRMED IN PART AND REVERSED IN PART

J. Falkner Wilkes, Jr., and Robert Clyde Childs, III,
of Greenville, for Appellants.

Fred W. Suggs, III, of Greenville, for Respondent.

LOCKEMY, J.: In this tort action, a jury found Benjamin Scott Few and Few Farms, Inc. (collectively "Few") liable to Kenneth B. Jenkins for damage to his fertilizer truck and lost profits. On appeal, Few maintains the trial court erred by failing to grant his motions for a directed verdict and in

qualifying an expert witness. Few also contends the trial court erred by declining to reduce actual and punitive damages. We affirm in part and reverse in part.

FACTS

Few and Jenkins are competitors in the fertilizer and lime spreading business. Jenkins had reason to believe Few hired two individuals to place sugar in the gas tank of his Ford F-700 fertilizer truck on two separate occasions for the purpose of interfering with his business. Consequently, Jenkins brought suit against Few alleging trespass, conversion, civil conspiracy, and violation of South Carolina's Unfair Trade Practices Act.¹

At trial, two witnesses testified Few asked them to sabotage Jenkins's fertilizer truck. The first witness, Buford Stokes, a friend of Few's, testified Few called him and asked whether putting sugar or metal filings into a gas tank would cause more damage to a truck. After Stokes replied that he understood sugar would do the most damage, Few expressed his desire to destroy a competitor's fertilizer business.

The second witness, Johnny Lindsey, testified Few also telephoned him about putting sugar in a gas tank. According to Lindsey, during their conversation Few indicated he wanted to place sugar in the gas tank of Jenkins's fertilizer truck. Lindsey initially declined to help Few and handed the phone to a friend, Billy Guest, who made arrangements to sabotage Jenkins's truck for Few. The pair met with Few and acquired the sugar. Later, Guest put the sugar in the gas tank of Jenkins's truck while Lindsey waited in the get-a-way car.

Lindsey explained Few paid him \$100 for his part in the sabotage of Jenkins's truck. After learning Jenkins's truck was still operable, Few called Lindsey again and asked him to sabotage the truck a second time. This time Lindsey put five pounds of sugar into a gas can and poured it into Jenkins's truck for another \$100. Eventually, Lindsey turned himself in to the police

¹ S.C. Code Ann. §§ 39-5-10, -560 (1985 & Supp. 2009).

and pled guilty to malicious damage for his role in sabotaging Jenkins's fertilizer truck. Lindsey was ordered to pay Jenkins \$220 in restitution.

After learning Jenkins's truck was sabotaged, Stokes explained he met with Jenkins and told him about his conversation with Few. According to Stokes, Few called him after he met with Jenkins and threatened him. Few denied contacting Stokes or Lindsey regarding sabotaging Jenkins's truck and denied any involvement in interfering with Jenkins's fertilizer business.

At the end of Jenkins's case, Few moved for a directed verdict on civil conspiracy and conversion. The trial court denied Few's motions and after the close of Few's case, charged the jury on unfair trade practices, conversion, civil conspiracy, and trespass. The jury found in favor of Jenkins on trespass, conversion, and civil conspiracy. The jury found in favor of Few on the unfair trade practices claim. On a general verdict form, the jury awarded Jenkins \$28,000 in actual damages and \$100,000 in punitive damages. After the verdict was published, Few moved for (1) a new trial absolute on trespass of personal property, conversion, and civil conspiracy and (2) a new trial nisi remittitur on actual damages. Few also sought a post verdict review of the punitive damages award. The trial court denied both motions and declined to set aside or modify the punitive damages award. This appeal followed.

ISSUES ON APPEAL

1. Did the trial court err in denying Few's motion for a directed verdict on civil conspiracy?
2. Did the trial court err in denying Few's motion for a directed verdict on conversion?
3. Did the trial court err in declining to exclude Stokes as a witness and qualifying Stokes as an expert?
4. Did the trial court err in declining to reduce the jury's award of actual damages?

5. Did the trial court err in finding the jury's punitive damages award comported with due process?

LAW/ANALYSIS

I. Directed Verdict Issues

A. Standard of Review

In reviewing the denial of a directed verdict motion, this court employs the same standard as the trial court: we view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Welch v. Epstein, 342 S.C. 279, 299-300, 536 S.E.2d 408, 418 (Ct. App. 2000). "This [c]ourt will reverse the trial court only when there is no evidence to support the ruling below." Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999).

B. Civil Conspiracy

Few argues the trial court erred in denying his motion for a directed verdict on civil conspiracy because Jenkins failed to demonstrate damages beyond those alleged in other causes of action. We disagree.

"The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). "[T]he gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design." Id. "Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." Pye v. Estate of Fox, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006).

In his complaint, Jenkins alleged special damages from the civil conspiracy as "including, but not limited to, the destruction of [his fertilizer truck], and the loss of revenue for the nine days which [he] could not operate

his business." Jenkins did not allege lost profits in regard to any other cause of action. At trial, Jenkins testified, without objection, that he could not operate his spreading business for 8.16 days and lost \$5,891 in profits. Additionally, Jenkins explained he incurred \$2,035 in costs related to offering and paying a reward for information leading to the parties responsible for sabotaging his truck. We conclude evidence supports the trial court's ruling that Jenkins alleged and demonstrated special damages. Accordingly, the trial court properly denied Few's motion for a directed verdict on civil conspiracy.

C. Conversion

Few argues the trial court erred in denying his motion for a directed verdict on conversion because the record contains no evidence he wrongfully assumed and exercised the right of ownership over Jenkins's fertilizer truck. We agree.

Conversion is the "unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights." Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's chattel." Id.

Here, the record reveals no evidence Few wrongfully assumed and exercised the right of ownership over Jenkins's fertilizer truck. Jenkins argues the damage to his truck so altered its condition that Few wrongfully assumed and exercised the right of ownership.² However, Jenkins cites no

² The Restatement of Torts appears to support this contention: "One who intentionally destroys a chattel or so materially alters its physical condition as to change its identity or character is subject to liability for conversion." Restatement (Second) of Torts § 226 (1965). Absent a change in identity there still may be conversion if "the change materially affects the value of the chattel to the plaintiff for the normal uses to which such chattels are put." Id. at § 226 cmt. d. However, no South Carolina case has adopted this view of conversion.

South Carolina authority in support of this proposition. Instead, Jenkins points to his testimony Few "took control" of the truck by sabotaging it and that Few "took possession of [his] truck" because he could not use it after sugar was placed in the gas tank. These statements indicate Few interfered with the truck, not that he wrongfully assumed and exercised the right of ownership over the truck. Because Jenkins presented no evidence Few wrongfully assumed and exercised the right of ownership or illegally used or misused the truck, we find the trial court erred in denying Few's motion for a directed verdict on conversion.

II. Expert Witness

Few argues the trial court erred in allowing Stokes to testify as an expert witness because he lacked the necessary qualifications and Few was not provided with notice Jenkins intended to call Stokes as an expert. We disagree.

Generally, "[t]he admission or exclusion of evidence is a matter within the sound discretion of the trial court and absent clear abuse, will not be disturbed on appeal." Gamble v. Int'l Paper Realty Corp. of S.C., 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996). Also, "[w]here a party fails timely to disclose the identity of an expert witness, the question of whether the witness'[s] testimony may be received in evidence is left largely to the discretion of the trial judge." Tribble v. Hentz, 285 S.C. 616, 618, 330 S.E.2d 560, 562 (Ct. App. 1985).

Pursuant to Rule 33(b)(6), SCRCP, counsel has a duty to disclose "any expert witnesses whom the party proposes to use as a witness at the trial of the case." This rule imposes an ongoing duty to supplement interrogatory answers to reflect the addition of a witness or the intention to call a listed witness as an expert. Rule 33(b); Bensch v. Davidson, 354 S.C. 173, 182, 580 S.E.2d 128, 132 (2003) ("[T]here is a continuing duty on the part of the party from whom information is sought to answer a standard interrogatory, such as the one requesting the party list any expert witnesses whom the party proposes to use as a witness at the trial of the case."). The trial court has the discretion to determine whether a sanction is warranted for a violation of

Rule 33(b)'s continuing duty to disclose information. Bensch, 354 S.C. at 182, 580 S.E.2d at 133. "The sanction of excluding a witness should never be lightly invoked." Id. Before excluding a witness as a sanction for violating the continuing duty to disclose information the trial court should ascertain (1) the type of witness involved, (2) the content of the evidence, (3) the explanation for the failure to name the witness in answer to the interrogatory, (4) the importance of the witness's testimony, and (5) the degree of surprise to the other party. Id.

We are cognizant of the similar factors outlined in Jumper v. Hawkins, and applied by a number of subsequent cases. 348 S.C. 142, 558 S.E.2d 911 (Ct. App. 2001); see, e.g., Callen v. Callen, 365 S.C. 618, 620 S.E.2d 59 (2005); Barnette v. Adams Bros. Logging, Inc., 355 S.C. 588, 586 S.E.2d 572 (2003); Bryson v. Bryson, 378 S.C. 502, 662 S.E.2d 611 (Ct. App. 2008); Arthur v. Sexton Dental Clinic, 368 S.C. 326, 628 S.E.2d 894 (Ct. App. 2006). However, we conclude the Bensch factors are more appropriate because the record before us indicates Jenkins listed Stokes as a fact witness but failed to later supplement his interrogatory answer to indicate his intention to call Stokes as an expert witness. In sum, Jenkins violated Rule 33(b)'s continuing duty of disclosure. Because this was the precise issue in Bensch, we apply the Bensch factors.

We find the trial court made the appropriate considerations before declining to exclude Stokes as an expert witness. Here, the trial court determined Jenkins was calling Stokes as an expert witness and would testify that introducing sugar into a gas tank could damage an engine. Jenkins's counsel explained he first listed Stokes as a fact witness but reserved the right to make a later determination about calling him as an expert witness. However, after deciding to call Stokes as an expert witness, Jenkins's counsel inadvertently failed to supplement his interrogatory answer. The trial court found this mistake was not the result of bad faith. The trial court also determined other experts would testify regarding the effect of sugar on an engine. Finally, the trial court found the degree of surprise and prejudice to Few was low because Stokes testified to the same thing during his deposition and Few's counsel had the opportunity to cross-examine him during an in

camera proffer of his testimony. Accordingly, we conclude the trial court did not abuse its discretion in admitting Stokes as an expert witness.

We now turn to Few's contention the trial court erred in qualifying Stokes as an expert. During the in camera proffer, Stokes testified he was a certified automobile mechanic with two years' experience. Stokes also explained he worked on two cars about which he was told had sugar placed in their gas tanks. Based on Stokes's training and experience, the trial court qualified him as an expert in automobile mechanics. Few alleges the trial court erred in qualifying Stokes as an expert because he lacked personal knowledge of whether the automobiles he worked on actually had sugar placed in their gas tanks. Stokes's lack of personal knowledge goes to the weight of his testimony and not its admissibility. See Peterson v. Nat'l R.R. Passenger Corp., 365 S.C. 391, 400, 618 S.E.2d 903, 908 (2005) (holding experts lack of firsthand knowledge "goes to the weight of the testimony, not its admissibility"). Accordingly, we find the trial court did not abuse its discretion in qualifying Stokes as an expert witness. Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 25, 609 S.E.2d 506, 509 (2005) (noting a trial court's decision to qualify a witness as an expert will not be disturbed absent an abuse of discretion).

III. Actual Damages

Few argues the trial court erred in declining to reduce the jury's award of actual damages for trespass to personal property. According to Few, the actual damages award is excessive because it exceeds the diminution in value or damage to Jenkins's fertilizer truck and appears to be based on the value of a new truck Jenkins purchased. We disagree.

Few's argument hinges on a finding trespass to personal property is the only surviving cause of action and asks us to speculate as to the amount of actual damages attributable to trespass to personal property. Both civil conspiracy and trespass to personal property support the jury's actual damage award. Few contributed to drafting and agreed to use a general verdict form that did not include a separate damages award for each cause of action. Because the verdict was a general verdict, it is impossible to determine how

the jury allocated damages between civil conspiracy, conversion, and trespass to personal property. We will not speculate as to how the jury allocated damages. See Armstrong v. Collins, 366 S.C. 204, 227, 621 S.E.2d 368, 379 (Ct. App. 2005) (finding "[b]ecause the verdict was a general verdict, we cannot now speculate as to how the jury allocated damages"). Accordingly, we will not disturb the trial court's ruling on this issue.

IV. Punitive Damages

Few argues the trial court erred in failing to reduce the punitive damages award. Specifically, Few maintains that based on the actual damage to Jenkins's fertilizer truck caused by his trespass to personal property, the award of punitive damages is excessive. We disagree.

In evaluating the constitutionality of a punitive damages award, we conduct a de novo review. Mitchell v. Fortis Ins. Co., 385 S.C. 570, 583, 686 S.E.2d 176, 183 (2009) (holding "our appellate courts must conduct a de novo review when evaluating the constitutionality of a punitive damages award"). Accordingly, we apply the test articulated in Mitchell and consider (1) the degree of reprehensibility of Few's conduct, (2) the disparity between the actual harm suffered and the amount of punitive damages awarded by the jury, and (3) the difference between punitive damages awarded by the jury and those awarded in similar cases. See id. at 587-89, 686 S.E.2d at 185-86. (citing BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996)).³

A. Reprehensibility

In considering the degree of reprehensibility, a court should consider whether:

³ We note the post-trial review factors outlined in Gamble v. Stevenson, 305 S.C. 104, 111-12, 406 S.E.2d 350, 354 (1991) are still applicable, but only within the context of the test articulated in Mitchell, 385 S.C. at 587, 686 S.E.2d at 185.

(i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.

Id. at 587, 686 S.E.2d at 185 (citing State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 419 (2003)). Here, Jenkins suffered economic harm. The damage to his fertilizer truck caused him to lose revenue for the eight days he could not operate his business. Further, the record contains no evidence Few evinced an indifference to or a reckless disregard towards Jenkins's health or safety. However, Few deliberately targeted Jenkins's truck and business during the fertilizer spreading season when he knew Jenkins would be the most busy, ensuring he would inflict the most economic harm to his competitor. Additionally, after learning his first attempt failed to render the truck nonoperational, Few sabotaged the truck a second time. Few acted with intentional malice expressing his desire to put Jenkins out of business to both Stokes and Lindsey. Few also perpetrated a clandestine conspiracy to accomplish his goal of sabotaging Jenkins's truck. Weighing the above factors, we find Few's conduct was highly reprehensible.

B. Ratio

Courts must ensure that punitive damages are "both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." Campbell, 538 U.S. at 426. Although there is no constitutional limit on the ratio between harm and damages recovered, single-digit multipliers are more likely to comport with due process. Id. at 424-25. In determining reasonableness, courts may consider "the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay." Mitchell, 385 S.C. at 588, 686 S.E.2d at 185.

Here, the jury awarded Jenkins \$100,000 in punitive damages and \$28,000 in actual damages. The ratio between punitive damages and actual damages is 3.6 to 1. Furthermore, this award of punitive damages will serve to deter Few from engaging in like conduct against Jenkins or other competitors in the fertilizer spreading business. Additionally, the record contains evidence Few has the ability to pay the punitive damages award. Based on the foregoing, we find the award of punitive damages is both reasonable and proportionate to the amount of harm caused.

C. Comparative Penalty Awards

In conducting a comparative penalty analysis the court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. Mitchell, 385 S.C. at 588, 686 S.E.2d at 186. To identify comparable cases "a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant." Id. at 588-89, 686 S.E.2d at 186.

A review of case law uncovered no case factually on point with this one. However, research revealed several comparable cases on the lower end of the single-digit spectrum. In Mackela v. Bentley, a conversion case, this court affirmed a punitive to actual damage ratio of 3.7 to 1. 365 S.C. 44, 50, 614 S.E.2d 648, 651 (Ct. App. 2005). Also, in Austin v. Specialty Transportation Services, Inc., a negligence case, this court affirmed a punitive to actual damage ratio of 2.5 to 1. 358 S.C. 298, 318, 594 S.E.2d 867, 877 (Ct. App. 2004). This court has also affirmed ratios on the high end of the single-digit spectrum. For instance, in Collins Entertainment Corp. v. Coats & Coats Rental Amusement, this court upheld a punitive to actual damage ratio of 9.9 to 1 on an intentional interference with contract claim. 355 S.C. 125, 143-44, 584 S.E.2d 120, 130 (Ct. App. 2003). Our review of these cases leads us to the conclusion the 3.6 to 1 ratio at issue here is within the range of comparable cases and those most often upheld by South Carolina courts. See Mitchell, 385 S.C. at 593, 686 S.E.2d at 188 ("South Carolina

courts have most often upheld verdicts on the low end of the single-digit spectrum").

After applying the standard articulated in Mitchell, in our view—especially considering the reprehensibility of Few's conduct and the low single-digit ratio of actual to punitive damages—the jury's award of punitive damages comports with due process.

CONCLUSION

In sum, Jenkins's claim for civil conspiracy was properly submitted to the jury. However, we find the trial court erred in submitting Jenkins's conversion claim to the jury. Furthermore, the trial court properly declined to exclude Stokes as a witness and did not err in qualifying Stokes as an expert. Because the jury issued a general verdict, we will not speculate as to the amount of damages attributable to each remaining cause of action. Therefore, we affirm the trial court as to the actual damages award. Finally, we find the jury award of punitive damages comports with due process. Accordingly, the decision of the trial court is

AFFIRMED IN PART AND REVERSED IN PART.

KONDUROS and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
D. Garrison Hill, Circuit Judge

Case No. 07-CP-23-0779

Kenneth B. Jenkins, ... Respondent,

v.

Benjamin Scott Few, and
Few Farms, Inc, ... Appellant.

PETITION FOR REHEARING

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NOW INTO COURT COME the Appellants who respectfully move this Court for a rehearing pursuant to Rule 221, SCACR, based on the following:

I. B. CIVIL CONSPIRACY

THE COURT'S OPINION FAILS TO RECOGNIZE THAT THE RESPONDENT ALLEGED THE SAME DAMAGES UNDER HIS CONSPIRACY CLAIM THAT HE ALLEGED IN OTHER CAUSES OF ACTION SO THAT THE DAMAGES ARE NOT UNIQUE TO CONSPIRACY.

This Court's opinion finds that the Respondent alleged special damages from the civil conspiracy as "including, but not limit to, the destruction of [his fertilizer truck,] and the loss of revenue for the nine days which [he] could not operate his business." The Court went on to find that "Jenkins did not allege lost profits in regards to any other cause of action." Contrary to the Court's findings the Respondent's complaint clearly incorporated additional claims for the very same losses in other causes of action.

In his complaint the Respondent alleged trespass, conversion, conspiracy, unfair trade practice, and defamation. In seeking recovery under conspiracy the Respondent sought to recover damages for the loss to the truck and loss of revenue for nine days. (Paragraph 23, Complaint). What the Court has overlooked is that the Respondent's claims under unfair trade practices and defamation *explicitly* incorporated the same losses the Respondent sought to recover under his conspiracy theory. (Complaint, Paragraphs 24, 30). Clearly the loss of revenue and value of the truck were pled in other causes. All or a portion were also recoverable in other causes of action. Since the loss of revenue and value of the truck do not go beyond the damages alleged in the other causes of action, they fail to be unique. Therefore, there can be no recovery under a

conspiracy theory.

The elements a Respondent must demonstrate in order to prove civil conspiracy include: (1) the combination of two or more people; (2) for the purpose of injuring the Respondent; (3) causing special damages. Pye v. Estate of Fox, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006). Because the quiddity of a civil conspiracy claim is the damage resulting to the Respondent, the damages alleged must go beyond the damages alleged in other causes of action. Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App. 1989). Pye v. Estate of Fox, 369 S.C. 555 (2006).

The decision of this Court overlooks the fact that the Respondent specifically incorporated the loss of revenue and value to the truck in his other causes of action. There are therefore no damages unique to the conspiracy and therefore, no special damages alleged aside from the damages on all other causes. The verdict form, as accepted by the Respondent, provides for no finding as to special damages. There being no damages unique to the conspiracy, nor found by the jury, the conspiracy action is barred. See Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App. 1989). The Court should therefore reconsider its decision and grant a new hearing.

II. THE TRIAL COURT ERRED IN QUALIFYING PLAINTIFF'S WITNESS AS A SURPRISE EXPERT IN THE MIDDLE OF HIS TESTIMONY.

This Court misperceived important facts relevant to the application of law in this case. The Court's decision overlooks the factual similarity between this case and the Bensch case on which this Court relies. The Court's opinion also overlooks the fact that the in Bensch, under

similar facts, the Supreme Court *upheld* the exclusion of the expert witness based on the same Rule 33 violation as presented in the present case.

As in Bensch, the Respondent in this case failed to give notice of his intent to call his witness as an expert. Appellants timely objected to the witness [Stokes] being asked questions as an expert on the ground that the Respondent failed to properly notify the Defendants of his intention to call him as an expert. Appellants made specific requests to the Respondent as to whether he would call any expert witnesses. Appellants specifically asked during the deposition of Stokes whether the Appellant intended to call him as an expert. The Respondent denied that Stokes would be called as an expert and as a result, Appellant limited his deposition to fact testimony in reliance on the Respondent's representations. Respondent did not disclose his intent to call Stokes as an expert until the trial had begun and Stokes was in the middle of his testimony.

The Appellant, through no fault of his own, was clearly prejudiced by the Respondent's representations. The Respondent clearly knew that his representation would be relied on by the Appellant, as the Appellants indicated that their examination of the Stokes during deposition would be limited to his being a fact witness. At trial, Appellants indicated that had they been aware that Stokes would be called as a witness they would have called additional witnesses to rebut his testimony. Based on the gross lack of qualifications of Stokes to be qualified as an expert, the lack of those additional witnesses further prejudiced the Appellants. The limitation on the Appellant's right to discovery through full deposition, as well as the inability to call witnesses to rebut Stokes, is precisely the injury Rule 33 is designed to protect against.

Contrary to this Court's opinion, the deposition of Stokes did little to reduce surprise to

the Appellants where the deposition examination was limited based on the Defendants' belief that he would be only a fact witness. This Court's opinion fails to address the similarity of the present facts to those in Bensch v. Davidson, 354 S.C. 174 (2003).

In Bensch the Court outlined the factors for the trial court's consideration when the issue of surprise is raised. This Court's opinion properly recognizes the existence of those factors but fails to give them effect in their application to the facts of the present case.

In this case there is little doubt that the Appellant was surprised by the Respondent not identifying Stokes as a potential expert prior to trial. The parties' disclosure of information before trial is designed to avoid surprise and to promote decisions on the merits after a full and fair hearing. Reed v. Clark, 277 S.C. 310, 286 S.E.2d 384 (1982). When it appears a violation of Rule 33 has occurred, it lies within the discretion of the trial court to decide what sanction, if any, should be imposed. Jackson v. H&S Oil Co., Inc., 263 S.C. 407, 211 S.E.2d 223 (1975) (case decided under former Circuit Court Rule 90). The sanction of excluding a witness should never be lightly invoked. Kirkland v. Peoples Gas Co., 269 S.C. 431, 237 S.E.2d 772 (1977). Before so ruling, the trial court should ascertain the type of witness involved, the content of the evidence, the explanation for the failure to name the witness in answer to the interrogatory, the importance of the witness' testimony, and the degree of surprise to the other party. Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12 (1974).

The Court's opinion minimizes the facts surrounding the failure to identify and disclose Stokes as an expert prior to trial. First, looking at the Respondent's explanation for his failure to name Stokes as an expert, Respondent admitted it was an error. But this was not a mere oversight since Respondent admitted that he intended to call Stokes as a expert. At what point he made that

decision is unclear but it appears to have been made sometime prior to trial. Respondent did not disclose the intent in his responses to interrogatories. Respondent was asked specifically by Defendants in Stokes's deposition and they did not disclose the intent to call him as an expert. Respondent never updated his responses to interrogatories with the disclosure of such an intent. Respondent therefore was without a valid explanation for his failure to give notice under Rule 33.

Second, looking to the importance of Stokes's testimony the Court concluded that the prejudice was reduced by the fact that other experts would be testifying. This however overlooks the fact that the failure of notice under Rule 33 prevented the Defendants' from being able to adequately depose Stokes as to his qualifications and opinions prior to court. Defendant's failure is especially troublesome where they were asked specifically during Stokes's deposition if Stokes would be called as an expert. Based on the Respondent's actions the Defendants were prejudiced in their ability to properly prepare their case.

The record in this case shows a high degree of surprise to the Appellant in this case. As it was not until the trial had begun that the Respondent gave notice of his intentions to call Stokes as a expert, the Appellants were effectively prevented from calling witnesses to rebut that testimony. The deposition of Stokes as a fact witness was simply insufficient to prevent surprise or prejudice in this case. And contrary to the Court's decision, the opportunity to cross-examine a surprise expert witness in camera is insufficient to cure any prejudice. This Court has overlooked the similarity between the facts of this case and those of Bensch where the Supreme Court held that exclusion of the witness was proper. See Bensch v. Davidson, 354 S.C. 173 (2003). Wherefore, the Appellant moves the Court for a rehearing in this case.

III. ACTUAL DAMAGES - THE COURT ERRED IN FAILING TO REDUCE CONVERSION DAMAGES DOWN TO TRESPASS DAMAGES (DIMINUTION OF VALUE OR DAMAGE TO THE CHATTEL.)

This Court correctly held that conversion was not supported by the facts of the case.

However, despite its holding, the Court failed to make a corresponding reduction in the award of actual damages to remove any damages recovered under the theory of conversion. Additionally, the Court failed to reduce the award for damages where a recovery for the replacement value of the whole truck is otherwise unsupported by the facts. Absent the conversion cause, and considering that the Respondent chose to replace a truck he could have repaired, the award of damages for the vehicle should have been reduced to the truck's diminution in value as allowable under Respondent's trespass claim.

The jury's award in this case clearly includes damages exceeding the diminution in value to the truck which can be easily determined based on the cost of repairing the truck. Rather than limiting recovery to the truck's diminution in value, this Court has allowed the Respondent to recover close to the total value of the truck as if under a conversion theory. The Court's opinion overlooks that the Respondent chose to purchase a new and substantially bigger truck rather than simply repairing the damage done to his old truck. This fact being overlooked by the Court, yet significant, as the cost of repair was minor in relation to the cost of the new truck. This Court, in failing to limit damages to diminution in value, essentially nullifies the granting of a directed verdict on the ground of conversion.

The record shows that Respondent chose to upgrade with a newer and bigger truck. The decision was strictly a business decision to help him be more competitive in the market. R. 187-

188. Respondent sought to make Defendants' pay for his choice in upgrading his equipment. In allowing recovery greater than the truck's diminution in value this Court allows the Respondent to exceed what is properly recoverable under a claim for trespass to chattel or personal property.

A person is a "trespasser to a chattel" if he was "intentionally using or intermeddling of a chattel in possession of another." Ferris v. Monsanto Co. 380 Mass. 694 (1980). Trespass to personalty is an injury to, or interference with, possession of the property, unlawfully, with or without the exercise of physical force. Mountain States Tel. & Tel. Co. v. Vowell Constr. Co., 341 S.W.2d 148, 150 (Tex. 1960); Jamison v. Nat'l Loan Investors, L.P., 4 S.W.3d 465, 469 n. 2 (Tex.App.-Houston [1st Dist.] 1999, pet. denied). Destruction of, or injury to, personal property, regardless of negligence, may be a trespass. Mountain States, 341 S.W.2d at 150; Jamison, 4 S.W.3d at 469. Russell v. American Real Estate, 89 SW 3D (Tex.App. [13TH DIST] 2002).

In recognizing the distinctions between trespass to chattel and conversion this Court has noted in prior cases that recovery in trespass is limited to the diminished value of the chattel because of any damage to it, or for the damage to his interest in its possession or use. Usually, although not necessarily, such damages are less than the full value of the chattel itself. Restatement (Second) of Torts § 222A (1965). Young v. Century Lincoln-Mercury, Inc., 302 S.C. 320 (Ct.App. 1989). The Court's opinion in this case, although denying the conversion cause, has not given its decision meaning as it leaves the Respondent with conversion damages rather than adjusting damages down to diminution value appropriate under the trespass claim.

In the present case the Respondent was awarded \$28,000 which appears to be based, in whole or in part, on the value of the new and bigger truck that he decided purchase rather than simply repairing the old truck. R. 277. The maximum amount of damage or diminished value to

the Respondent's truck was no more than the \$5,300 which the Respondent's mechanic testified that it would cost to repair the truck. R. 236. Respondent's testimony is clear that he chose to replace the truck rather than repair it since it was an old truck. R. 222. The measure for recovery as explained in Young is the diminished value rather than the full value of the chattel itself. This Court's opinion allows recovery in this case to exceed the proper limits for damages under the Respondent's trespass claim. Appellant moves the Court to reconsider its decision and grant a rehearing on this matter.

IV. THE COURT ERRED IN FAILING TO REDUCE PUNITIVE DAMAGES AWARD.

An adjustment of the damages award based on the foregoing arguments requires this Court to make a corresponding adjustment in punitive damages. Even assuming damages of \$5,300 for diminution in the value of the truck, plus lost profits of \$5,891 and \$2035 in reward money, damages in this case would total only \$13,226, approximately half of the figure underpinning the jury's punitive damage award. With the conversion damages properly removed, the punitive damage award of \$100,000 on only \$13,226 dollars in actual damages becomes clearly excessive. RRR, INC. v. Toggas, 26612 (S.C. 3-9-2009); B.M.W. of N. Am., Inc. v. Gore, 517 U.S. 559 (1996); Phillip Morris USA v. Williams, 549 U.S. 346 (2007); State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003).

In reviewing punitive damage awards the United States Supreme Court identified with approval three major concerns. First, the trial court's jury instruction explains the nature, purpose and basis for the award; second, post-trial procedures enable the court to scrutinize the award;

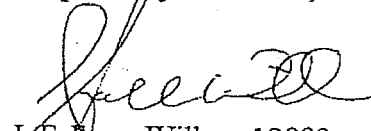
and, third, an appellate review process ensures that the award is reasonable and rational. Haslip, 111 S.Ct. at 1044-45. These procedural protections, the Haslip Court found, impose "a sufficiently definite and meaningful constraint on the discretion of Alabama fact finders in awarding punitive damages." 111 S.Ct. at 1045.

To ensure that a punitive damage award is proper, the trial court shall conduct a post-trial review and may consider the following: (1) Appellant's degree of culpability; Page 112 (2) duration of the conduct; (3) Appellant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the Appellant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) Appellant's ability to pay; and finally, (8) as noted in Haslip, "other factors" deemed appropriate. 305 S.C. 104, 406 S.E.2d 350 (1991).

BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996). Reprehensibility, ratio, sanctions for comparable misconduct. In Haslip the Supreme Court concluded that even though a punitive damages award of "more than 4 times the amount of compensatory damages," might be "close to the line," it did not "cross the line into the area of constitutional impropriety." 499 U.S., at 23-24. TXO, following dicta in Haslip, refined this analysis by confirming that the proper inquiry is "whether there is a reasonable relationship between the punitive damage award and the harm likely to result from the Appellant's conduct as well as the harm that actually has occurred." TXO, 509 U.S., at 460 (emphasis in original), quoting Haslip, 499 U.S., at 21. In the present case the jury's award of \$100,000 bears no reasonable relationship to the actual damages based on the diminution in value of \$5,300 or less under the theory of trespass to chattel. At close to twenty times the actual damages, the punitive award exceeds the ratio analysis outlined in Gore.

Comparing the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct provides a third indicium of excessiveness. Similar cases are a good indicator of the reasonableness of an award where the facts are similar. Although somewhat dated, a \$2,000 award in punitive for putting sugar in a gas tank of a competitor's truck is still a fair indication that a person would not be on notice that a \$100,000 penalty would be assessed for such conduct. Coonis v. Rogers, 429 S.W.2d 709 (Mo. 1968). Especially true where the act only resulted in \$5,300 in damage to the vehicle and at best, \$13,226 in total damages based on the Respondent's own testimony. Based on the actual damages to the chattel occasioned by the trespass, the punitive damage award is excessive. Appellant moves this Court to reconsider the issue of punitive damages and to grant a rehearing accordingly.

Respectfully submitted,



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December 22, 2010.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
D. Garrison Hill, Circuit Judge

Case No. 07-CP-23-0779

Kenneth B. Jenkins, ... Respondent,

v.

Benjamin Scott Few, and
Few Farms, Inc, ... Appellant.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Can a verdict for conspiracy stand where there are no special damages?
2. Can verdict for conversion stand where the facts fail to show unauthorized detention of chattel and, where the damages were far less than the total value of the chattel?
3. Should actual damages on trespass to personal property be limited to the damage or diminution of chattel?
4. Did the trial court erred in qualifying plaintiff's witness as an expert?
5. Are the punitive damages unreasonably high in relation to the actual damages under the facts of this case?
6. Should the punitive damages be reduced if the actual damages are reduced as a result of this appeal?

STATEMENT OF THE CASE

The Plaintiff/Respondent Kenneth B. Jenkins was represented below and on appeal by Fred W. Suggs, III, of Greenville. The Defendant/Appellant was represented at trial by Robert C. Childs who is joined on this appeal by J. Falkner Wilkes, both also of Greenville. This action was initiated by Summons and Complaint filed with the Clerk of Circuit Court in Greenville County. The Complaint was timely answered. A jury trial was held on the 25th through the 26th of August 2008 in the Court of Common Pleas in Greenville County, the Honorable D. Garrison Hill presiding. The jury returned a verdict in favor of the Respondent on causes for Trespass to Chattel, Conversion, Civil Conspiracy and for the Defendants on the cause under the Uniform Trade Practice Act. Actual damages were awarded in the amount of \$28,000. Punitive damages were awarded in the amount of \$100,000. Appeal was timely filed and this brief follows.

ARGUMENT

I. THE TRIAL COURT ERRED BY FAILING TO GRANT A DIRECTED VERDICT WHERE THERE WAS NO EVIDENCE OF SPECIAL DAMAGES.

Appellants and Respondent each are in the business of delivering fertilizer for farmers in and around Greenville County. They are competitors. This case arises out of allegations that the Appellant paid a third party to place sugar in the gas tank of the Respondent's truck on two different occasions. As a result of having sugar in the tank the Respondent claimed that the truck was damaged and that he lost a number of days of profit due to the time the truck was not operating properly. To this end the Respondent offered testimony as to actual damages. There was no evidence as to special damages.

Respondent sought recovery in this case based on multiple theories including civil conspiracy. The jury found for the Respondent on claims of trespass to personal property, conversion and conspiracy, and for the Defendants on the ground under the Uniform Trade Practice Act. At the close of the Respondent's case the Defendants moved for a directed verdict raising the Respondent's failure to submit any evidence as to special damages. The trial court denied the Defendants' motion. Subsequently, the jury returned a verdict for the Respondent on conspiracy. There was no finding as to special damages. As a result the Defendants further moved for a new trial nisi based on the same grounds. Despite the Respondent's inability to point to a single fact as evidence of special damages, the trial court denied Defendants motion for summary judgment. R. 272.

The elements a Respondent must demonstrate in order to prove civil conspiracy include:
(1) the combination of two or more people; (2) for the purpose of injuring the Respondent; (3)

causing special damages. Pye v. Estate of Fox, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006). Because the quiddity of a civil conspiracy claim is the damage resulting to the Respondent, the damages alleged must go beyond the damages alleged in other causes of action. Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App. 1989). Pye v. Estate of Fox, 369 S.C. 555 (2006).

In the present case the damages sought in the conspiracy cause of action are the same as those sought in other causes of action. Where no special damages are alleged and proven aside from the damages on all other causes, the conspiracy action is barred. Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App. 1989). The trial court therefore erred in failing to grant the Defendants' motion for a directed verdict and new trial on the civil conspiracy cause of action.

II. THE TRIAL COURT ERRED IN FAILING TO GRANT A DIRECTED VERDICT ON CLAIM OF CONVERSION.

The Respondent's case is based on testimony that Defendants' caused a third party to place sugar in the gas tank of the Respondent's truck. Respondent claimed, as a result of having sugar in his tank, lost revenue for eight days. The Respondent's mechanic testified that the truck could be repaired and estimated costs to have the entire engine rebuilt between \$4,600 and \$5,200 dollars. R. 236. Because he thought the truck was so old and small, the Respondent chose not to repair the truck but instead to purchase a newer and bigger truck so he could be more competitive. R. 187-189. There was no evidence that the Appellants ever took or possessed the truck or prevented the Defendant access to his truck. The only evidence was that there was an intermeddling with the truck causing damage which the evidence shows was clearly repairable.

Based on the lack of evidence that the Defendants had committed an unauthorized

detention of the truck moved for summary judgment on the conversion cause of action. The trial denied Defendant's motion. Review of the record shows at best a trespass to chattel rather than conversion. Evidence that the Defendants caused sugar to be placed in the gas tank is insufficient to support a cause for conversion since the Defendant never assumed or exercised the right of ownership over the truck and the damages were far less than the value of the chattel. There was no wrongful taking or detention of the truck by the Appellants.

A claim for conversion can be based on an unauthorized detention of property, after demand. Oxford Finance Cos., Inc. v. Burgess, 303 S.C. 534, 402 S.E.2d 480 (1991).

"Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." Conversion is a wrongful act that emanates by either a wrongful taking or wrongful detention. Kirby v. Home Motor Co., 295 S.C. 7, 366 S.E.2d 259 (Ct.App. 1988). A Respondent may prevail upon a claim for conversion by showing the unauthorized detention of property, after demand. Mackela v. Bentley, 365 S.C. 44, 614 S.E.2d 648 (Ct.App. 2005).

At best the evidence shows only an intermeddling with the chattel. A "trespasser to a chattel" is one that is "intentionally using or intermeddling of a chattel in possession of another." An action for trespass to chattels "[involves] incursions on other people's property very different in character from the present situation." Ferris v. Monsanto Co., 380 Mass. 694, 703 (1980). In Massachusetts, the exercise of dominion and control over the personal property of another is the tort of conversion. In re Hilson, 448 Mass. at 611. Ferris v. Monsanto Co. 380 Mass. 694 (1980). In the present case, there is no evidence that the Defendants exercised dominion and control over the Respondent's truck. At best the evidence shows only an interference. Interference does not

constitute conversion. Conversion has been limited by the courts, only to those serious, major, and important interferences with the right to control the chattel which justify requiring the defendant to pay its full value. In trespass the Respondent may recover for the diminished value of his chattel because of any damage to it, or for the damage to his interest in its possession or use.

Conversion is further unsupported as even the evidence in a light most favorable to the Respondent shows that the value of damage did not reach near the entire value of the truck. As this Court has noted, the importance of the distinction between trespass to chattels and conversion, which has justified its survival long after the forms of action of trespass and trover have become obsolete, lies in the measure of damages. Young v. Century Lincoln-mercury, Inc., 309 S.C. 263 (1992). Evidence tends to show that the damage to the truck was far less than the truck's fair market value, which the Respondent testified was between \$8,000 to \$10,000. Even by the Respondent's own estimation an entire engine rebuild would only cost \$5,300. R. 237; 357. The Respondent's testimony makes clear that it was a business choice rather than necessity that he purchase a new truck rather than to repair the damaged truck. R. 222. Conversion is therefore properly limited, and has been limited by the courts, to those serious, major, and important interferences with the right to control the chattel which justify requiring the defendant to pay its full value. Restatement of Torts (Second) § 222A comment c (1965); Young v. Century Lincoln-mercury, Inc., 309 S.C. 263 (1992). Even by the Respondent's own calculations, damages don't reach the level necessary to support a claim for conversion. As a result, the trial court erred in denying the Defendants' motion for a direct verdict on this ground.

III. THE TRIAL COURT ERRED IN FAILING TO REDUCE ACTUAL DAMAGES ON TRESPASS TO PERSONAL PROPERTY TO AN AMOUNT EQUAL TO THE DIMINUTION OF VALUE OR DAMAGE TO THE CHATTEL.

Respondent in this case claimed damages in amount far exceeding the full repair cost or diminution in value to the truck. Rather than calculating damage based on damage to the truck or the diminution in its value the Respondent claimed damages based on the cost of the truck he chose to purchase rather than simply repairing the damage alleged. The record shows that Respondent chose to upgrade with a newer and bigger truck. The decision was strictly a business decision to help him be more competitive in the market. R. 187-188. Respondent sought to make Defendants' pay for his choice in upgrading his equipment. In doing so the award of actual damages exceeds what is properly recoverable under a claim for trespass to chattel or personal property.

A person is a "trespasser to a chattel" if he was "intentionally using or intermeddling of a chattel in possession of another." Ferris v. Monsanto Co. 380 Mass. 694 (1980). Trespass to personalty is an injury to, or interference with, possession of the property, unlawfully, with or without the exercise of physical force. Mountain States Tel. & Tel. Co. v. Vowell Constr. Co., 341 S.W.2d 148, 150 (Tex. 1960); Jamison v. Nat'l Loan Investors, L.P., 4 S.W.3d 465, 469 n. 2 (Tex.App.-Houston [1st Dist.] 1999, pet. denied). Destruction of, or injury to, personal property, regardless of negligence, may be a trespass. Mountain States, 341 S.W.2d at 150; Jamison, 4 S.W.3d at 469. Russell v. American Real Estate, 89 SW 3D (Tex.App. [13TH DIST] 2002).

In recognizing the distinctions between trespass to chattel and conversion this Court noted that recovery in trespass is limited to the diminished value of the chattel because of any damage to it, or for the damage to his interest in its possession or use. Usually, although not

necessarily, such damages are less than the full value of the chattel itself. Restatement (Second) of Torts § 222A (1965). Young v. Century Lincoln-Mercury, Inc., 302 S.C. 320 (Ct.App. 1989).

In the present case the Respondent was awarded \$28,000 which appears to be based, in whole or in part, on the value of the new and bigger truck that he decided purchase rather than simply repairing the old truck. R. 277. The maximum amount of damage or diminished value to the Respondent's truck was no more than the \$5,300 which the Respondent's mechanic testified that it would cost to repair the truck. R. 236. Respondent's testimony is clear that he chose to replace the truck rather than repair it since it was an old truck. R. 222. The measure for recovery as explained in Young is the diminished value rather than the full value of the chattel itself. The trial court therefore erred in failing to grant the Defendants' motion for a directed verdict or new trial nisi remittitur as to the amount of damages under trespass to personal property.

IV. THE TRIAL COURT ERRED IN QUALIFYING PLAINTIFF'S WITNESS AS AN EXPERT WITNESS.

The trial court erred in admitting Buford Stokes (Rocky) as an expert witness where Stokes had no qualifications as an expert and, where the Respondent failed to provide notice of his intent to call Stokes as an expert in the case.

Stokes's only qualification as an expert was that over twenty years earlier he had worked as a mechanic for two years. R. 85. Stokes testified that some twenty years ago he had seen two cars that had sugar in the gas tank. R. 98-100. Stokes based this solely on what the owners of those vehicles told him. He admitted that he did not actually see any evidence of sugar actually being present. R. 98-100; 106-107.

Pursuant to Rule 601, SCRE, every person is competent to be a witness unless otherwise provided by statute or the rules. Rule 602, SCRE, prohibits a witness from testifying to matters unless evidence is introduced sufficient to demonstrate the witness has personal knowledge. Rule 602 is subject to the provisions of Rule 703, SCRE, which provides:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009):

In the present case Stokes was offered as an expert witness. To the extent that Stokes testified mostly to his own observations and conversations with the Respondent, it was unnecessary to qualify him as an expert. See State v. Douglas, *supra*.

In addition to the lack of qualifications the Respondent gave no notice that he would call Buford as an expert witness. R. 91-103. As a result of not having notice that Buford would be offered as an expert witness, Defendant's examination of Buford deposition as well as the Defendant's preparation for trial was limited to Stokes being a fact witness.

The Court erred in allowing Stokes to testify as an expert witness where notice was never given that he would be asked questions as an expert. Defendants timely objected to Stokes being asked questions as an expert on two grounds. First, that the Respondent failed to properly notify the Defendants of his intention to call Stokes. Requests as to the Respondent's expert witnesses was requested through discovery and later in the deposition. Respondent did not disclose his intent to call Stokes as an expert until the trial had begun. Defendants indicated that their examination of the Stokes during deposition was limited to his being a fact witness. Defendants

further indicated that had they been aware that Stokes would be called as a witness they would have called additional witnesses to rebut his testimony.

The Court erred in finding that the deposition of Stokes reduced surprise to the Defendants where the deposition examination was limited based on the Defendants' belief that he would be only a fact witness. This issue has been addressed previously in Bensch v. Davidson, 354 S.C. 174 (2003). In Bensch the Court outlined the factors for the trial court's consideration when the issue of surprise is raised. The parties' disclosure of information before trial is designed to avoid surprise and to promote decisions on the merits after a full and fair hearing. Reed v. Clark, 277 S.C. 310, 286 S.E.2d 384 (1982). When it appears a violation of Rule 33 has occurred, it lies within the discretion of the trial court to decide what sanction, if any, should be imposed. Jackson v. H&S Oil Co., Inc., 263 S.C. 407, 211 S.E.2d 223 (1975) (case decided under former Circuit Court Rule 90). The sanction of excluding a witness should never be lightly invoked. Kirkland v. Peoples Gas Co., 269 S.C. 431, 237 S.E.2d 772 (1977). Before so ruling, the trial court should ascertain the type of witness involved, the content of the evidence, the explanation for the failure to name the witness in answer to the interrogatory, the importance of the witness' testimony, and the degree of surprise to the other party. Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12 (1974).

Generally, a witness is limited in their testimony to personal knowledge. Pursuant to Rule 601, SCRE, every person is competent to be a witness unless otherwise provided by statute or the rules. Rule 602, SCRE, prohibits a witness from testifying to matters unless evidence is introduced sufficient to demonstrate the witness has personal knowledge. Rule 602 is subject to the provisions of Rule 703, SCRE, which provides:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Rule 703, SCRE.

First, looking at the Respondent's explanation for his failure to name Stokes as an expert, Respondent admitted it was an error. But this was not a mere oversight since Respondent admitted that he intended to call Stokes as a expert. At what point he made that decision is unclear but it appears to have been made sometime prior to trial. Respondent did not disclose the intent in his responses to interrogatories. Respondent was asked specifically by Defendants in Stokes's deposition and they did not disclose the intent to call him as an expert. Respondent never updated his responses to interrogatories with the disclosure of such an intent. Respondent therefore was without a valid explanation for his failure to give notice under Rule 33.

Second, looking to the importance of Stokes's testimony the Court concluded that the prejudice was reduced by the fact that other experts would be testifying. This however overlooks the fact that the failure of notice under Rule 33 prevented the Defendants' from being able to adequately depose Stokes as to his qualifications and opinions prior to court. Defendant's failure is especially troublesome where they were asked specifically during Stokes's deposition if Stokes would be called as an expert. Based on the Respondent's actions the Defendants were prejudiced in their ability to properly prepare their case.

The trial court failed to adequately consider the high degree of surprise in this case. As it was not until the trial had begun that the Respondent gave notice of his intentions to call Stokes

as a expert the Appellants were prevented from calling witnesses to rebut that testimony. The deposition of Stokes as a fact witness was simply insufficient to prevent surprise or prejudice in this case. See Bensch v. Davidson, 354 S.C. 173 (2003).

V. THE COURT ERRED IN FAILING TO REDUCE PUNITIVE DAMAGES AWARD.

The appellate court must conduct a *de novo* review of the trial judge's application of the Gore guideposts. RRR, INC. v. Toggas, 26612 (S.C. 3-9-2009); B.M.W. of N. Am., Inc. v. Gore, 517 U.S. 559 (1996); Phillip Morris USA v. Williams, 549 U.S. 346 (2007); State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003).

In reviewing punitive damage awards the United States Supreme Court identified with approval three major concerns. First, the trial court's jury instruction explains the nature, purpose and basis for the award; second, post-trial procedures enable the court to scrutinize the award; and, third, an appellate review process ensures that the award is reasonable and rational. Haslip, 111 S.Ct. at 1044-45. These procedural protections, the Haslip Court found, impose "a sufficiently definite and meaningful constraint on the discretion of Alabama fact finders in awarding punitive damages." 111 S.Ct. at 1045.

To ensure that a punitive damage award is proper, the trial court shall conduct a post-trial review and may consider the following: (1) Appellant's degree of culpability; Page 112 (2) duration of the conduct; (3) Appellant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the Appellant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7)

Appellant's ability to pay; and finally, (8) as noted in Haslip, "other factors" deemed appropriate. 305 S.C. 104, 406 S.E.2d 350 (1991).

BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996). Reprehensibility, ratio, sanctions for comparable misconduct. In Haslip the Supreme Court concluded that even though a punitive damages award of "more than 4 times the amount of compensatory damages," might be "close to the line," it did not "cross the line into the area of constitutional impropriety." 499 U.S., at 23-24. TXO, following dicta in Haslip, refined this analysis by confirming that the proper inquiry is "whether there is a reasonable relationship between the punitive damage award and the harm likely to result from the Appellant's conduct as well as the harm that actually has occurred." TXO, 509 U.S., at 460 (emphasis in original), quoting Haslip, 499 U.S., at 21. In the present case the jury's award of \$100,000 bears no reasonable relationship to the actual damages based on the diminution in value of \$5,300 or less under the theory of trespass to chattel. At close to twenty times the actual damages, the punitive award exceeds the ratio analysis outlined in Gore.

Comparing the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct provides a third indicium of excessiveness. Similar cases are a good indicator of the reasonableness of an award where the facts are similar. Although somewhat dated, a \$2,000 award in punitive for putting sugar in a gas tank of a competitor's truck is still a fair indication that a person would not be on notice that a \$100,000 penalty would be assessed for such conduct. Coonis v. Rogers, 429 S.W.2d 709 (Mo. 1968). Especially true where the act only resulted in \$5,300 in damage to the vehicle.

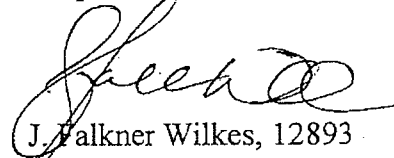
Based on the actual damages to the chattel occasioned by the trespass, the punitive damage award is excessive. As a result, the trial court erred in denying the Appellants' motion to

reduce the award accordingly.

CONCLUSION

Based on the foregoing, with the exception of trespass to chattel, the findings for Respondent on all other causes should be set aside. As to the cause for trespass to chattel, the actual damages should be reduced to an amount consistent with the damage or diminution in value of the chattel. Punitive damages should be reduced in accordance with the foregoing argument.

Respectfully submitted,



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August 3, 2009.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
D. Garrison Hill, Circuit Judge

Case No. 07-CP-23-0779

Kenneth B. Jenkins, ... Respondent,

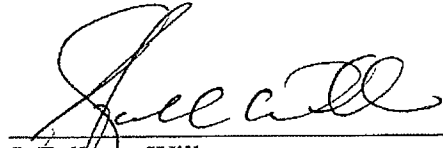
v.

Benjamin Scott Few, and
Few Farms, Inc, ...

Appellant.

CERTIFICATE OF COUNSEL

I certify that the Appellant's Brief has been redacted as to private date, personal identifiers and other confidential data in accordance with the Order of the Supreme Court.
I further certify that the Appellant's Brief is in compliance with Rule 211(b).



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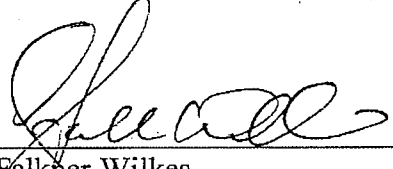
Case No. 07-CP-23-0779

Kenneth B. Jenkins, ... Respondent,
v.
Benjamin Scott Few, and
Few Farms, Inc, ... Appellant.

CERTIFICATE OF SERVICE

I certify that on August 3, 2009, I served the Appellant's Brief, Certificate of Counsel, and Certificate of Service on Respondent by delivering copies into the U.S. Mail, postage prepaid, addressed to the Respondent's counsel of record as follows:

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS
THE HONORABLE D. GARRISON HILL, Circuit Court Judge, 13th Circuit

Case No. 07-CP-23-0779

Appellants, Benjamin Scott Few and Roy Farms, Inc.,

Respondent, Kenneth B. Jenkins,

FINAL BRIEF OF RESPONDENT

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Statement of Issues on Appeal

- I. Did the trial court properly exercise its discretion in denying the Defendants' Motion for Directed Verdict on the cause of action of civil conspiracy?
- II. Did the trial court properly exercise its discretion in denying the Defendants' Motion for Directed Verdict on the cause of action of conversion?
- III. Did the trial court properly exercise its discretion in denying the Defendants' Motion for Directed Verdict and for a new trial *nisi remittitur* on the cause of action of trespass?
- IV. Did the trial court properly exercise its discretion in permitting the Plaintiff's expert witness to testify?
- V. Did the trial court properly exercise its discretion in permitting the jury's award of punitive damages to stand?

Statement of the Case

Plaintiff/Respondent, Kenneth E. Jenkins (hereinafter "Jenkins"), initiated this action by filing a Summons and Complaint on February 2, 2007. Jenkins' Complaint alleged causes of action of trespass, conversion, civil conspiracy, violation of the Unfair Trade Practices Act, and defamation. On February 19, 2007, the Defendants/Appellants filed an Answer in which they denied liability and asserted affirmative defenses. Prior to trial, Jenkins voluntarily withdrew his cause of action of defamation.

On August 25 and 26, 2008, a jury trial was held in the Court of Common Pleas in Greenville County. The Honorable D. Garrison Hill presided over the jury trial. The jury returned a verdict in favor of Jenkins on causes of action of trespass, conversion, and civil conspiracy. The jury returned a verdict in favor of the Defendants/Appellants on the cause of action of violation of Unfair Trade Practices Act. The jury awarded \$28,000.00 in actual damages and \$100,000.00 in punitive damages. The Defendants/Appellants served their Notice of Appeal on September 16, 2008.

Statement of Facts

Jenkins was the owner and operator of a fertilizer and lime spreading business in Greenville, South Carolina. The Defendant, Benjamin S. Few, was the owner of Few Farms, Inc., a company which also provided fertilizer and lime spreading services to farmers in Greenville, South Carolina. Few Farms, Inc. is also a Defendant in the matter. Jenkins and the Defendants were competitors.

In February 2004, Benjamin Few, acting on behalf of himself and as President of Few Farms, Inc., hired two individuals to place sugar in the gas tank of Jenkins' Ford F-700 spreader truck. The two individuals poured sugar into the gas tank of Jenkins' truck on two occasions. In

conspiring to place sugar in the gas tank of Jenkins' truck, the Defendants sought to put him out of business.

As a result of the Defendants' actions, the truck's engine was damaged and Jenkins was unable to operate his business for at least eight (8) days. Jenkins incurred numerous costs in attempting to determine the amount of damage to the truck and his business, as well as in identifying the perpetrators. In addition, Jenkins was forced to purchase a new spreader truck so that he could compete with the Defendants in the aftermath of their conspiratorial actions.

Argument

I. The trial court did not abuse its discretion in denying the Appellants' motion for directed verdict on the cause of action of civil conspiracy.

The Appellants contend that the trial court erred in denying their motion for directed verdict on the cause of action of civil conspiracy. Specifically, they assert that there was no evidence or testimony presented that Jenkins suffered special damages to establish a cause of action of conspiracy. In fact, there was ample evidence and testimony set forth at trial that Jenkins suffered special damages as a result of the conspiracy between the Appellants and third party conspirators.

When reviewing a trial court's ruling on directed verdict, the appellate courts will reverse only if no evidence supports the trial court's decision or the ruling is controlled by an error of law. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434-35, 629 S.E.2d 642, 648 (2006). The appellate court must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts as liberally construed in his favor. Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006). If the evidence as a whole is susceptible of more than one reasonable inference, it creates an issue for the jury and the motion for directed verdict must be denied. Proctor v. Dep't of Health and Env'tl. Control, 368 S.C. 279, 292, 628 S.E.2d

496, 503 (Ct.App. 2006). When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. Wright v. Craft, 372 S.C. 1, 19, 640 S.E.2d 486, 496 (Ct.App. 2006).

An action for civil conspiracy is one at law, and the trial court's findings will be upheld on appeal unless they are without evidentiary support. McMillan v. Oconee Memorial Hosp., 367 S.C. 559, 626 S.E.2d 884 (2006). A civil conspiracy is "a combination of two or more persons joining for the purpose of injuring the plaintiff." LaMotte v. Punchline of Columbia, Inc., 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988). The essential consideration in determining whether a conspiracy exists is whether the primary purpose or object of the combination is to injure the plaintiff. Lee v. Chesterfield Hosp., 289 S.C. 6, 344 S.E.2d 379 (Ct.App. 1986). A combination of two or more persons willfully to injure a man in his trade is unlawful and, if it results in damage to him, is actionable. Id. at 13, *citing* Sorrell's Case, A.C. 700, 712 (1925). The plaintiff must also establish special damages. Jackson v. Midlands Human Resource Center, 296 S.C. 526, 374 S.E.2d 505 (Ct.App. 1988). Special damages "are such as naturally and proximately, but not necessarily, accrue from the unlawful acts alleged" Epstin v. Berman, 78 S.C. 327, 330, 58 S.E. 1013, 1015 (1907). South Carolina courts have held that in an action for conspiracy resulting in damages to a business, special damages may include loss of profits. Charles v. Texas Co., 199 S.C. 156, 18 S.E.2d 719 (1942).

The Appellants argue only that Jenkins failed to establish the special damages element of conspiracy; therefore, this is the only issue before the Court. In the initial Complaint, Jenkins specifically alleged that the conspiracy alone resulted in special damages, including loss of profits. (R. p. 7). Jenkins did not allege that the loss of profits were incurred due to any of the other causes of action. (R. pp. 4-8).

The evidence and testimony presented at trial established that Jenkins' special damages included the loss of profits caused by the conspiracy, as well as damages to his business which forced him to purchase a new spreader truck so that he could compete with the conspirators, which are recoverable under a cause of action of conspiracy. In Charles v. Texas, the South Carolina Supreme Court considered what damages are recoverable by a business which is harmed by a competitor's conspiratorial actions:

While speculation may not furnish a foundation for a jury award, common sense and business experience combine with fundamental legal concepts to entitle the plaintiff in cases of the present character to recover a sum that takes into account not only the specific items of loss and damage traceable to the acts of the defendants in specific transactions, and the loss and damage inflicted on the plaintiff in the destruction of particular items of his business; he also is entitled to recover some reasonable amount that will compensate him for the loss of profits that he will sustain by reason of the permanent damage done his business, insofar as a determination on this subject can be reached from the evidence.

Id. at 727-28. The testimony and evidence proffered at trial established Jenkins' claim of special damages, including lost profits. Jenkins' uncontroverted testimony at trial, supported by a spreadsheet reflecting revenue generation which was entered into evidence, was that he could not operate his spreading business for 8.16 days, resulting in a loss of \$5,891.00. (R. p. 180, line 17 – p. 181, line 2; R. pp. 15 - 17; R. pp. 18 - 36). While Jenkins' lost profits naturally and proximately flowed from the Appellants' bad acts, they did not necessarily result from the wrong, as Jenkins may have very well been able to continue to operate his business under a variety of alternative conditions. Because Jenkins' lost profits were an aspect of damages that were a result of the conspiracy cause of action alone, which naturally and proximately accrued from the Appellants' unlawful acts, they constitute special damages.

In addition to the lost profits suffered by Jenkins as a result of the conspiracy, he was also forced to purchase a larger spreader truck so that he could continue to compete with the Appellants.

Jenkins testified that as a result of the conspiratorial actions of the Appellants, he purchased a new spreader truck for \$38,272, as he was determined "that [he] was not going to let somebody put [him] out of business." (R. p. 187, line 12 – p. 188, line 8). In addition to the loss of profits, Jenkins' purchase of the new truck constitutes special damages resulting from the civil conspiracy.

Finally, Jenkins also testified that he incurred costs of \$2,035 related to the award which he paid for information leading to the identification of the person responsible for the malicious destruction of his truck. (R. p. 183, line 25 – p. 185, line 24). Certainly this expense was not related to any of the other causes of action and was appropriately regarded as special damages by the trial court.

Accordingly, because the trial judge's decision to deny the Appellants' motion for directed verdict as to conspiracy is supported by the evidence and testimony, it does not constitute an abuse of discretion and should be upheld.

II. The trial court did not abuse its discretion in denying the Appellants' motion for directed verdict on the cause of action of conversion.

The Appellants contend that the trial court abused its discretion in denying the Appellants' motion for directed verdict as to the Plaintiff's claim of conversion. The Appellants argue that conversion is limited to those serious, major and important interferences with the right to control the chattel which justify requiring the defendant to pay its full value, and because the Appellants' interference with Jenkins' truck was not serious, he cannot recover. To the contrary, Jenkins asserts that the Appellants' actions constitute such an interference as to support a cause of action for conversion, and there was ample testimony and evidence set forth at trial to support the jury's verdict against the Appellants.

The South Carolina Rules of Civil Procedure require a party to identify the specific grounds for a directed verdict motion. Rule 50(a), SCRPC. Issues not raised in a motion for directed verdict

motion at trial will not be determined for the first time on appeal. Austin v. Independent Life and Accident Ins. Co., 296 S.C. 156, 370 S.E.2d 918 (Ct.App. 1988). The Appellants only argued in support of their motion for directed verdict that “there is no allegation that the Defendant has exercised the right of ownership over goods or property of the Plaintiff, [and] that he has exercised any type of dominion or control over the objects.” (R. p. 264, lines 15-18). Thus, the Appellants are limited to this issue alone on appeal and cannot now raise additional grounds to support their position. Holy Loch Distrib., Inc., v. Hitchcock, 340 S.C. 20, 24, 531 S.E.2d 282, 284 (2000) (“In order to preserve an issue for appellate review, the issue must have been raised to, and ruled upon by the trial court.”).

Conversion is the unauthorized assumption and exercise of the right of ownership over the goods or personal chattels of another to the alteration of the condition or the exclusion of the owner’s rights. Crane v. Citicorp Nat’l Services, Inc., 313 S.C. 70, 437 S.E.2d 50 (1993). Conversion is also the illegal use, misuse, or detention of another’s chattel to the exclusion of the owner’s rights. Hite v. Thomas and Howard Co. of Florence, 305 S.C. 358, 409 S.E.2d 340 (1991). South Carolina law is well settled that one can establish conversion against a party or entity through the actions of its agents. Hunt v. Jordan, 286 S.C. 340, 333 S.E.2d 569 (Ct.App. 1985).

Jenkins established at trial that the Appellants, acting through their agents, damaged his spreader truck and his business by pouring sugar into the truck’s gas tank. By damaging Jenkins’ spreader truck, and thereby altering its condition, the Appellants assumed without authority and exercised the right of ownership over the truck. This was an illegal misuse and detention of Jenkins’ personal property. In fact, Jenkins explicitly testified that the Appellants “took control of that truck the moment [they] put that sugar in it and [he] had no use of it.” (R. 213, lines 4-5). There was sufficient evidence and testimony presented at trial for a jury to conclude that the

Appellants converted Jenkins' truck. The trial court appropriately charged the jury and after considering the evidence and testimony, the jury awarded Jenkins actual damages of \$28,000.00. The jury's province should not be invaded by reversing this award.

Jenkins regards the issues raised by the Appellants pertaining to damages as issues which should not be addressed by this Court since they were not raised below; however, should the Court wish to address these issues, Jenkins submits that while the Appellants cite a comment to the Restatement of Torts (Second) for the proposition that the damage to property must equal the full value of the converted property to recover under conversion, this is an overstatement of the premise. In fact, the same treatise offers a more complete explanation of the damages recoverable pursuant to conversion:

In many cases this becomes a question of degree, as to which no fixed rule can be stated. If the identity of the chattel is changed, as when grapes are made into wine, lumber into logs, or cloth into clothing, there is clearly a sufficient alteration for a conversion of grapes, lumber, or cloth. But even though there is no such change to identity, the chattel may be so materially altered that its essential character is changed, and such a change is sufficient for conversion. This is true, in general, whenever the change materially affects the value of the chattel to the plaintiff for the normal uses to which such chattels are put. If a horse is permanently lamed, it remains a horse, the owner may still be in possession, and the horse may have value to a glue works, but it has become useless for the ordinary purposes of a horse. In such a case, there is a conversion.

Restatement (Second) of Torts § 226 cmt. d (1965). The Restatement section cited by the Appellants also identifies factors to consider in determining the seriousness of the interference and the justice of requiring the actor to pay the full value of the chattel: 1) the extent and duration of the actor's exercise of dominion or control; 2) the actor's intent to assert a right in fact inconsistent with the other's right of control; 3) the actor's good faith; 4) the extent and duration of the resulting interference with the other's right of control; 5) the harm done to the chattel; and 6) the inconvenience and expense caused to the other. Restatement (Second) of Torts §. 222A (1965).

Jenkins testified that while the Appellants were sugaring the gas tank, and for the eight days thereafter, he was not able to use his truck. (R. p. 172, lines 9-11). Furthermore, Jenkins spent \$296.40 repairing the truck and estimates for repairs ranged from \$4,600-5,300. (R. p. 236, lines 19-22). Jenkins also testified that after his truck was damaged by the Appellants, he no longer had confidence in the truck as he did not believe that it was reliable. (R. p. 188, lines 9-12; R. p. 222, lines 4-16). In essence, the truck had lost all of its value and was no longer useable. Much like the horse referenced in the Restatement section above, Jenkins testified that the spreader truck is now lame and is no longer useful to him in his business; thus, it has been converted.

Jenkins testified that the value of the spreader truck exceeded \$10,000.00 and approached \$38,000.00. (R. p. 201, lines 11 – 17). After being properly charged on the elements of conversion by the trial judge, the jury considered all of the testimony and evidence and found for Jenkins on his claim for conversion. The jury had the discretion to determine whether Jenkins should recover the full value of the chattel. Because the testimony and evidence is susceptible of the reasonable inference that the Appellants converted Jenkins' truck, and that the truck's value was between \$10,000.00 and \$38,000.00, a jury issue was created and the Appellants' motion for directed verdict was appropriately denied.

III. The trial court did not abuse its discretion in denying the Appellants' motion for directed verdict and for a new trial *nisi remittitur* on the cause of action of trespass.

The Appellants contend that the trial court abused its discretion in denying their motion to dismiss and their motion for a new trial *nisi remittitur* regarding the cause of action of trespass. To the contrary, Jenkins presented testimony and evidence of trespass against his personal property at trial which supported the jury's verdict of actual damages, and as such, the trial court properly denied the Appellants' motions for directed verdict and new trial *nisi remittitur*.

A motion for a new trial *nisi remittitur* asks the trial court to reduce the verdict because the verdict is merely excessive. O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993). The denial of a motion for a new trial *nisi remittitur* is within the trial court's discretion and will not be reversed unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law. Chapman v. Upstate RV & Marine, 364 S.C. 82, 88-89, 610 S.E.2d 852, 856 (Ct.App. 2005). If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, or prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute. Id. Compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur*. Pelican Bldg. Ctrs. v. Dutton, 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993). Great deference is given to the trial judge "who heard the evidence and is more familiar with the evidentiary atmosphere at trial," and who "possesses a better-informed view of the damages than the appellate court." Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct.App. 1996) citing Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993).

Trespass is an interference with one's right to exclusive, peaceable possession of property. Ravan v. Greenville County, 315 S.C. 447, 434 S.E.2d 296 (Ct.App. 1993). In order to establish trespass, the Plaintiff must only establish legal possession, voluntary entry on the property by the Defendant, and that the entry was without the Plaintiff's permission. T.J. Ervin, *S.C. Request to Charge – Civil Section 5-21*. Trespass has been held to include damage, destruction, unpermitted use, and improper movement of personal property where the interference was direct and forcible. Prosser Section 14 at 85. The Court in Barbee v. Winnsboro Granite Corp., 190 S.C. 245, 2 S.E.2d 737 (1939), held that one commits a trespass to personal property if that property is destroyed or

injured. The evidence presented at trial established that the Appellants intentionally damaged a truck owned by Jenkins without permission. Thus, the elements of trespass were met.

The Appellants rely upon Young v. Century Lincoln-Mercury, 302 S.C. 320, 396 S.E.2d 105 (Ct. App. 1989), for the assertion that the difference between trespass and conversion is that recovery in trespass is limited to the diminished value of the chattel because of any damage to it or for the damage to one's interest in its possession or use. That case does not stand for this proposition and does not appear to even discuss this distinction. Comment c to Restatement (Second) of Torts § 222A, also cited by the Appellants, however, states that damages are usually, *although not necessarily*, less than the full value of the chattel itself. (*emphasis added*) This Restatement section explicitly states that the plaintiff may recover for the diminished value of his property because of any damage to it, or for the damage to his interest in its possession or use. Damages recoverable under trespass are not necessarily less than the full value of the property trespassed against. Thus, Jenkins could arguably recover the full value of the truck which was damaged by the Appellants. As indicated above, Jenkins testified that the value of the truck was between \$10,000.00 and \$38,000.00. Therefore, assuming that the jury awarded \$28,000.00 on the trespass cause of action, this award was appropriate and should stand.

It should be noted, however, that it is now impossible to determine the amount awarded by the jury on the trespass claim. The Appellants' suggestion that the jury awarded Jenkins \$28,000.00 on his trespass claim amounts to pure speculation. The verdict form submitted to the jury did not identify the amount of damages allocated to each cause of action. Furthermore, because the Appellants failed to object to the verdict form, and actually contributed to its drafting, they cannot now object to the verdict form, nor can they speculate as to the jury's intent. (R. p. 400, line 23 – p. 401, line 1). Because the verdict is supported by the testimony and evidence, explicitly addressed

by the trial court, it properly exercised its discretion in refusing to invade the province of the jury and by denying the Appellants' motions for directed verdict and for a new trial *nisi remittitur*.

IV. The trial court did not abuse its discretion in permitting Jenkins' expert to testify.

The Appellants argue that the trial court erred by allowing the Plaintiff's witness, Buford Stokes, to testify as an expert. The Appellants contend that Stokes was not qualified to testify as an expert because he testified concerning matters about which he had no personal knowledge. They also argue that they were prejudiced by Stokes not being identified as an expert prior to trial. The trial court, however, appropriately considered these arguments and the law governing the issues and disagreed; thus, it did not abuse its discretion in permitting Stokes to testify as an expert in motor vehicle mechanics.

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, counsel has a duty to inform the opposing party of "any expert witness whom the party proposes to use as a witness at the trial of the case." Rule 33(b)(7), SCRPC. The rule also imposes an ongoing duty upon each party to supplement their answers to opposing counsel's interrogatories to reflect the addition of witnesses or the intention to call them as an expert witness. *Id.* 33(b). When counsel fails to abide by these rules, specifically by not informing his opposition of the intention to call a witness as an expert, the court must decide whether exclusion of the witness or not qualifying him as an expert is appropriate and necessary to prevent undue prejudice to the adverse party.

It is well established that under South Carolina law, the admission of an expert, just as the admission of evidence, "is a matter addressed to the sound discretion of the trial judge and absent a clear abuse of discretion amounting to an error of law, the lower court's ruling will not be disturbed on appeal." Hofer v. St. Clair, 298 S.C. 503, 513, 381 S.E.2d 736, 742 (1989); See Conner v. City of Forest Acres, 363 S.C. 460, 611 S.E.2d 905 (2005). More specifically, "where

a party fails timely to disclose the identity of an expert witness, the question of whether the witness' testimony may be received in evidence is left largely to the discretion of the trial judge."

Tribble v. H.M. Hentz, 285 S.C. 616, 618, 330 S.E.2d 560, 561 (1985) *citing* Jackson v. H & S Oil Co., Inc., 263 S.C. 407, 211 S.E.2d 223 (1975).

Recently, the Court of Appeals, considering the holding in Jumper v. Hawkins, noted:

Before imposing the sanction of excluding a witness, a trial court is required to consider and evaluate several factors: (1) the type of witness involved; (2) the content of the evidence emanating from the proffered witness; (3) the nature of the failure or neglect or refusal to furnish the witness' name; (4) the degree of surprise to the other party, including the prior knowledge of the name of the witness; and (5) the prejudice to the opposing party.

Bryson v. Bryson, 378 S.C. 502, 506-507, 662 S.E.2d 611, 613 (Ct.App. 2008) *citing* Jumper v. Hawkins, 348 S.C. 142, 150, 558 S.E.2d 911, 915 (Ct.App. 2001). In *Bryson*, the Court of Appeals upheld the trial judge's decision to exclude a witness whose name was not provided to opposing counsel until the morning of the day he was to testify. The *Bryson* court found that the trial judge properly considered the *Jumper* factors in determining whether opposing counsel was unfairly surprised and therefore prejudiced by the offering of the witness. *Id.* In a similar case, the Supreme Court upheld the trial court's exclusion of expert witness testimony in Bensch v. Davidson because of the Respondent's failure to disclose the witness as an expert. 354 S.C. 173, 580 S.E.2d 128 (2003). The trial court evaluated whether to allow the witness to testify as an expert pursuant to the *Jumper* factors, and as such, the Supreme Court did not disturb the trial court's conclusion. 354 S.C. 173, 182. As these cases demonstrate, as long as the trial court considers the five *Jumper* factors in light of the particular circumstances of the case, its decision to either exclude or qualify an expert witness should not be overturned on appeal absent a showing of an abuse of discretion amounting to an error of law.

Admittedly, Plaintiff's counsel's failure to disclose his plans to call Stokes as an expert witness at trial, although innocent, violated Rule 33. However, the trial court properly evaluated whether to allow Mr. Stokes to be qualified as an expert under the mandated considerations articulated in *Jumper* and the facts and circumstances support its decision to allow Stokes' testimony. First, when the issue of whether to allow Stokes to testify as an expert witness arose, the Court held an *in camera* examination of the witness. Following Stokes' voir dire testimony, the Court stated, "I will review the criteria under that Jumper versus Hawkins decision, and I will let you know my ruling when we come back." (R. p. 100, lines 18-20) Upon reconvening, the Court prefaced its inquiry by expressly stating that "as to the issue of excluding Mr. Stokes as an expert witness, based on Jumper versus Hawkins . . . I find that Mr. Stokes was proffered as a witness earlier." (R. p. 101, lines 4-7).

The Court addressed the requisite *Jumper* factors before making its determination. Already having ascertained the type of witness involved and the nature of the evidence emanating from him (factors 1 and 2), the trial judge inquired as to the reason Stokes had not been listed. (R. p. 101, lines 7-8). After learning that the failure to disclose the witness as an expert was due to innocent oversight by counsel, the Court found that it "certainly wasn't any kind of bad faith" (factor 3). (R. p. 101, line 7 – p. 102, line 1.) Finally, the trial court found that "based on the fact that this witness did testify at his deposition about the same thing he will testify to here today, and now that Mr. Childs has had a chance to voir dire him, I find that the degree of surprise and degree of prejudice is low" (factors 4 and 5). (R. p. 102, lines 2-6).

It should be noted that contrary to the Appellants' argument at trial and on appeal, counsel for the Appellants was aware at Stokes' deposition that Respondent would make a determination later as to whether he would identify Stokes as an expert, and also had the

opportunity to question Stokes regarding his experience as a mechanic with cars which had been sugared. (R. p. 101, lines 7-12). The court also noted an additional factor mitigating the degree of prejudice to the opposing party: "In ruling I am taking into account the fact that the lawyers have represented to me that there is going to be other expert testimony on this same manner. So this would not be the only expert testimony the jury would hear." (R. p. 102, lines 17-21).

Thus, after express consideration of all of the *Jumper* factors in light of the totality of the circumstances, the court in its discretion properly allowed Stokes to testify as to the effects of introducing sugar into a vehicle's gas tank. The Appellate Court can only overturn this decision if it finds the trial court abused its discretionary power to such a degree that it amounts to an error of law. No such error exists when one considers the court's analytical approach along with the evidence and testimony presented at trial.

The Appellants also contend that the trial court erred in qualifying Stokes as an expert pursuant to South Carolina Rules of Evidence 602. This argument is without foundation as Stokes was qualified to testify as an expert on the issue of the effect that sugar has on an automobile's engine system based upon his personal experience. South Carolina Rule of Evidence 602 prohibits a witness from testifying to a particular matter unless he has personal knowledge of it. Pursuant to the Rule, "evidence to prove personal knowledge, may, but need not, consist of the witness' own testimony." Rule 602, SCRE. Rule 602 is subject to South Carolina Rule of Evidence 703 with regard to expert witness testimony. Rule 703 states that "the facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert." Under the Rule, these "facts or data need not be admissible in evidence." Rule 703, SCRE.

Stokes testified that he was a C.E.S. certified mechanic for two years at a car dealership, during which time he saw and worked on two engines that had sugar introduced into the gas tank. (R. p. 96, line 25 – p. 97, line 16; R. p. 104, line 21 – p. 106, line 22). His opinion that sugar has adverse effects on a car's engine was based upon facts that he perceived working as a mechanic, thereby affording him personal knowledge on the matter. Appellants contend that Stokes could not know that sugar was actually introduced into the gas tanks and instead relied on the owners' statements to that effect. While the owners' statements are hearsay, Rule 703 allows an expert's opinion to be based on facts not admissible in evidence as long as those facts are "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences." Rule 703, SCRE. Therefore, the fact that the owner's statements are hearsay is of no consequence as mechanics commonly rely on the car owner's statements to inform them of the cause of the particular problem.

In sum, the trial court appropriately exercised its discretion in allowing Stokes to testify as an expert upon considering the factors outlined in *Jumper* and Rule 602.

V. The trial court did not abuse its discretion in permitting the jury's award of punitive damages to stand.

The Appellants contend that the trial court erred in refusing to reduce the punitive damages award. The jury awarded Jenkins \$28,000.00 in actual damages and \$100,000.00 in punitive damages. Based upon the amount of actual damages and the considerations outlined below, an award of \$100,000.00 in punitive damages was not excessive and the trial court appropriately exercised its discretion in allowing the award to stand.

When "determining whether the evidence is sufficient to support an award of punitive damages, the Court of Appeals will consider the evidence in the light most favorable to the prevailing party and will give the prevailing party the benefit of every inference that can

reasonably be drawn on his or her behalf.” Cash v. Kim, 288 S.C. 292, 296, 342 S.E.2d 612, 64 (Ct.App. 1986) (internal citations omitted). The court “will also assume the truth of the evidence that supports the recovery of punitive damages” while disregarding “entirely evidence to the contrary.” Id.

Two preeminent decisions control the assessment of whether punitive damages are impermissibly and/or unconstitutionally excessive. Due to the fact that “punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment.” Atkinson v. Orkin Exterminating Co., 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004). In order to comport with due process, the trial court must conduct a post-verdict evaluation of the punitive damages award considering the three guideposts as articulated by the United States Supreme Court in BMW of North American, Inc. v. Gore, 517 U.S. 559, 116 S.Ct. 1589 (1996), as well as the eight factors identified by the South Carolina Supreme Court in Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991).

The *Gamble* factors are: (1) the defendant’s degree of culpability; (2) the duration of the conduct; (3) the defendant’s awareness or concealment; (4) the existence of similar past conduct; (5) the likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant’s ability to pay; and (8) other factors deemed appropriate. 305 S.C. at 111-12. Also, a trial court must review a jury’s punitive damage awards under the three *Gore* guideposts considering: “(1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized

or imposed in comparable cases.” James v. Horace Mann Ins. Co., 371 S.C. 187, 196, 638 S.E.2d 667, 671 (2006); See Gore 517 U.S. at 575.

Based upon the *Gore* guideposts and the *Gamble* factors, which were explicitly considered by the trial court, the award of \$100,000.00 was in fact appropriate. Citing dicta from Pacific Mutual Life Insurance Company v. Haslip, 499 U.S. 1, 111 S.Ct. 1032 (U.S. 1991), the Appellants argue that the jury’s award of actual and punitive damages in this matter were not in an acceptable ratio with one another. In so arguing, the Appellants suggest that the actual damages in this case were only \$5,300.00. Of course, this is not supported by the verdict form. Not only is Appellants’ focus misplaced, but even using their proposed damages figures, they fail to mention or recognize either Cock-N-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 466 S.E.2d 727 (1996), or Collins Entm’t Corp. v. Coats & Coats Rental Amusement, 355 S.C. 125, 584 S.E.2d 120 (Ct.App. 2003), respectively awarding punitive damages 28 times and 10 times the actual damages. Both of these cases were cited by the trial judge. (R. p. 410, lines 11-16). Using either the actual damages award determined by the jury, or the proposed actual damages suggested by the Appellants, the punitive damages to actual damages ratio did not violate due process.

More importantly, “the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant’s conduct.” Gore, 517 U.S. at 575. The Appellants conduct was extremely reprehensible, as recognized by the trial judge. (R. p. 409, lines 16-19).

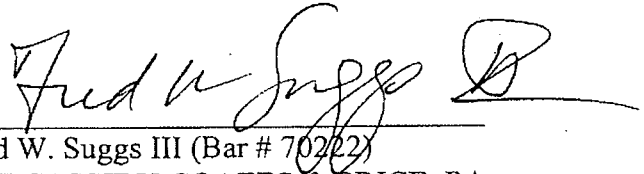
The trial court considered the *Gamble* factors and the *Gore* guideposts in determining that the jury’s punitive damages award did not violate due process. (R. p. 408, line 23 – p. 410, line 20). Because the Court recognized the appropriate standard for analysis of the

constitutionality of a punitive damages award, and considered whether evidence existed to support the award, it appropriately refrained from invading the province of the jury by refusing to reduce the punitive damages award.

Conclusion

Based upon the foregoing authorities and arguments, the Respondent respectfully submits that the trial court properly denied the Appellants' motion for directed verdict, motion for a new trial *nisi remittitur*, motion to exclude the Plaintiff's expert witness, and motion to reduce the award of punitive damages.

Respectfully submitted,

A handwritten signature in cursive script, reading "Fred W. Suggs III", followed by a stylized monogram or flourish.

Fred W. Suggs III (Bar # 70222)
ROE CASSIDY COATES & PRICE, PA
P. O. Box 10529
Greenville, South Carolina 29603
(864) 349-2600

Attorney for Respondent

Greenville, South Carolina

August 1, 2009

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO.: 02 CP-23- 0779

Kenneth B. Jenkins

Benjamin Scott Few
+ Few Farms, Inc.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

☐ JURY VERDICT:

This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED: CHECK REASON:

☐ Rule 12(b), SCRCP: ☐ Rule 41(a), SCRCP: (Vol. Nonsuit):
☐ Rule 43(k), SCRCP (Settled):
☐ Other _____

☐ ACTION STRICKEN: CHECK REASON:

☐ Rule 40(j), SCRCP: ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award.
☐ Other _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order: ☐ Statement of Judgment by the Court.

Defendants' motion for new trial is: and
JNOV denied. Punitive Damages award satisfied
Gamble v. Stevenson and BMW v. Gore for reasons
Dated at Greenville, South Carolina, this 26th day of August, 2008. more fully set forth on record.

Court Reporter: L. Coconut Pantseri

Hill
PRESIDING JUDGE

This judgment was entered on the 27 day of Aug, 2008, and a copy mailed first class this 27 day of Aug, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

Fred Suggs

✓ P. Robert C Childs III

Consumer Fraud Section At.
ATTORNEY(S) FOR THE PLAINTIFF(S) office

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
C.A. No.: 2007-CP-23-779

Kenneth B. Jenkins,

Plaintiff,

v.

Benjamin S. Few and Few Farms, Inc.,

Defendant.

VERDICT FORM

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1. As to the claim for Unfair Trade Practice, we the jury, by unanimous consent, find:

☒ for Defendant Benjamin S. Few and Few Farms, Inc.

☐ for Plaintiff Kenneth B. Jenkins.

2. As to the claim for Trespass to Personal Property, we the jury, by unanimous consent, find:

☐ for Defendant Benjamin S. Few and Few Farms, Inc.

☒ for Plaintiff Kenneth B. Jenkins.

3. As to the claim for Conversion, we the jury, by unanimous consent, find:

☐ for Defendant Benjamin S. Few and Few Farms, Inc.

☒ for Plaintiff Kenneth B. Jenkins.

4. As to the claim for Civil Conspiracy, we the jury, by unanimous consent, find:

☐ for Defendant Benjamin S. Few and Few Farms, Inc.

☒ for Plaintiff Kenneth B. Jenkins.

5. We find Plaintiff Kenneth B. Jenkins should be awarded \$ 28,000 actual damages.

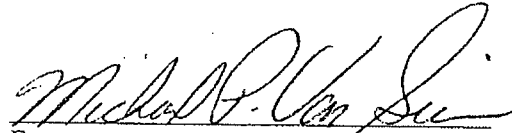
*6. As to Kenneth B. Jenkins' claim for punitive damages against Benjamin S. Few and Few Farms, Inc, we the jury, by unanimous consent, find:

☒ for Plaintiff Kenneth B. Jenkins in the amount of \$ 100,000 punitive damages.

_____ We find punitive damages should not be awarded.

*Answer question 6 only if you have awarded Plaintiff actual damages under any of the above questions.

August 26, 2008
Greenville, South Carolina


Foreperson

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

CASE NO. 2007-CP-23- 779

Kenneth B. Jenkins,)

Plaintiff,)

COMPLAINT

(JURY TRIAL DEMANDED)

v.)

Benjamin Scott Few and
Few Farms, Inc.,)

Defendants.)

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The Plaintiff, Kenneth B. Jenkins, complaining of the Defendants, would respectfully allege and show unto the Court as follows:

GENERAL ALLEGATIONS

1. The Plaintiff, Kenneth B. Jenkins (hereinafter referred to as "Jenkins"), is a resident of the County of Greenville, State of South Carolina.
2. The Defendant, Benjamin Scott Few (hereinafter referred to as "Few"), is a citizen and resident of the County of Greenville, State of South Carolina.
3. The Defendant, Few Farms, Inc. (hereinafter referred to as "Few Farms"), is a corporation that is organized and exists under the laws of one of the states of the United States of America and does business in the County of Greenville, State of South Carolina.
4. Jenkins owns and operates a fertilizer business which provides services to farmers and landowners in Greenville County, South Carolina. These services include, but are not limited to, using a specialized truck to spread fertilizer in pastures and fields for his customers.

SCANNED

5. Few owns and operates a like business, Few Farms, which also offers services to farmers and landowners, including spreading fertilizer on fields and pastures in Greenville County, South Carolina.

6. Shortly prior to February 24, 2004, Few, acting on behalf of himself and Few Farms, conspired with and hired two individuals to place sugar in the fuel system of Jenkins' 1971 Ford F700 truck, which he used to provide services for his fertilizer business. Few did so in an attempt to hinder Jenkins' ability to compete with Few Farms. Few paid the individuals \$100.00 to perform the sabotage.

7. The two individuals hired and paid by Few did, in fact, enter onto Jenkins' property and pour sugar in the fuel system of Jenkins' truck, which resulted in the destruction of the truck, as well as the loss of revenue for the nine days that Jenkins was unable to provide services due to the sabotage.

8. Thereafter, shortly prior to February 24, 2004, fearing that the sabotage had failed, Few again hired the same two individuals to pour sugar in the fuel system of Jenkins' truck, which the individuals again performed.

9. In addition to that which is outlined above, Few informed Jenkins' customers that Jenkins was a dishonest businessman, as well as other defamatory comments.

10. At all times pertinent hereto, Few was acting on behalf of himself, as well as Few Farms, Inc.

FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

(TRESPASS)

11. The allegations contained in paragraphs 1- 10 are alleged as if repeated verbatim.

12. At all times pertinent hereto, Jenkins was the legal owner and possessor of the Ford truck.

13. The individuals hired by and acting on behalf of the Defendants voluntarily entered onto the real property owned by Jenkins, as well as into the property owned by Jenkins, consisting of the Ford truck, without Jenkins' permission.

14. The actions consisting of placing sugar in the fuel system of the Ford truck owned by Jenkins constitutes trespass against Jenkins' property, and proximately caused Jenkins actual damages.

FOR A SECOND CAUSE OF ACTIONS AGAINST ALL DEFENDANTS

(CONVERSION)

15. The allegation contained in paragraphs 1-14 are alleged as if repeated verbatim.

16. As described in this Complaint, the Plaintiff had an interest in the Ford truck that was converted by the Defendants.

17. By placing the sugar in the fuel system of the truck, the Defendants converted the truck to their own use or to the use of entities controlled by them.

18. This use was without the Plaintiff's permission and/or knowledge.

19. The conversion by the Defendants resulted by way of illegal, tortious, fraudulent, and/or other wrongful conduct.

FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

(CONSPIRACY)

20. The allegations contained in paragraphs 1- 19 are alleged if repeated verbatim.

21. The Defendants, in conjunction with the two individuals hired by them, joined together in an effort to injure and damage the Plaintiff and his business.

22. Upon information and belief, the common and shared purpose of the enterprise, or conspirators, was the Defendants' financial gain by interfering with and injuring the Plaintiff and his business.

23. These actions resulted in special damages, including, but not limited to, the destruction of the Ford truck, and the loss of revenue for the nine days which Jenkins could not operate his business.

FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDNATS

(UNFAIR TRADE PRACTICES ACT)

24. The allegations contained in paragraphs 1- 23 are alleged if repeated verbatim.

25. The described conduct of the Defendants was, and is, unfair and deceptive, and violates the South Carolina Trade Practices Act, South Carolina Code Ann. § 39-5-10, et seq. (1976).

26. The unfair and deceptive conduct of the Defendants affects the public interest, is capable of repetition by the Defendants, and was in fact repeated through the course of dealing.

27. The Defendant knew or should have known that their conduct was a violation of the South Carolina Trade Practices Act, and therefore willfully and knowingly violated the Act.

28. The unfair and deceptive conduct of the Defendants proximately caused the Plaintiff's actual damages.

29. The Plaintiff is entitled to an award of this Court for the actual damages trebled, plus the costs and attorney's fees incurred by the Plaintiffs in the prosecution of this action.

FOR A FIFTH CAUSE OF ACTION AGAINST ALL DEFENDNATS

(DEFAMATION)

30. The allegations contained in paragraphs 1- 29 are alleged if repeated verbatim.

31. The Defendant, Few, acting on behalf of himself as well as Few Farms, maliciously informed customers of the Plaintiff that he was a dishonest businessman.

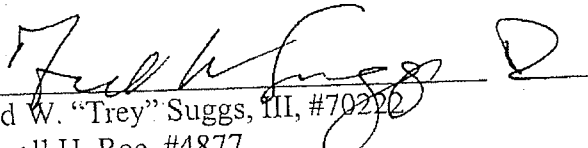
32. This statement is false, as well as malicious, and constitutes slander per se.

33. The defamatory statements resulted in damages to the Plaintiff and his business.

WHEREFORE, having fully set forth this Complaint against the Defendants, the Plaintiff prays that the Court:

- a) award the Plaintiff judgment against all Defendants for its actual damages, trebled, plus the costs and attorney's fees incurred by the Plaintiff in the prosecution of this action;
- b) punitive damages; and
- c) for such other and further relief that may be just and proper.

ROE CASSIDY COATES & PRICE, P.A.


Fred W. "Trey" Suggs, III, #70222
Carroll H. Roe, #4877
P.O. Box 10529
Greenville, SC 29603
(864) 349-2600
Attorneys for Plaintiff

Greenville, South Carolina
February 2, 2007

) IN THE COURT OF COMMON PLEAS
)
) CASE NO. 2007-CP-23-779

SUMMONS

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Kenneth B. Jenkins

Plaintiff,

CIVIL ACTION COVERSHEET

2007 - CP - 23- 779

vs.

Benjamin Scott Few and
Few Farms, Inc.

Defendant.

(Please Print)

Submitted By: Fred W. Suggs, III

Address: P.O. Box 10529
Greenville, SC 29603

SC Bar #: 70222

Telephone #: 864-349-2600

Fax #: 864-349-0303

Other:

E-mail: tsuggs@roecassidy.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)

- Administrative Law/Relief**
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex/Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☒ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)

Submitting Party Signature:



Date: February 2, 2007

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY
Florence, Clatsop, Lexington, Richland, Greenville and Anderson

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

Plf - Suggs
Def - Childs

STATE OF SOUTH CAROLINA
CERTIFICATE OF TITLE
OF A VEHICLE

VEHICLE ID NUMBER YEAR MAKE BODY STYLE MODEL
F70EUL56261 71 FORD TRK 6261

WEIGHT NEW/USED TITLE NUMBER ODOMETER DATE ISSUED
103 USED T 02574529 E * 08-13-1997

FULL NAME OF OWNER(S) VEHICLE BRAND(S)
JENKINS KENNETH B *EXEMPT
1032 CAME CREEK ROAD
TAYLORS SC 29687

THE SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY
THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE
DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

WILLIAM E. GUNN
INTERIM DIRECTOR
DEPT. OF PUBLIC SAFETY

DAVID M. BRASLEY
GOVERNOR

KEEP IN SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE

05632853

PLAINTIFF'S
EXHIBIT

1

APPENDIX 80

Delta Power System Inc.
 1004 Cedar Lane Road
 Greenville, SC 29617
 Phone 864-271-1967
 Fax 864-235-2248

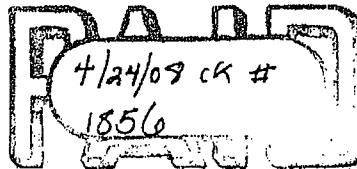
Invoice

Date	Invoice #
4/24/2008	5697-11

Bill To
Kenneth Jenkins P.O.Box 2298 Greer SC 29652

Odometer	Terms	Description
N/A		71 Ford F700 361 CID

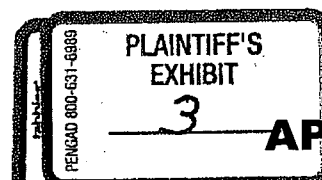
Quantity	Item	Description	Amount
	Service	Ck Engine For Possible Damage Due to Sugar in Fuel. Scope Engine to Analyze Primary & Secondary Wave Pattern. Read & Interpret Electrical Ignition Components. They are Ok. Test Engine Hard Components (Timing Chain, Distributor, Shaft's Gear & Dwell Lobe) They are Ok. Run Vacuum Probe to Lab Scope to Test Engine Performance at the Ring & Valve (Intake & Exhaust) Level. Test Results Indicate that Intake Valve and/or Exhaust Valve Are Slow Responding for Mechanical Movement. Also, in Some of the Piston Rings, Equipment Shows Sufficient Damage to Have Vacuum Levels to Rise Resulting in Power Loss.	285.00
	Shop Materials	Labor Subtotal	285.00
		Shop Supplies & Materials	11.40
		Sales Tax	0.00



	Total	\$296.40
	Payments/Credits	\$0.00
	Balance Due	\$296.40

Payment is due in full for services rendered. A \$25.00 storage fee will be charged for vehicles left more than three days after services are completed.

Customer Signature: _____



APPENDIX 81

Jenkin's SPREADER SERVICE

1/3

FERTILIZER & Lime 2/24/04 THRU 3/25/04

INVOICE #	DATE	COST	Sales	Rev.
328592	2/24/04	3201.0 -	3938.0	737.0
328593	2/25/04	1050.0 -	1306.0 1/3/day	253.0
	2/25/04	Down 2/3/day		
	2/26/04	Down		
	2/27/04	Down		
	2/28/04	Down		
	2/29/04	Sun		
328594	3/1/04	699.0 -	1134.0 1/2/day	435.0
	3/1/04	Down 1/2/day		
	3/2/04	Down		
	3/3/04	Down		
328597	3/4/04	1262.0 -	1512.0 250.0	450.0
328595	3/4/04	870.0 -	1070.0 200.0	
	3/5/04	Down		
	3/6/04	Down		
	3/7/04	Sun		
937729	3/8/04	2468.0 -	2979.0	511.0
328598	3/9/04	2501.0 -	3172.0	670.0
328598	3/10/04	1062.0 -	1346.0 284.0	803.0
328599	3/10/04	2595.0 -	3114.0 519.0	
328600	3/11/04	765.0 -	943.0 178.0	
328599	3/11/04	980.0 -	1176.0 196.0	788.0
937730	3/11/04	325.0 -	477.0 152.0	
937731	3/11/04	1214.0 -	1476.0 262.0	

PLAINTIFF'S
EXHIBIT

APPENDIX 82

ENGAL-031-6889

INVOICE #	DATE	COST	Sales	Rev.
937726	3/12/04	2900.0 -	3594.0	695.0
937727	3/13/04	128.0 -	256.0	Lime 128.0 → 1181.0
937734	3/13/04	1248.0 -	2301.0	Lime 1053.0 →
937728	3/14/04 Sun		500.0	spreading only 500.0
937733	3/15/04	822.0 -	980.0	158.0 → 423.0
937732	3/15/04	1165.0 -	1431.0	265.0 →
937736	3/16/04	926.0 -	1154.0	228.0 → 689.0
937737	3/16/04	2078.0 -	2539.0	461.0 →
937739	3/17/04	612.0 -	765.0	153.0 →
937738	3/17/04	870.0 -	1026.0	156.0 → 595.0
937740	3/17/04	1236.0 -	1522.0	286.0 →
937741	3/18/04	4849.0 -	5871.0	1022.0
937743	3/19/04	1241.0 -	1480.0	1/2/day * 239.0
* 1/2/day not included in total comp's.				
937742	3/20/04	2251.0 -	2805.0	554.0 → 649.0
937743	3/20/04	535.0 -	630.0	95.0 →
	3/21/04 Sun			
937753	3/22/04	1244.0 -	1551.0	307.0 →
937751	3/22/04	128.0 -	256.0	128.0 → 1005.0
937744	3/22/04	2490.0 -	3060.0	570.0 →
937755	3/23/04	1222.0 -	1523.0	301.0 →
937745	3/23/04	556.0 -	763.0	147.0 → 744.0
937741	3/23/04	1401.0 -	1697.0	296.0 →

Invoice #	Date	Cost	Sales	Rev
937754	3/24/04	326.0	467.0	141.0
937755	3/24/04	552.0	591.0	39.0
937756	3/24/04	234.0	399.0	165.0
937758	3/24/04	358.0	476.0	118.0
937759	3/24/04	179.0	238.0	59.0
937746	3/25/04	348.0	630.0	282.0
937747	3/25/04	554.0	741.0	187.0
937748	3/25/04	625.0	785.0	160.0
937757	3/25/04	1342.0	1644.0	302.0
				522.0
				931.0

18.33/days TOTAL 13,603.00
 $18.83 \div 13,603.00 = 722.0/\text{day Avg.}$
 $8.16/\text{days Down} \times 772.0 = \$5891.00$

328592

De 2/24, 05/1

[REDACTED]

Customer's Order No. PC	Department	Date 2-25-04
Name [REDACTED]	Address [REDACTED]	
City, State, Zip [REDACTED]	29640	
Sold By	Cash	C.O.D.
Charge	On Acct.	Mdse. Retd.
Paid Out		

QTY	PRICE	AMOUNT
1		
2		
3	6.05	17-17-17 ^u 5 ^o 5
4	5.11	
5	5.11	
6	16.27	255 4148.00
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		

Received by

Keep this Slip for Reference

328593

2/24

Customer's Order No. F35800	Department 268-1699	Date 2/26/04
Name [REDACTED]	Address [REDACTED]	
City, State, Zip TR	29690	
Sold By	Cash	C.O.D.
Charge	On Acct.	Mdse. Retd.
Paid Out		

QTY	PRICE	AMOUNT
1		
2		
3	4.020T	18-23-10A w/s
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		

total 1093.00

mail check to
Kenneth Jenkins
1032 Camp Creek Rd
Taylors, 29687

Thank you

Received by

Keep this Slip for Reference

PLAINTIFF'S
EXHIBIT

5

5640 800-631-6009

Adams DC5808

Adams DC5808

APPENDIX 85

328594

3-1-04

Customer's Order No. <i>RC</i>	Department	Date <i>3/2/04</i>
Name [REDACTED]	[REDACTED]	
Address [REDACTED]	[REDACTED]	
City, State, Zip <i>Taylor SC 29687</i>	[REDACTED]	
Sold By	Cash	C.O.D.
	Charge	On Acct.
	Mdse. Retd.	Paid Out

QTY	DESCRIPTION	PRICE	AMOUNT
1			
2			
3	16 T Luma @ 32	512.00	
4			
5	2.06 T 17-17-17 44/523	302	622.00
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

TOTAL \$1134.00

mail check to
Kenneth Jenkins
1032 Camp Creek Rd
Taylor SC 29687
Thank you

Received by

Adams DC5808

Keep this Slip for Reference

328597

Customer's Order No. <i>RC</i>	Department	Date <i>3-04-04</i>
Name [REDACTED]	[REDACTED]	
Address [REDACTED]	[REDACTED]	
City, State, Zip <i>1 29651</i>	[REDACTED]	
Sold By	Cash	C.O.D.
	Charge	On Acct.
	Mdse. Retd.	Paid Out

QTY	DESCRIPTION	PRICE	AMOUNT
1			
2			
3			
4	5.04 T Luma	300	1512.00
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

Thank you
Set 3.75
200 per AC

Received by

Adams DC5808

Keep this Slip for Reference

328595

Customer's Order No. <i>RC</i>	Department	Date <i>3-4-04</i>
Name [REDACTED]		
Address [REDACTED]		
City, State, Zip <i>Greenville 29609</i>		
Billed By	Cash	C.O.D.
	Charge	On Acct.
	Mdse. Retd.	Paid Out

QUANTITY	DESCRIPTION	PRICE	AMOUNT
4.04	17-17-17 1/4 5% S	265	1070.00
Ken Jenkins			
Thank you			
Arrow Set 5.			
received by			

Keep this Slip for Reference

937729

del. 3-8-04

customer's order no. <i>RC</i>	phone [REDACTED]	date <i>3-15-04</i>
name [REDACTED]		
address [REDACTED]		
city, state, zip <i>Lan drum 29356</i>		
sold by	cash ☐ C.O.D. ☐	charge ☐ on acct. ☐
shipping information		

quantity	description	price	amount
1			
2	<i>6.08T</i>		
3	<i>6.08T</i>		
4	<i>12.16 TON'S 21-7-14 1/4 8% S</i>	<i>245</i>	<i>2979.00</i>
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
		<i>TOTAL</i>	<i>2979.00</i>
<i>Kenneth Jenkins</i>			
<i>1032 Camp Creek Rd</i>			
<i>Talors 29687</i>			
<i>Thank you</i>			
received by			

adams

keep this slip for reference

DC5808UV

APPENDIX 87

adams DC5808

328599

328598

Customer's Order No. <i>RC</i>	Department	Date <i>3-11-04</i>
Name <i>[Redacted]</i>		
Address <i>[Redacted]</i>		
City, State, Zip <i>Green</i>		
Sold By	Cash	C.O.D.
	Charge	On Acct.
	Mdse. Retd.	Paid Out

QUAN	DESCRIPTION	UNIT PRICE	AMOUNT
	<i>OK # 630</i>		
<i>6.05</i>			
<i>6.02</i>			
<i>4.56</i>			
<i>16.63</i>	<i>17-17-17 5% S</i>	<i>258</i>	<i>4290.0</i>
<i>2 Ton</i>	<i>17-17-17 Bag</i>	<i>242</i>	<i>484.0</i>
	<i>Total</i>		<i>4774.0</i>
	<i>Thank you</i>		
	<i>Set 3.5</i>		
	<i>40 to over</i>		

Received by

Adams DC5808

Keep this Slip for Reference

Customer's Order No. <i>RC</i>	Department	Date <i>3-10-04</i>
Name <i>[Redacted]</i>		
Address <i>[Redacted]</i>		
City, State, Zip <i>Green</i>		
Sold By	Cash	C.O.D.
	Charge	On Acct.
	Mdse. Retd.	Paid Out

QUAN	DESCRIPTION	UNIT PRICE	AMOUNT
<i>1</i>			
<i>2</i>			
<i>3</i>	<i>5.90T 33-00-00 10% S y John</i>		<i>4.75</i>
<i>4</i>	<i>6.07T "</i>		
<i>5</i>	<i>5.08T " Dave, Plau set</i>		<i>4.75</i>
<i>6</i>	<i>17.05 TONS</i>		<i>245 4518.00</i>
<i>7</i>			
<i>8</i>			
<i>9</i>			
<i>10</i>			
<i>11</i>			
<i>12</i>			
<i>13</i>			
<i>14</i>			
<i>15</i>			
<i>16</i>			
<i>17</i>			
<i>18</i>			
<i>19</i>			
	<i>Total</i>		<i>4518.00</i>
	<i>Please mail check to</i>		
	<i>Kenneth Jenkins</i>		
	<i>1032 Camp Creek Rd</i>		
	<i>Taylor</i>	<i>29687</i>	
	<i>Thank you</i>		

Received by

Adams DC5808

Keep this Slip for Reference

937730

Del 3-11-04

328600

customer's order no. <i>RC</i>		phone [REDACTED]	date <i>3-15-04</i>
name [REDACTED]			
address [REDACTED]			
city, state, zip <i>Gleek 29651</i>			
sold by	cash ☐ c.o.d. ☐	charge ☐ on acct. ☐	shipping information

quantity	description	price	amount
1			
2			
3	<i>1.51 Tons 17-17-17u 4/5% S</i>	<i>316</i>	<i>4770</i>
4			
5			
6	<i>meal check to</i>		
7			
8	<i>Kenneth Jenkins</i>		
9	<i>1032 Camp Creek Rd</i>		
0	<i>Taylor 29687</i>		
1			
2	<i>Thank you</i>		
3			
4			

received by

Customer's Order No. <i>RC</i>	Department	Date <i>3-11-04</i>
Name [REDACTED]		
Address [REDACTED]		
City, State, Zip <i>Summerville 29681</i>		
Sold By	Cash ☐ C.O.D. ☐	Charge ☐ On Acct. ☐
Mdse: Retd.		Paid Out

quantity	description	price	amount
1			
2			
3	<i>3.56 Ton 17-17-17u w/5% S</i>	<i>265</i>	<i>943.0</i>
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

Received by

937731

Del 3-11-04

937726

customer's order no. RC	phone [REDACTED]	date 3-15-04
name [REDACTED]		
address [REDACTED]		
city, state, zip 29651		
sold by [Signature]	cash ☐ c.o.d. ☐	charge ☐ on acct. ☐ shipping information

quantity	description	price	amount
6	10 Tons 20-10-10u w/10% S	242	1476.00
	Total	1476.00	
APPENDIX 90 Thank you			

received by

adams

keep this slip for reference

DC5808UV

ORDER INFO	customer's order no. RC	phone [REDACTED]	date 3/12/04
	name [REDACTED]		
	address [REDACTED]		
	city, state, zip 29651		
	sold by [Signature]	cash ☐ c.o.d. ☐	charge ☐ on acct. ☐ shipping information

quantity	description	price	amount
1			
2			
3	6.04 T 19-19-19u		
4	6.57 T		
5	12.16	285	3593.85
6			
7	Total	3593.85	
8			
9	CK NO. 3626		
10			
11	Kenneth Jenkins		
12	Set 4-25 @ 350 per hr		
13	Approx 73 hr		
14			

received by

adams

keep this slip for reference

DC5808UV

937727

customer's order no.	[REDACTED]	date	3/13/04
name [REDACTED]			
address [REDACTED]			
city, state, zip [REDACTED] 29356			
sold by	cash ☐	charge ☐	shipping information
	c.o.d. ☐	on acct. ☐	

quantity	description	price	amount
1			
2	8 Ton Lure	32.256	80
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			

Thank you

Set 4.25 @ 350 per Ac
 Apprais 73. Ac

937734

del 3-13-04

customer's order no.	[REDACTED]	date	3-15-04
name [REDACTED]			
address [REDACTED]			
city, state, zip [REDACTED]			
sold by	cash ☐	charge ☐	shipping information
	c.o.d. ☐	on acct. ☐	

quantity	description	price	amount
1			2301.0
2	78 tons Lure	29.50	2301.0
3	Apprais 50% Ac		
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			

Total \$2301.0

mail check to

Kenneth Jenkins
 1632 Camp Creek Rd
 Taylors 29687

Thank you

APPENDIX 91

937732

3-15-04

customer's order no. CIE 35981	phone	date 3-15-04
name [REDACTED]		
address [REDACTED]		
city, state, zip TR 29690		
sold by	cash ☐ c.o.d. ☐	charge ☐ on acct. ☐ shipping information

quantity	description	price	amount
1	5.00		
2	10 Tons 19-19-19a	280	1430.80
3			
4	Total	1430.80	
5			
6			
7	Kenneth Jenkins		
8			
9			
10	Thank you		
11			
12	ck# 2420		
13			
14			

received by

adams

keep this slip for reference

DC5808UV

937728

customer's order no.	phone	date 3-14-04
name [REDACTED]		
address [REDACTED]		
city, state, zip Worcester 29388		
sold by	cash ☐ c.o.d. ☐	charge ☐ on acct. ☐ shipping information

quantity	description	price	amount
1			
2			
3	50 Tons Lime Spreading 10		500.00
4			
5			
6	Kenneth Jenkins		
7	895-1681		
8			
9			
10	Thank you		
11			
12			
13			
14			

received by

adams

keep this slip for reference

DC5808UV

3-15-04

937733

customer's order no. <i>RC</i>	phone	date <i>3-15-04</i>
name [REDACTED]		
address [REDACTED]		
city, state, zip [REDACTED]		
sold by	cash ☐ c.o.d. ☐	charge ☐ on acct. ☐
shipping information		

quantity	description	price	amount
4	4.4 Ton 21-7-14 1/2 8" S	245	980.00
	16 to twenty AC		
	more look 15 AC		
	21-7-14		
	set @ 5.0		

APPENDIX 93

keep this slip for reference

DC5808UV

937736

3-16-04

customer's order no. <i>RC</i>	phone <i>877-2895</i>	date <i>3-16-04</i>
name [REDACTED]		
address [REDACTED]		
city, state, zip [REDACTED]		
sold by	cash ☐ c.o.d. ☐	charge ☐ on acct. ☐
shipping information		

quantity	description	price	amount
5	5.02 T 18-9-9 1/2 13 1/2 S	230	1154.00
	Total		1154.00
	Thank you		
	Pasture/Hay feed to Hay pump		
	Set 4.00 should be 428 - 458		

keep this slip for reference

DC5808UV

937738

3-17-04

ORDER INFO	customer's order no.	phone	date
	name	3-17-04	
	address		
	city, state, zip	29681	
sold by		cash ☐ charge ☐ c.o.d. ☐ on acct. ☐	shipping information

quantity	description	price	amount
1			
2	4.04 Tons 17-17-17 4 1/5 % S	254	1026.0
3			
	Total \$1026.0		
	Kenneth Jenkins		
	1032 Camp Creek Rd		
	Taylor, 29681		
	Thank you		
	Set 4.0 Hayfield Bottom		
	upper part of pasture		

APPENDIX 94

adams

keep this slip for reference

DC5808UV

937737

ORDER INFO	customer's order no.	phone	date
	name	3-16-04	
	address		
	city, state, zip	296151	
sold by		cash ☐ charge ☐ c.o.d. ☐ on acct. ☐	shipping information

quantity	description	price	amount
1			
2	6.060T		
3	4.180T		
4	10.240 21-7-14 4 1/4 % S	248	2539.0
5			
6	Total \$2539.00		
7			
8	Thank you		
9			
10	14 Hayfield		
11	Pasture @ Ben Atkins set 4.25+		
12			
13			
14			

received by

adams

keep this slip for reference

DC5808UV

937740

3-17-04

customer's order no. CE 35998		date 3-17-04	
name [REDACTED]			
address [REDACTED]			
city, state, zip Greer, 29651			
sold by		cash ☐	charge ☐
		c.o.d. ☐	on acct. ☐
shipping information			

quantity	description	price	amount
1			
2			
3	6.090 21-7-14 u/8% S	250	1522.00
4			
5	TOTAL 1522.00		
6			
7	mail check to:		
8			
9	Kenneth Jenkins		
10	1032 Camp Creek Rd		
11	Taylor, 29687		
12			
13	Thank you		
14			

received by

adams

keep this slip for reference

DC5808UV

937739

customer's order no. RC		phone		date 3-17-04	
name [REDACTED]					
address [REDACTED]					
city, state, zip					
sold by		cash ☐	charge ☐	shipping information	
		c.o.d. ☐	on acct. ☐		

quantity	description	price	amount
1			
2	~~4.04 21-7-14 u/8% S~~	~~255~~	~~1022.00~~
3			
4	3.01 21-7-14 u/8% S	255	765.00
5			
6			
7	4.25 set		
8			
9			
10			
11			
12			
13			
14			

received by

adams

keep this slip for reference

DC5808UV

ORDER INFO

ORDER INFO

APPENDIX 95

937743

3-20-04

customer's order no. CE 36041, 36044	name [REDACTED]	date 3-21-04
address [REDACTED]		
city, state, zip [REDACTED] 29151		
sold by	cash ☐ charge ☐ c.o.d. ☐ on acct. ☐	shipping information

quantity	description	price	amount
6.115 T	21-7-14-4 w/4% S	242	1480.00
2	SILT 21-7-14-4 w/4% S	251	630.00
4/50 lbs	Vertagro 17 ³	6.35	25.40
total \$2134.00			
\$2135.40			
Kenneth Jenkins			
11032 Camp Creek Rd			
Taylors 29687			
Thank you			

APPENDIX 96

received by

adams

keep this slip for reference

DC5808UV

937741

3-18-04

customer's order no. CE 36006	phone [REDACTED]	date 3-18-04
name [REDACTED]		
address [REDACTED]		
city, state, zip [REDACTED] 29651		
sold by	cash ☐ charge ☐ c.o.d. ☐ on acct. ☐	shipping information

quantity	description	price	amount
1			
2			
3	21.745 Tons 24-10-10A w/5	270	5871.00
4	6.285 Tons Set 3/25	270	1697.00
5	Sub Total		5871.00
6			1697.00
7	Kenneth Jenkins		
8	P.O. Box 2298		
9	Greer 29652		
10	Total		\$7568.00
11	Thank you		
12			
13			
14			

received by

adams

keep this slip for reference

DC5808UV

937753

3-22, 23-04

customer's order no.

PC CE 36076

date

3-28-04

name

address

city, state, zip

sold by

cash ☐charge ☐c.o.d. ☐on acct. ☐

shipping information

quantity	description	price	amount
1			
2			
3	6.130T		
4	6.020T		
5	12.15T 21-2.44 w/s	253	3073.95
6			
7			
8			
9			
10			
11			
12			
13			
14			

Total \$3,073.95

APPENDIX 97

Mail check to
 Kenneth Jenkins
 1032 Camp Creek Rd
 Taylor 29687
 Thank you

received by

adams

keep this slip for reference

DC5808UV

937742

3-22-04

customer's order no.

PC CE 36051

phone

date

3-21-04

name

address

city, state, zip

sold by

cash ☐charge ☐c.o.d. ☐on acct. ☐

shipping information

quantity	description	price	amount
1			
2	5.01T 27-7.144 w/4% S	253	
3	6.08T		
4	11.09		\$2805.77
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			

Total \$2805.77

mail check to

Kenneth Jenkins
 1032 Camp Creek Rd
 Tay 1032 29687

Thank you -

received by

adams

keep this slip for reference

DC5808UV

937751

937744

3-22-04

ORDER INFO	customer's order no.	phone	date
	3-22-04		
	name		
	address		
city, state, zip			
sold by		cash ☐	charge ☐
		c.o.d. ☐	on acct. ☐
shipping information			

quantity	description	price	amount
1			
2			
3	4T Lime	32.25	126.00
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			

received by

adams keep this slip for reference DC5808UV

ORDER INFO	customer's order no.	phone	date
	3-22-04		
	name		
	address		
city, state, zip			
sold by		cash ☐	charge ☐
		c.o.d. ☐	on acct. ☐
shipping information			

quantity	description	price	amount
1			
2	6.07 T		
3	6.17 T		
4	12.24 Tons 21-7-14 u w/5% S	*250	3060.00
5			
6	mail check to	250.00	per 14
7			
8	Kenneth Jenkins		
9	~~1032~~ Factors		
10	PO Box 2298		
11	Green 29652		
12			
13			
14			

received by

adams keep this slip for reference DC5808UV

937754

3-24-04

customer's order no. CE 36073	phone [REDACTED]	date 3/28/04
name [REDACTED]		
address [REDACTED]		
city, state, zip Taylor, MO		
sold by	cash ☐ c.o.d. ☐	charge ☐ on acct. ☐
shipping information		

quantity	description	price	amount
1	605T 21-7-14u w/s	291	4670
Total		4670	
mail check to Kenneth Jenkins 1032 Camp Creek Rd Taylors 29687			

APPENDIX 99

received by

adams

keep this slip for reference

DC5808UV

937745

3-23-04

customer's order no. CE 36073	[REDACTED]	date 3-23-04
name [REDACTED]		
address [REDACTED] 14		
city, state, zip Taylor, MO		
sold by	cash ☐ c.o.d. ☐	charge ☐ on acct. ☐
shipping information		

quantity	description	price	amount
1			
2	255T 17-17-17A w/s	276	7030
3			
4			
5	mail check to		
6			
7	Kenneth Jenkins		
8	1032 Camp Creek Rd		
9	Taylors 29687		
10			
11	Thank you		
12			
13			
14			

received by

adams

keep this slip for reference

DC5808UV

937756

3-24-04

customer's order no. CE 36086	phone [REDACTED]	date 3/28/04
name [REDACTED]		
address [REDACTED]		
city, state, zip [REDACTED] 29690		
sold by	cash ☐ c.o.d. ☐	charge ☐ on acct. ☐ shipping information

quantity	description	price	amount
1			
2	1.050T 24-10-10A w/s	380	399.0
3	TOTAL \$399.0		
4			
5	mail check to		
6	Kenneth Jenkins		
7	1032 Camp Creek Rd		
8	Taylor, LA 29687		
9			
10			
11	Thank you		
12			
13			
14			

received by

adams

keep this slip for reference

DC5808UV

937755

3-24-04

customer's order no. CE 36078	phone [REDACTED]	date 3/28-04
name [REDACTED]		
address [REDACTED]		
city, state, zip [REDACTED] 29349		
sold by	cash ☐ c.o.d. ☐	charge ☐ on acct. ☐ shipping information

quantity	description	price	amount
1			
2	2.535 17-17-17A w/s Oct	233	590.65
3			
4	TOTAL \$590.65		
5	please mail check to		
6	Kenneth Jenkins		
7	P.O. Box 2298		
8	CoReer 29652		
9			
10	Thank you so much		
11	Sorry about the mix up.		
12			
13	Ken		
14			

received by

adams

keep this slip for reference

DC5808UV

937759

3-24-04

customer's order no. CE 310081	phone [REDACTED]	date 3-28-04
name [REDACTED]		
address [REDACTED]		
city, state, zip [REDACTED]		
sold by [REDACTED]	☐ cash ☐ c.o.d.	☐ charge ☐ on acct.
shipping information		

quantity	description	price	amount
1			
2	18817 T 21-7-14u/48s	270	238.0
3			
4	TOTAL \$238.0		
5			
6	mail check to		
7	Kenneth Jenkins		
8	1032 Camp Creek Rd		
9	Taylor, OK 73687		
10			
11			
12			
13			
14			

APPENDIX 101

received by

DC5808UV

937758

3-24-04

customer's order no. CE 36081	phone [REDACTED]	date 3/28/04
name [REDACTED]		
address [REDACTED]		
city, state, zip [REDACTED]		
sold by [REDACTED]	☐ cash ☐ c.o.d.	☐ charge ☐ on acct.
shipping information		

quantity	description	price	amount
1			
2	1.763 T 21-7-14u/48s	270	476.0
3			
4	TOTAL \$476.0		
5			
6	mail check to		
7	Kenneth Jenkins		
8	1632 Camp Creek Rd,		
9	Taylor, OK 73687		
10			
11			
12	Set @ 4.75		
13			
14			

received by

adams

keep this slip for reference

DC5808UV

937757

Del 3-25-04

customer's order no. <i>CE 36114</i>	date <i>3/28-04</i>
name [REDACTED]	
address [REDACTED]	
city, state, zip [REDACTED]	
sold by [REDACTED]	cash ☐ charge ☐ c.o.d. ☐ on acct. ☐
shipping information	

quantity	description	price	amount
1			
2	<i>60 300T 17-17-174 3%5</i>	<i>261</i>	<i>1644.3</i>
3			
4	<i>Total #1644.30</i>		
5			
6	<i>mail check to</i>		
7	<i>Kenneth Jenkins</i>		
8	<i>1032 Camp Creek Rd</i>		
9	<i>Taylor 29687</i>		
10			
11			
12			
13			
14			

APPENDIX 102

received by

adams

keep this slip for reference

DC5808UV

937748

Del 3-25-04

customer's order no. <i>CE 36102</i>	date <i>3-25-04</i>
name [REDACTED]	
address [REDACTED]	
city, state, zip <i>g 29651</i>	
sold by [REDACTED]	cash ☐ charge ☐ c.o.d. ☐ on acct. ☐
shipping information	

quantity	description	price	amount
1			
2	<i>21-7-1424 4 1/5</i>		
2	<i>308 T 17-17-174</i>	<i>255</i>	<i>785.0</i>
3			
4			
5	<i>Kenneth Jenkins</i>		
6	<i>1032 Camp Creek Rd</i>		
7	<i>Taylor 29687</i>		
8			
9			
10			
11			
12			
13			
14			

received by

adams

keep this slip for reference

DC5808UV

937746

3-25-04

customer's order no.	ph	date
CC	[REDACTED]	3-25-04
name [REDACTED]		
address [REDACTED]		
city, state, zip [REDACTED]		
sold by	cash ☐ charge ☐ c.o.d. ☐ on acct ☐	shipping information

quantity	description	price	amount
1			
2			
3	8T Lime	32	256.00
4	102 T 17-17-17 u 43	220	224.00
	Spreading	150	150.00
			\$630.00
	Thank you		

APPENDIX 103

received by

adams

keep this slip for reference

DC5808UV

937747

Del 3-25-04

customer's order no.	ph	date
CE 36098	[REDACTED]	3-25-04
name [REDACTED]		
address [REDACTED]		
city, state, zip [REDACTED]		
sold by	cash ☐ charge ☐ c.o.d. ☐ on acct ☐	shipping information

quantity	description	price	amount
1			
2	2.54 T 17-17-17 A w/12%	233	591.82
3	Spreading		150.00
4			741.82
5			
6			
7	Thank you		
8			
9			
10	ch # 6435		
11	Set S.O. @ 4000		
12			
13			
14			

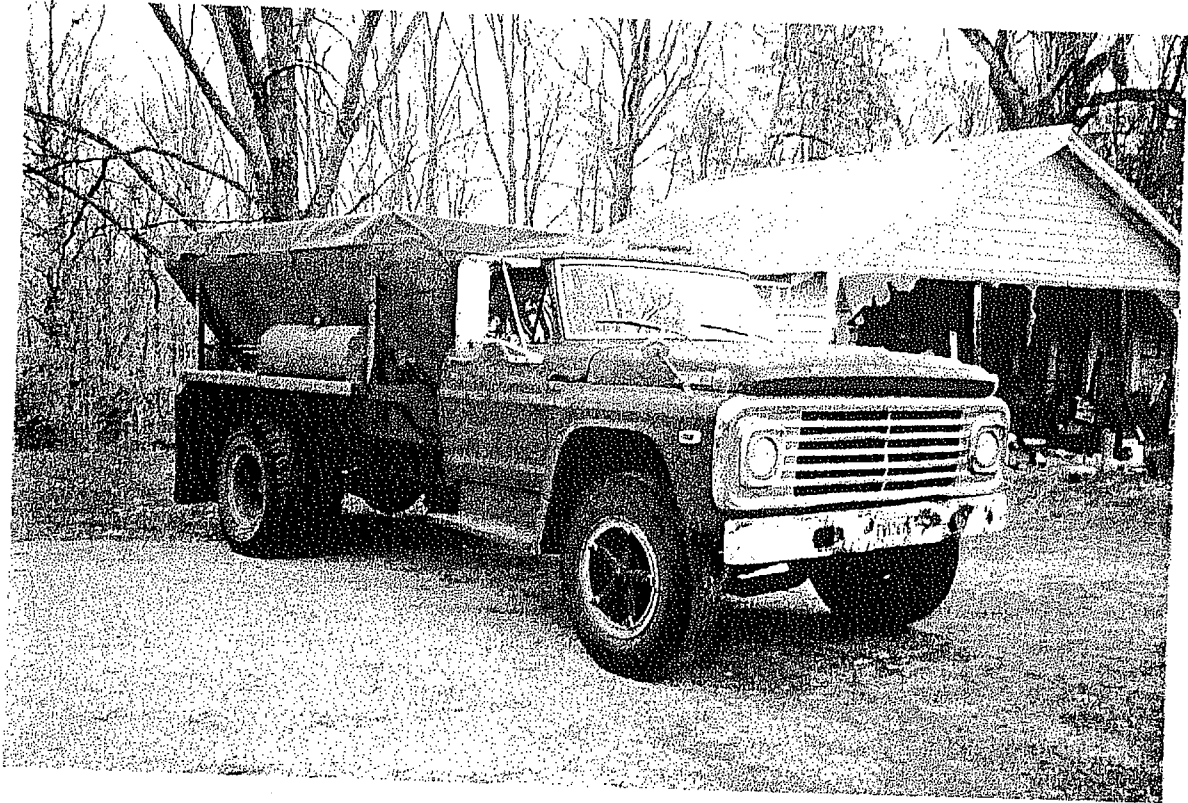
received by

adams

keep this slip for reference

DC5808UV

\$2000 REWARD



FOR INFORMATION LEADING TO THE ARREST AND CONVICTION OF THE PERSON/PERSONS RESPONSIBLE FOR PLACING **SUGAR** AND/OR FOREIGN SUBSTANCE IN THE FUEL TANK OF THE 1971 FORD FERTILIZER TRUCK LOCATED AT 2404 EAST TYGER BRIDGE RD, GREER, SC ON OR ABOUT MID-FEBRUARY 2004.

IF YOU HAVE ANY INFORMATION, PLEASE CONTACT DETECTIVE TRACY KING AT THE **GREENVILLE COUNTY SHERIFF DEPARTMENT**, AT 371-3618 OR KEN JENKINS AT 895-1681.

CASE #0439156

SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service

Name of proprietor

Kenneth B Jenkins

A Principal business or profession, including product or service (see instructions)

Farm services

C Business name. If no separate business name, leave blank.

E Business address (including suite or room no.) PO Box 2298
City, town or post office, state, and ZIP code Greer, SC 29652

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) _____

G Did you 'materially participate' in the operation of this business during 2004? If 'No,' see instructions for limit on losses ☒ Yes ☐ No

H If you started or acquired this business during 2004, check here _____

Part I Income

1	Gross receipts or sales. Caution. If this income was reported to you on Form W-2 and the 'Statutory employee' box on that form was checked, see the instructions and check here. ☐	1	116,194.
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	116,194.
4	Cost of goods sold (from line 42 on page 2)	4	80,570.
5	Gross profit. Subtract line 4 from line 3	5	35,624.
6	Other income, including Federal and state gasoline or fuel tax credit or refund	6	
7	Gross income. Add lines 5 and 6	7	35,624.

Part II Expenses. Enter expenses for business use of your home only on line 30.

8	Advertising	8		19	Pension and profit-sharing plans	19	
9	Car and truck expenses (see instructions)	9	6,761.	20	Rent or lease (see instructions):	20 a	403.
10	Commissions and fees	10		a	Vehicles, machinery, and equipment	20 b	
11	Contract labor (see instructions)	11		b	Other business property	21	
12	Depletion	12		21	Repairs and maintenance	22	165.
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13	24,343.	22	Supplies (not included in Part III)	23	792.
14	Employee benefit programs (other than on line 19)	14		23	Taxes and licenses	24	
15	Insurance (other than health)	15		24	Travel, meals, and entertainment:	24 a	
16	Interest:			a	Travel		
a	Mortgage (paid to banks, etc)	16 a		b	Meals and entertainment		
b	Other	16 b		c	Enter nondeductible amount included on line 24b (see instrs)		
17	Legal & professional services	17	1,500.	d	Subtract line 24c from line 24b	24 d	
18	Office expense	18		25	Utilities	25	1,336.
28	Total expenses before expenses for business use of home. Add lines 8 through 27 in columns			26	Wages (less employment credits)	26	
29	Tentative profit (loss). Subtract line 28 from line 7			27	Other expenses (from line 48 on page 2)	27	238.
30	Expenses for business use of your home. Attach Form 8829			28		28	35,538.
31	Net profit or (loss). Subtract line 30 from line 29.			29		29	86.
	• If a profit, enter on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see instructions). Estates and trusts, enter on Form 1041, line 3.			30		30	
	• If a loss, you must go to line 32.			31		31	86.
32	If you have a loss, check the box that describes your investment in this activity (see instructions).						
	• If you checked 32a, enter the loss on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see instructions). Estates and trusts, enter on Form 1041, line 3.						
	• If you checked 32b, you must attach Form 6198.						

32 a ☒ All investment is at risk.
32 b ☐ Some investment is not at risk.

Part III	Cost of Goods Sold (see instructions)
-----------------	--

33 Method(s) used to value closing inventory: a ☒ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)

34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory?
If 'Yes,' attach explanation ☐ Yes ☐ No

35 Inventory at beginning of year. If different from last year's closing inventory, attach explanation. 35

36	Purchases less cost of items withdrawn for personal use	36	80,570.
----	---	----	---------

37	Cost of labor. ~~Do~~ not include any amounts paid to yourself	37
----	---	----

38	Materials and supplies	38
----	------------------------------	----

39- Other costs	39
-----------------------	----

40	Add lines 35 through 39	40	80,570.
-----------	-------------------------------	-----------	---------

41	Inventory at end of year	41
----	--------------------------------	----

42	Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4	42	80,570.
-----------	---	-----------	---------

Part IV **Information on Your Vehicle.** Complete this part **only** if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month, day, year) ▶

44 Of the total number of miles you drove your vehicle during 2004, enter the number of miles you used your vehicle for:

a Business _____ **b Commuting** _____ **c Other** _____

45 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No

46 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No

47 a Do you have evidence to support your deduction? ☐ Yes ☐ No

b If 'Yes,' is the evidence written? ☐ Yes ☐ No

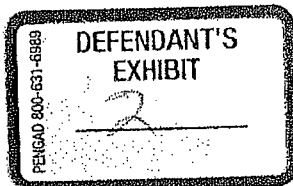
Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30.

Other expenses	238.
----------------	------

48	Total other expenses. Enter here and on page 1, line 27	48	238.
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SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)



Profit or Loss From Business
(Sole Proprietorship)

Partnerships, joint ventures, etc., must file Form 1065 or 1065-B.
Attach to Form 1040 or 1041. See Instructions for Schedule C (Form 1040).

OMB No. 1545-0074

2005

Attachment
Sequence No. 09

Name of proprietor

Kenneth B Jenkins

Social security number (SSN)

MJH

A Principal business or profession, including product or service (see instructions)

Farm services

C Business name. If no separate business name, leave blank.

E Business address (including suite or room no.) **PO Box 2298**
City, town or post office, state, and ZIP code **Greer, SC 29652**

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) _____

G Did you 'materially participate' in the operation of this business during 2005? If 'No,' see instructions for limit on losses ☒ Yes ☐ No

H If you started or acquired this business during 2005, check here _____

Part I Income

1 Gross receipts or sales. Caution. If this income was reported to you on Form W-2 and the 'Statutory employee' box on that form was checked, see the instructions and check here _____	1	124,176.
2 Returns and allowances	2	
3 Subtract line 2 from line 1	3	124,176.
4 Cost of goods sold (from line 42 on page 2)	4	96,413.
5 Gross profit. Subtract line 4 from line 3	5	27,763.
6 Other income, including Federal and state gasoline or fuel tax credit or refund	6	
7 Gross income. Add lines 5 and 6	7	27,763.

Part II Expenses. Enter expenses for business use of your home **only** on line 30.

8 Advertising	8		18 Office expense	18	
9 Car and truck expenses (see instructions)	9	9,461.	19 Pension and profit-sharing plans	19	
10 Commissions and fees	10		20 Rent or lease (see instructions):		
11 Contract labor (see instructions)	11		a Vehicles, machinery, and equipment	20a	
12 Depletion	12		b Other business property	20b	
13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13	6,902.	21 Repairs and maintenance	21	95.
14 Employee benefit programs (other than on line 19)	14		22 Supplies (not included in Part III)	22	695.
15 Insurance (other than health)	15		23 Taxes and licenses	23	889.
16 Interest:			24 Travel, meals, and entertainment:		
a Mortgage (paid to banks, etc)	16a		a Travel	24a	
b Other	16b		b Deductible meals and entertainment	24b	
17 Legal & professional services	17		25 Utilities	25	1,088.
28 Total expenses before expenses for business use of home. Add lines 8 through 27 in columns	28	19,130.	26 Wages (less employment credits)	26	
29 Tentative profit (loss). Subtract line 28 from line 7	29	8,633.	27 Other expenses (from line 48 on page 2)	27	
30 Expenses for business use of your home. Attach Form 8829	30				
31 Net profit or (loss). Subtract line 30 from line 29.	31	8,633.			

- If a profit, enter on **Form 1040, line 12**, and also on **Schedule SE, line 2** (statutory employees, see instructions). Estates and trusts, enter on Form 1041, line 3.
- If a loss, you **must** go to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see instructions).

- If you checked 32a, enter the loss on **Form 1040, line 12**, and also on **Schedule SE, line 2** (statutory employees, see instructions). Estates and trusts, enter on Form 1041, line 3.

- If you checked 32b, you **must** attach **Form 6198**. Your loss may be limited.

32a ☒ All investment is at risk.

32b ☐ Some investment is not at risk.

BAA For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule C (Form 1040) 2005

APPENDIX 107

Part III	Cost of Goods Sold (see instructions)
-----------------	--

- | | | | |
|----|--|--|---------|
| 33 | Method(s) used to value closing inventory: a ☒ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation) | | |
| 34 | Was there any change in determining quantities, costs, or valuations between opening and closing inventory?
If 'Yes,' attach explanation | ☐ Yes ☐ No | |
| 35 | Inventory at beginning of year. If different from last year's closing inventory, attach explanation | 35 | |
| 36 | Purchases less cost of items withdrawn for personal use | 36 | 96,413. |
| 37 | Cost of labor. Do not include any amounts paid to yourself | 37 | |
| 38 | Materials and supplies | 38 | |
| 39 | Other costs | 39 | |
| 40 | Add lines 35 through 39 | 40 | 96,413. |
| 41 | Inventory at end of year | 41 | |
| 42 | Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4 | 42 | 96,413. |

Part IV Information on Your Vehicle. Complete this part **only** if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

- 43 When did you place your vehicle in service for business purposes? (month, day, year) ▶ _____
- 44 Of the total number of miles you drove your vehicle during 2005, enter the number of miles you used your vehicle for:
a Business _____ b Commuting _____ c Other _____
- 45 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No
- 46 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No
- 47 a Do you have evidence to support your deduction? ☐ Yes ☐ No
b If 'Yes,' is the evidence written? ☐ Yes ☐ No

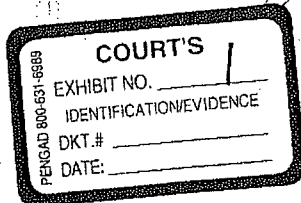
Part V **Other Expenses.** List below business expenses not included on lines 8-26 or line 30.

[illegible]

- 48 Total other expenses. Enter here and on page 1, line 27

Please define "Unfair Trade Practices"

Please define "Conversion"



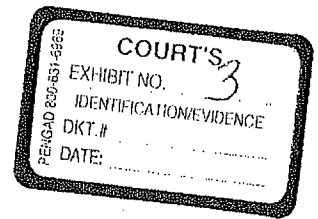
Mit Van Gun

CONVERSION

THE PLAINTIFF CLAIMS THAT THE DEFENDANT CONVERTED THE PLAINTIFF'S PERSONAL PROPERTY. PERSONAL PROPERTY IS ANYTHING THAT IS NOT REAL ESTATE. CONVERSION IS THE UNAUTHORIZED EXERCISE OF CONTROL OVER PERSONAL PROPERTY BELONGING TO ANOTHER PERSON WHICH EITHER CHANGES OR EXCLUDES THE OWNER'S RIGHTS TO THE PROPERTY. CONVERSION MAY ARISE BY THE ILLEGAL USE, MISUSE, OR ILLEGAL DETENTION OF THE PROPERTY.

IN ORDER TO PROVE CONVERSION,

- THE PLAINTIFF MUST FIRST PROVE THAT THE PLAINTIFF OWNED OR HAD A RIGHT TO POSSESS A CERTAIN PIECE OF PERSONAL PROPERTY.
- THE PLAINTIFF MUST THEN SHOW THAT THE DEFENDANT GAINED CONTROL AND POSSESSION OF THE PROPERTY OR PREVENTED THE PLAINTIFF FROM USING THE PROPERTY.
- FINALLY, THE PLAINTIFF MUST SHOW THAT THE DEFENDANT DID THIS WITHOUT THE PLAINTIFF'S PERMISSION. IF THE PLAINTIFF EXPRESSLY OR IMPLIEDLY AGREED TO OR APPROVED THE DEFENDANT'S TAKING, USE, RETENTION, OR DISPOSITION OF THE PROPERTY, THE PLAINTIFF CANNOT RECOVER FOR CONVERSION OF THE PROPERTY.



UNFAIR TRADE PRACTICES ACT

Section 39-5-20(a) of the Unfair Trade Practices Act provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful."

The terms "trade" and "commerce" include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and any trade or commerce directly or indirectly affecting the people of South Carolina.

THE PLAINTIFF CLAIMS THAT THE DEFENDANT COMMITTED UNFAIR TRADE PRACTICES. THE ACT OR PRACTICE MUST BE UNFAIR OR DECEPTIVE. A TRADE PRACTICE IS UNFAIR IF IT OFFENDS ESTABLISHED PUBLIC POLICY OR IS IMMORAL, UNETHICAL, OR OPPRESSIVE. A DECEPTIVE ACT IS ONE THAT HAS A TENDENCY TO DECEIVE.

THE PLAINTIFF MUST PROVE THAT THE PLAINTIFF SUFFERED ACTUAL DAMAGES AS A PROXIMATE RESULT OF THE DEFENDANT'S UNFAIR TRADE PRACTICE OR ACT.

IN ADDITION, THE PLAINTIFF MUST PROVE THAT THE UNFAIR TRADE PRACTICE OR ACT AFFECTED PERSONS OTHER THAN THE PARTIES TO THE TRANSACTION. THE PLAINTIFF MUST PROVE THAT THE UNFAIR TRADE PRACTICE OR ACT HAS AN ADVERSE IMPACT ON THE PUBLIC'S INTEREST. THIS MAY BE SHOWN BY PROOF THAT THE UNFAIR TRADE PRACTICE OR ACT IS CAPABLE OF AND HAS A POTENTIAL FOR REPETITION.

IN OTHER WORDS, THE UNFAIR TRADE PRACTICES ACT IS NOT AVAILABLE TO REDRESS PURELY PRIVATE WRONGS, THAT IS WRONGS THAT ONLY AFFECT THE PARTIES AND HAVE NO IMPACT ON THE PUBLIC.

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

KENNETH B. JENKINS,
Plaintiff,
-vs-
BENJAMIN S. FEW AND
FEW FARMS, INC.,
Defendants.

IN THE CIVIL COURT

TRANSCRIPT OF RECORD
07-CP-23-779

August 25-26, 2008
Greenville South Carolina

B E F O R E:
HONORABLE D. GARRISON HILL, Judge; and a jury.

A P P E A R A N C E S:
FRED W. SUGGS, III, Esquire
Attorney for the Plaintiff
ROBERT C. CHILDS, III, Esquire
Attorney for the Defendants

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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14 **PLAINTIFF'S EXHIBITS**

15	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
16	1	Certificate of title		122
17	2	Fuel filter		125
18	3	Invoice (Delta)		131
19	4	Spread sheet	132	138
20	5	Packet of invoices	132	138
21	6	Reward poster	139	141

22 **DEFENDANT'S EXHIBITS**

23	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
24	1	P&L (2004)	159	160
25	2	P&L (2005)	159	160

COURT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Note from jury	359	
2	Charge (conversion)	359	
3	Charge (unfair trade practices)	359	

1 (The following proceedings were reported on
2 August 25, 2008).

3 THE COURT: Do you have any motions before the
4 trial?

5 MR. SUGGS: Judge, Mr. Childs and I discussed
6 very briefly about agreeing on exhibits and moving those
7 into evidence before we get started. I don't want to
8 speak for him, but I think we have agreed on at least
9 all but one.

10 MR. CHILDS: It depends upon how the case pans
11 out. He has only got five exhibits, and I don't know
12 why it would slow us down at all to do it at trial. I
13 have got maybe two.

14 MR. SUGGS: One thing I have done, Judge, is I
15 have made up exhibit notebooks to hand to each juror,
16 along with the Court and opposing counsel, just so they
17 have the exhibits handy should they wish to look at them
18 as we go along, but I understand Mr. Childs might not
19 like that idea.

20 MR. CHILDS: I don't like that idea.

21 THE COURT: So we are just going to take the
22 exhibits up one at a time during the course of the
23 trial?

24 MR. CHILDS: It suits me.

25 MR. SUGGS: I guess so.

1 MR. CHILDS: It's a small number. If we had
2 50 exhibits, I would be worried about it.

3 THE COURT: All right.

4 MR. SUGGS: One other issue, Judge, and it
5 very well may be that we need to take it up later at the
6 time, but we will have a motion to exclude Mr. Few's
7 expert witness.

8 THE COURT: Okay. Anything further before we
9 bring the jury up?

10 MR. SUGGS: No, sir. One thing I was going to
11 mention to you is just as far as voir dire goes, the
12 standard works just fine for us, as far as witnesses and
13 parties and general questions. We didn't propose
14 anything further. Thank you, Judge.

15 THE COURT: Thank you.

16 MR. CHILDS: Same here, Your Honor.

17 THE COURT: All right. If you will bring the
18 jury up.

19 MR. SUGGS: Judge, one other thing I was going
20 to mention briefly while the jury is on the way up is we
21 have got -- the first witness we will call has been here
22 for about an hour, and he is itching to get back to
23 work.

24 We are hoping that, depending on when we wrap
25 up opening remarks, we can just go ahead and call him so

1 he can get back to work and then take a lunch break
2 whenever Your Honor sees fit.

3 THE COURT: I don't know. We will have to see
4 how it goes.

5 MR. SUGGS: Okay.

6 (The jury panel enters the courtroom).

7 THE COURT: Good morning, ladies and
8 gentlemen. My name is Gary Hill. I am one of the
9 circuit judges here in Greenville and Pickens County,
10 which is known as the Thirteenth Circuit. I am glad to
11 be home serving with you this week.

12 We are about to start the trial of Kenneth B.
13 Jenkins versus Benjamin S. Few and Few Farms,
14 Incorporated. This is a civil case. I will let the
15 attorneys tell you more about it in their opening
16 statements.

17 For our purposes right now, we simply need to
18 find a jury of 12 people who can be fair about this case
19 and impartial about it and not have any kind of
20 preconceived ideas. Therefore, I will ask you some
21 questions to that end.

22 The first question I will ask you is if anyone
23 is related by blood or marriage to Kenneth B. Jenkins or
24 Benjamin S. Few. If you gentlemen could stand up so the
25 jury can know who you are. Thank you very much.

1 Is anyone related by blood or marriage or kin
2 to any of those gentlemen in any way? If so, please
3 stand.

4 (There is no response).

5 THE COURT: Does anyone have any personal,
6 social, or business relationship with either Mr. Jenkins
7 or Mr. Few? If so, please stand.

8 (There is no response).

9 THE COURT: Has anyone been employed by Few
10 Farms, Incorporated or Mr. Jenkins or Mr. Few or had a
11 member of their immediate family so employed? If so,
12 please stand.

13 (There is no response).

14 THE COURT: Has anyone ever done business with
15 Few Farms, Incorporated or been a shareholder, officer,
16 director or employee of that company? If so, please
17 stand.

18 (There is no response).

19 THE COURT: I will ask the attorneys involved
20 in the case to introduce themselves. Yes, sir,
21 Mr. Suggs.

22 MR. SUGGS: My name is Trey Suggs, and I
23 practice with Roe, Cassidy, Coates, and Price here in
24 Greenville.

25 THE COURT: Mr. Childs.

1 MR. CHILDS: My name is Ronnie Childs. I
2 practice here in Greenville and I represent Mr. Few.

3 THE COURT: Is anyone related by blood or
4 marriage to any of the lawyers involved in the case? If
5 so, please stand.

6 (There is no response).

7 THE COURT: Does anyone have a personal,
8 social or business relationship with the lawyers? If
9 so, please stand.

10 (There is no response).

11 THE COURT: Has anyone ever been involved in a
12 dispute where you were represented by one of the lawyers
13 or their law firms or where the other side was
14 represented by one of these lawyers or their law firms?
15 If so, please stand.

16 (There is no response).

17 THE COURT: Have any of you ever been employed
18 or had a member of your immediate family be employed by
19 either one of these lawyers or their law firms? If so,
20 please stand.

21 (There is no response).

22 THE COURT: There are a number of people who
23 may testify in this case, and they include: Buford
24 Stokes; Ronnie Maness, M-A-N-E-S-S; Johnny Lindsey; Ken
25 Jenkins; John Wheeler, Scott Few, and Juan Faneytte. I

1 may be pronouncing that incorrectly. It's
2 F-A-N-E-Y-T-T-E.

3 Does anyone have any personal, social or
4 business relationship or are you related by blood or
5 marriage to any of the people I just mentioned who may
6 testify in the case? If so, please stand.

7 (There is no response).

8 THE COURT: Does anyone know anything about
9 the case, other than what you have heard here from me
10 this morning? If so, please stand.

11 (There is no response).

12 THE COURT: Does anyone know of any reason why
13 they could not be fair and impartial about this case or
14 any issue in it? If so, please stand.

15 (There is no response).

16 THE COURT: Any further voir dire requested by
17 the Plaintiff?

18 MR. SUGGS: None, Your Honor.

19 THE COURT: From the defense?

20 MR. CHILDS: No, sir, Your Honor.

21 THE COURT: We are going to select a jury.

22 (Whereupon preemptory strikes were exercised
23 by both sides, and the jury was duly impaneled at
24 11:45 a.m.)

25 THE COURT: Any matters or motions related to

1 the selection process or the composition of the jury
2 from the Plaintiff?

3 MR. SUGGS: No, sir, Your Honor.

4 THE COURT: Defense?

5 MR. CHILDS: No, sir, Your Honor.

6 THE COURT: I find the process followed all
7 statutory mandates and Batson versus Kentucky and J.E.B.
8 versus Alabama.

9 Ladies and gentlemen, you have been selected
10 to be the jury in the case of Kenneth B. Jenkins versus
11 Benjamin F. Few and Few Farms, Incorporated. We will
12 start the case in just a few minutes.

13 At this time I will ask Mr. Ford to show you
14 where your jury room is. Don't talk about the case.
15 Obviously you haven't heard anything about it yet. We
16 will have the opening statements momentarily. Thank you
17 very much.

18 (The jury retires to the jury room).

19 THE COURT: Let's take a brief recess before
20 we get started.

21 (Whereupon there was a recess).

22 THE COURT: Anything further before we start
23 the case?

24 MR. SUGGS: None from the Plaintiff, Your
25 Honor.

1 MR. CHILDS: No, sir, Your Honor.

2 THE COURT: You can bring them in whenever
3 they are ready.

4 (The jury returns to the courtroom).

5 THE COURT: Good morning, ladies and
6 gentlemen. We about to begin the case of Kenneth B.
7 Jenkins versus Benjamin Few and Few Farms, Incorporated.
8 Let me just give you a few preliminary instructions, and
9 at the end of the case, I will give you an instruction
10 on the law.

11 The first thing I want to do is thank you for
12 your service this week. I know you probably groaned
13 when you got the summons in the mail to report down here
14 Monday morning to do jury service.

15 I know also you are here in part because you
16 respect and understand the jury system is the foundation
17 of our system of justice. We could not resolve disputes
18 sometimes unless we had a jury.

19 It is a fundamental part of our democracy and,
20 in fact, Thomas Jefferson said the right to a jury trial
21 is the most important right of all because all the other
22 rights ultimately depend on that.

23 We appreciate you being here with us. The
24 right to a jury trial, the right to a trial by one's
25 peers and one fellow's citizens, is an important right

1 that we are fortunate to have in this country, and we
2 appreciate you helping to make it possible this week.

3 Now, you heard the lawyers. They introduced
4 themselves. Again, I am Gary Hill, one of the circuit
5 judges here in Greenville and Pickens County. I will
6 tell you what my job is in just a minute, and then I
7 will tell you what your job is. I will also tell you
8 about the people in the courtroom, what their roles are
9 and what their jobs are that you haven't met yet.

10 First of all, the bailiffs, Mr. Ford and
11 Mr. Fuller, are here for your assistance and your
12 comfort while you are serving on the jury. They can
13 take care of your needs and help escort you across the
14 hall back and forth to the jury room, and they do an
15 outstanding job.

16 Up here behind me is Coconut Pantsari. She is
17 the court reporter. She is actually down from the
18 Lexington area, and we are glad to have her here this
19 week. She takes down every word that is said because
20 circuit court is a court of record.

21 Next to her is Shirley Cline, who is one of
22 the deputy clerks of court. As you saw, she helps with
23 the jury selection process and helps keep things
24 organized throughout the trial and represents th Clerk's
25 Office here in the courtroom.

1 On the bench with me is John Mussetto, my law
2 clerk. He just started a couple of weeks ago. In fact,
3 I think this is going to be his first trial. He helps
4 me with legal research and helps me during the trial as
5 well.

6 Everyone I introduced to you has taken an oath
7 to do their job. I have certainly taken an oath and the
8 lawyers have taken an oath as well. You are going to
9 take an oath to do your job.

10 Please stand at this time and let Ms. Cline
11 administer that oath to you. Listen to it very
12 carefully. It has been around a long time, and it tells
13 you in a nutshell what your job is.

14 (The jury is duly sworn at 11:54 a.m.)

15 THE COURT: Thank you very much. Ladies and
16 gentlemen, my job is pretty easy. I am here as the
17 judge of the law in this case. At the end of the case,
18 I will give you the law that you are to apply to this
19 matter.

20 The other thing I do during the trial is that
21 I rule on the evidence questions. If someone objects
22 during the course of this trial to the evidence, I rule
23 on whether it is proper and whether you can consider
24 it.

25 If I sustain the objection, that means the

1 evidence is improper and you can't consider it. If I
2 overrule the objection, that means the evidence is
3 proper, and you may consider it.

4 The last thing I do is I try to run things
5 efficiently and keep the train running, so to speak,
6 during this trial. Bear in mind that we are not trying
7 to make a profit during this trial. We are here to do
8 justice. Your job is to do justice as well.

9 Justice often takes time, and we are not going
10 to be able to run things as efficiently as private
11 business. There are certain built-in obstacles in the
12 system that we have to adhere to. We appreciate your
13 understanding on that.

14 If, during the course of the trial, someone
15 objects to evidence, usually I can rule right on the
16 spot. Sometimes we get into thorny questions of
17 evidence or of law that takes some time to go through,
18 and we may have to ask you to go across the hall and
19 step in the jury room and take a break while we do
20 that.

21 We are not out here drinking coffee and
22 cracking jokes. We are out here working and trying to
23 make the case move as efficiently as possible. I
24 certainly pledge that I will do that and try to respect
25 your time as best we can.

1 Now, you have a different role than I do, and
2 our roles are different but they are similar in some
3 respects. Every case has two judges in it. As I said,
4 I am the judge of the law. Under our Constitution the
5 jury is also a judge. You are the judge of the facts in
6 the case.

7 I can't have an opinion about the facts in
8 this case. I am not allowed to comment on the facts,
9 and I won't comment on the facts of this case. Because
10 under our system of justice, the jury and the jury alone
11 determines what the facts are in a trial.

12 You determine what the facts are, and that's
13 why we need a jury is because there's some dispute about
14 what the true facts are in this case. You have been
15 called upon to resolve that dispute.

16 Now, ladies and gentlemen, your badge says
17 juror, but when it comes to matters of fact, it should
18 say judge because that's what you are. You and you
19 alone determine what the facts are in this case.

20 How do you do that? You determine what the
21 facts are by weighing and evaluating the evidence you
22 are going to hear during the course of this trial. So
23 let me tell you what evidence is and what it is not.

24 First of all, evidence has two sources. The
25 first is the one you are probably most familiar with,

1 and that is the sworn testimony of a witness. I
2 anticipate we will have people who will come in and be
3 sworn and under oath and tell you about things they know
4 about this case or some matter about this case.

5 The second source of evidence is by way of an
6 exhibit that we may have in this case. An exhibit is
7 simply a physical, tangible object. It might be a
8 photograph, a piece of paper, or some other thing of
9 that nature.

10 You will know it's an exhibit and will know
11 it's evidence that you can base your decision as to what
12 the facts are in this case because it will be back in
13 the jury room. It will have a little sticker on it that
14 says exhibit number so and so.

15 So those are the sources from which you can
16 determine the facts in this case. You cannot consider
17 anything else. You can't consider what the lawyers say
18 because they are not witnesses.

19 They are going to help you interpret the
20 evidence, and you certainly should listen very carefully
21 to what they say. But bear in mind that they are not
22 witnesses, and therefore what they say is not evidence.

23 Likewise, anything you may see or hear when
24 court is not in session is not evidence, and you may not
25 consider that in determining what the facts are in this

1 case.

2 Now, in determining what the facts are, you
3 will have to, by way of necessity, determine the
4 credibility or believability of the evidence. That is
5 for every witness who comes in and testifies, you will
6 have to determine whether they are telling the truth,
7 and for every exhibit that is entered in, you will have
8 to determine whether it is worthy of belief.

9 In the case of a witness, I can give you some
10 guidelines for determining the credibility or
11 believability of a witness. You may consider whether
12 they have some bias or prejudice about this matter or
13 whether they have something to gain by their testimony,
14 whether they testify in a forthright manner or whether
15 they are hesitant.

16 Their demeanor is something you should
17 consider. You certainly can consider how they act on
18 the stand, and you can consider anything you use in your
19 day-to-day life when you determine whether someone is
20 telling you the truth. Because you certainly don't
21 surrender your common sense when you report to the
22 courthouse for jury duty.

23 As the judge of the facts, you will have to
24 determine the credibility of the witnesses. Bear in
25 mind that you may see in the paper from time to time or

1 on the news that cases are reversed on appeal.

2 Let me just tell you how important your job as
3 the finder of facts is. When someone's case is reversed
4 on appeal, that means the judge made a mistake on the
5 law.

6 Under our system of justice, if I make a
7 mistake on the law, it can easily be corrected on
8 appeal. But a jury's findings of fact and their
9 decision as to what the facts are can almost never be
10 reversed on appeal and is almost always final. So keep
11 that in mind as you are doing your job.

12 I know it's hard to sit here for long periods
13 of time and listen to witnesses and listen to cases, but
14 also remember that it's right when we start daydreaming
15 when usually something important happens. Your job is
16 very important, and I know you will do it
17 conscientiously and diligently.

18 We are going to take breaks about every hour
19 and a half to two hours. You won't be in here at
20 midnight or anything like that. We are going to try to
21 keep reasonable hours.

22 I don't know how long this case is going to
23 take. They tell me it will probably be resolved
24 tomorrow. But it doesn't matter how long or short a
25 case is, it's an important case. It is an important

1 day in court for both sides. This is their day in
2 court.

3 Now, I think it's important for you to know
4 that this is a civil case. You will have to determine
5 which side wins in the end, and you need to know what
6 kind of yardstick you are going to be using in terms of
7 a legal measure.

8 I think it's important before I get into the
9 substantive law that is going to apply here, which I
10 will tell you about at the end of the case, it's
11 important for you to know something about the burden of
12 proof.

13 In order for a party to prevail in a civil
14 case, they must prove to you that the greater weight of
15 the evidence is on their side. They must prove to you
16 what they are trying to show is more likely true than
17 not true.

18 So keep that in mind as you listen to the
19 evidence. The burden of proof is on the Plaintiff in
20 this case, Mr. Jenkins, and that brings me into telling
21 you a little bit about the structure of a civil trial.

22 How many of y'all have served on a jury before
23 in a civil case? Raise your hand.

24 (Jurors indicate).

25 THE COURT: Others of you may know from your

1 own experience, but a civil trial has a structure to it.
2 The Plaintiff, because he bears the burden of proof,
3 will go first. In just a few moments, we will hear from
4 Mr. Suggs, Mr. Jenkins' lawyer, who will give an opening
5 statement.

6 An opening statement is simply an opportunity
7 to give you a road map about what the case is going to
8 be about and what the evidence is going to be and what
9 the issues may be.

10 At the conclusion of that, then Mr. Childs
11 will have an opportunity to give an opening statement
12 for the Defendant, Mr. Few, as well. Then after you
13 have heard the opening statements, again Mr. Jenkins,
14 because he bears the burden of proof as the Plaintiff,
15 the person that brought the lawsuit, will go first and
16 present his witnesses and evidence.

17 Mr. Few will have the opportunity for his
18 lawyer to cross examine and challenge that evidence.
19 Then we will have the opportunity for Mr. Few to present
20 any evidence he wishes to. He doesn't have a burden of
21 proof so he doesn't have to present any evidence, but if
22 he chooses to he can.

23 Then after you have heard all the evidence,
24 you will hear the lawyers' final arguments where they
25 summarize what they think the evidence has shown and

1 what the verdict should be. Then I will give you the
2 instruction on the law, and then the case will be in
3 your hands for a decision and for a verdict.

4 Until that time and that point, please don't
5 talk about this case among yourselves or with anyone
6 else. We spent a good deal of time here this morning
7 and so did you trying to find a jury that would be fair
8 and impartial and have an open mind about this matter.

9 So please don't discuss the case until the end
10 when you have heard all the evidence, when you have
11 heard the arguments of the lawyers, and when you have
12 heard the law that you need to apply to the facts of
13 this case.

14 Because then and only then will you have the
15 tools you need to do your job. A trial is often like a
16 puzzle. The lawyers must present it one piece at a
17 time. Pay close attention and keep an open mind
18 throughout the case.

19 The lawyers in this case are advocates for
20 their clients. They will do their best to represent
21 their clients to the best of their ability. You and I,
22 ladies and gentlemen, are not advocates. We don't have
23 any friends to reward in this process or any enemies to
24 punish.

25 Our job is to be neutral. Your job is to

1 find the facts and render a verdict based on those facts
2 and based on the law as I give it to you at the end of
3 the case. We appreciate your attention to me, and at
4 this time we will have the opening statements of
5 Mr. Suggs.

6 MR. SUGGS: May it please the Court.

7 THE COURT: Yes, sir.

8 **OPENING STATEMENT**

9 MR. SUGGS: Ladies and gentlemen of the jury,
10 my name is Trey Suggs. I have the privilege of
11 representing Ken Jenkins in this lawsuit that we have
12 filed against Scott Few and Few Farms, Incorporated, his
13 company.

14 They are seated back here. I will ask y'all
15 to bear with me a little bit over the coming days. I
16 usually find myself on that side of the courtroom. I am
17 a defense lawyer by trade. But I think you will
18 understand, once you have heard the story that we are
19 here to share with you, why I had to take this case.

20 It's a very basic, fundamental, simple, if you
21 will, case. It's about right and wrong. It's about
22 three fundamental tenets or rules by which our society
23 operates:

24 One, act honestly; two, respect each other's
25 property; and three, do not interfere with a man or

1 woman's ability to provide for his family and himself.
2 These are rules that you know, and they are rules that I
3 know. They are apparently rules that Mr. Few does not
4 know.

5 Before I tell you the complete story or at
6 least a structure or skeleton of the story, let me tell
7 you a little bit about Ken. Ken is 67 years old and
8 lives in the northern part of Greenville County.

9 He has been working his whole life and still
10 works today. He has been earning a living the hard way,
11 working hard for it, using his hands primarily, using
12 his brain as well. But he owns and operates a company
13 that provides fertilizer and lime spreading services in
14 the upstate.

15 When he first told me what he did, it didn't
16 mean much, and it might not mean a lot to you. But how
17 it operates is a farmer or a landowner calls Ken and
18 says, Ken, I need this number of pounds of fertilizer on
19 this pasture or this amount of lime out here in this
20 field by Saturday.

21 Ken goes and takes his specialized Ford F-700
22 spreader truck, spreads it all across the pasture, gets
23 paid of course for his services, and on he goes to the
24 next client.

25 He has regular clients, but he also has

1 customers who just call him up out of the blue and say,
2 Hey, I need this done. I need that done. There are two
3 primary times of the year that his services are needed,
4 early spring -- February, March, April -- and then early
5 fall.

6 I don't really understand too much about the
7 growing season. I'm not a farmer myself, but apparently
8 that is when you are supposed to spread fertilizer and
9 lime and get your hay ready to be grown.

10 Now, Ken has competition, as we all do in
11 business, and one of his main competitors in the upstate
12 is Few Farms. There are several others that operate in
13 the area, but due to them both being from the northern
14 Greenville area operating the same business, the Few
15 family and Ken Jenkins have known each other for a very
16 long time.

17 I expect the testimony that you are going to
18 hear from both of them is that they didn't have any
19 problems with each other prior to this. So let's go
20 ahead and let me tell you a little bit about the story.

21 You are going to hear from seven or so
22 witnesses over the next couple of days. The first two
23 you are going to hear from are the most important. It's
24 not Ken Jenkins and it's not Scott Few.

25 You are going to hear from two people that

1 have no dog in this fight. They are completely
2 independent, third-party witnesses. The first one you
3 are going to hear from is a guy named Buford "Rocky"
4 Stokes.

5 He is going to tell you he has known Mr. Few
6 for years. He is a man that he called his friend, but
7 they are not friends anymore. The reason is one evening
8 back in February of 2004, Mr. Stokes got a phone call.
9 It was his buddy, Mr. Few.

10 He said, How is it going? They have little
11 small talk. Then Scott Few says, Rocky, I need to know
12 what will damage a truck more, putting sugar in the gas
13 tank or putting metal filings in the oil. Rocky says, I
14 don't really know. They both sound pretty bad.

15 Well, he says, you know, Scott, I don't think
16 that sounds like a very good idea. What is going on?
17 He says, There is this guy up here in north Greenville
18 County stealing my business. I want to take him out. I
19 want to destroy him and his business so he cannot
20 compete with me anymore.

21 Rocky says, It sounds like you are asking for
22 trouble, and all he is going to do is go get another
23 truck anyway. He said, Are you willing to help me? And
24 Rocky says, No, I am not willing to help you.

25 They have multiple conversations like that,

1 and eventually Scott Few realizes that he is not going
2 to be able to rely upon Rocky to do his bidding. So he
3 moves on. He calls another lifelong family friend,
4 Johnny Lindsey.

5 Let me go ahead and tell you a little bit
6 about Mr. Lindsey. I will get that out in the open. He
7 is no saint. He has struggled with addiction and
8 substance abuse for the better part of his adult life,
9 and he's struggled with crime and he has a record.

10 But you know what? Mr. Jenkins didn't choose,
11 Mr. Lindsey. Mr. Few did. So let's be careful about
12 how we judge his character. What you are going to hear
13 from Johnny Lindsey is he, too, got a phone call from
14 Scott Few back in February the 24ish, 2004.

15 Scott said, Johnny, I need you to go up there
16 to Steve's Garage, and I need you to put sugar in the
17 gas tank of Ken Jenkins' spreader truck. He says, I'm
18 tired of him cutting my prices. I'm tired of him
19 stealing my business. I want him gone.

20 Well, Johnny said, I don't know. I have
21 always thought you don't mess with a man's property, and
22 I don't think I am interested. Well, at the time Johnny
23 had a roommate, a guy named Billy Guest.

24 Billy overhears the conversation, gets on the
25 phone with Scott, and the next thing you know it's late

1 at night. Johnny Lindsey is driving up the road with
2 Billy Guest and a shotgun.

3 They've got a five-pound bag of sugar. They
4 slip up there and Johnny pulls up, drops Billy off. He
5 is going to tell you that he watched Billy walk up there
6 to that truck, unscrew the gas cap, and pour that five
7 pound bag of sugar in it.

8 He jumps in the truck and they head back off
9 to his house. Actually I think he might tell you, if my
10 memory serves me correctly, they actually went to a drug
11 house. That was after they got the \$100 they had been
12 promised by Scott Few.

13 Scott paid them a hundred bucks to do this
14 deed and off they go. Fast forward about 10 or 14 days.
15 Johnny Lindsey gets another phone call. It's Scott Few
16 again: I thought I paid you a hundred dollars to sugar
17 Ken Jenkins' gas tank, but I just passed him driving
18 down the road.

19 Well, Johnny says, Listen, I watched Billy
20 pour the sugar in there. I watched him do it. He said,
21 I will give you another hundred dollars to do it again.
22 Late that night Johnny Lindsey slips on up the road by
23 himself this time.

24 He checks a jug of gas he had out back, mixes
25 a five-pound bag of sugar in there, goes up and pours

1 that gas into the truck and off he goes, collects
2 another hundred bucks. The deed has been done.

3 In the meantime -- and I realize we've got two
4 different trains going here -- but in the meantime, you
5 have got Ken Jenkins. About February 24th that F-700
6 starts choking down, starts losing power, starts
7 smoking. He is going to tell you about all the problems
8 he was having with it.

9 Now, this truck had been rebuilt in 2000.
10 It's a 1971 model, but he had completely rebuilt the
11 engine and everything else in 2000. He is going to tell
12 you that he didn't have any problems with that truck
13 prior to February of 2004.

14 Well, he knows enough about cars -- I don't --
15 but he knew something was going wrong with the fuel
16 intake. So he strips it down, takes off the fuel line,
17 takes out the fuel filter, takes off the tank, cleans
18 everything out, gets it going okay again.

19 The next day the same thing happens. He calls
20 a mechanic. The mechanic comes over. They strip it
21 out, they take out the fuel line, and take out the
22 filter. I will show you this filter in a little while.
23 It is chock full of white powder stuff.

24 I'm not tasting it, but Ken Jenkins did. Why,
25 I don't know. He tasted it and said it's a sweet

1 substance, tastes like sugar. Y'all are going to see
2 that filter before the end of the trial.

3 So he realizes at that point that someone has
4 poured sugar in his gas tank. He was scared, he was
5 worried about his business, and he didn't know how much
6 damage had been done and how much could be done by this
7 sugar being added to the fuel system.

8 Now, he did his best to clean everything out,
9 but eight days go by where he can't operate. This time
10 of year, late February, start of March, he is busy. He
11 is slammed, busy every day, running up and down the road
12 providing fertilizer and lime services to various
13 farmers and landowners.

14 If he doesn't have a truck, he can't operate.
15 It is that simple. He was making about \$700 a day
16 through this business. He can't operate for eight days.
17 Well, fast forward a little bit.

18 Ken thinks everything is going fine, but all
19 of sudden his truck starts fouling up again. It's even
20 worse for a little while, losing power, cutting down, no
21 breaks because this connects to the vacuum system. It's
22 smoking.

23 The truck just won't work right. He
24 eventually parks it. He uses it some, can't use it
25 others, parks it. By the end of the year, he has gone

1 off and spent \$38,000 to purchase a new spreader truck.
2 He doesn't trust the old truck anymore. It's not
3 running right. There you go.

4 Now, I told you a little bit about Johnny
5 Lindsey, but the end of the story with Lindsey is that
6 his conscience gets the best of him. He ends up going
7 to the police and turning himself in and pleading
8 guilty to malicious damage related to sugaring the gas
9 tank.

10 Now, if he didn't do it, I can't imagine why
11 he would turn himself for it. Likewise, Rocky Stokes
12 hears that Ken Jenkins' truck has been sugared. He
13 immediately knows what has happened.

14 He is going to tell you that he had trouble
15 sleeping, he struggled with his conscience, and he
16 finally called Ken Jenkins up. He didn't know Ken. He
17 had never met Ken in his life.

18 He finds out where he works and calls him up
19 and says, I need to come meet with you. They meet. He
20 tells him the story. Ken is a little sceptical at
21 first, but he gets enough information from Rocky Stokes
22 to realize that this guy couldn't know all this if this
23 wasn't true.

24 Y'all are going to hear from all of these
25 fellows, and they are all going to be telling the exact

1 same story. As a result of these deceitful actions, Ken
2 has suffered extensive damages to his business.

3 He was not able to operate for eight days.
4 His truck is basically junk. You are going to hear from
5 a mechanic, who we have had run a number of tests on the
6 vehicle, and he is going to say the engine is shot and
7 needs to be rebuilt.

8 He has also incurred the expense of purchasing
9 a new truck. He also has spent \$2,000 paying out reward
10 money trying to find out what in the world happened to
11 his vehicle.

12 I might add that when Rocky Stokes came to see
13 Ken, there was no reward posted, there was no poster up
14 on any wall, and no money had been offered or paid to
15 Rocky at that time.

16 Folks, y'all are going to hear this story over
17 the next couple of days. At the conclusion of all the
18 evidence and testimony, I believe there will be one
19 conclusion to draw, which is Scott Few maliciously
20 intended to destroy the business of my client.

21 I will ask y'all to do the only thing y'all
22 can. I can't help him. There ain't a whole lot I can
23 do, other than stand up here and tell the story. There
24 is not much he can do for himself, but you 12 jurors do
25 have the power to make things right. That's what I'm

1 asking you to do. Thank you.

2 THE COURT: Thank you, Mr. Suggs. Yes, sir,
3 Mr. Childs.

4 OPENING STATEMENT

5 MR. CHILDS: Ladies and gentlemen of the jury,
6 it's my pleasure to represent Scott Few, who is a local
7 businessman in the northern part of Greenville County.
8 He used to run a fertilizer business and also was in
9 competition with Mr. Jenkins' business.

10 You will hear during the course of this trial
11 that these two individuals had really no difficulty
12 prior to this alleged incident. I think that's admitted
13 by everybody.

14 Mr. Jenkins bought his business for, I
15 believe, \$17,000 several years before, and Mr. Few and
16 Mr. Jenkins had plenty of work to do. What you won't
17 hear in this case is who actually put sugar in
18 Mr. Jenkins' gas tank.

19 That's what this case is all about is
20 allegedly somebody put sugar in Mr. Jenkins' gas tank.
21 You will hear two folks, one of which is Mr. Buford
22 Stokes, who got a reward for coming forward and saying
23 he had this conversation with Mr. Few back when he
24 doesn't know when and it was about he doesn't know
25 who.

1 By the way, these people are no longer
2 friends. As a matter of fact, Mr. Stokes hates his
3 guts. As a matter of fact, Mr. Stokes is a criminal.
4 He has a conviction for a felony.

5 Also you have Mr. Johnny Lindsey. This case
6 is more about Johnny Lindsey than I think anybody else.
7 Johnny Lindsey has benefited more out of this case than
8 anybody you will ever see.

9 Johnny Lindsey has a friend in Mr. Jenkins
10 now. Johnny Lindsey is a great con man. He knows how
11 to manipulate the system. Mr. Jenkins has gone and
12 visited Mr. Lindsey in the hospital.

13 Mr. Lindsey has a nice friend. Mr. Lindsey
14 has been helped out by Mr. Jenkins. Mr. Lindsey was
15 ordered to pay restitution for all the damages that he
16 has done to Mr. Jenkins, \$420. That was the damages
17 that Mr. Lindsey allegedly caused.

18 Mr. Lindsey hasn't paid that yet. Mr. Lindsey
19 has gotten away with what whatever he wanted to get away
20 with. You will hear a litany of criminal charges that
21 Mr. Lindsey has had, has, and probably will have in the
22 future.

23 I do not know what goes through the brain of a
24 crack addict. I cannot tell you why Mr. Lindsey and
25 Mr. Stokes would come up with this fabulous story about

1 sugaring a gas tank.

2 I don't know if it makes sense, and I don't
3 know that crack addiction makes much sense to people
4 either. But I know for sure that Mr. Few had nothing to
5 do with these individuals. Mr. Few had nothing to gain
6 as a result of these individuals.

7 Mr. Few is smart enough, being a graduate of
8 Clemson and being a businessman for many years, to know
9 that sugar in a gas tank won't do anything but clog up
10 the fuel.

11 Sugar in the gas tank will do nothing but clog
12 the fuel filter. Sugar will not dissolve in gasoline.
13 It's the urban myth that you can damage a car by adding
14 sugar to the gasoline. Sugar will not dissolve in
15 gasoline.

16 Now, Mr. Jenkins, thinking that Mr. Few has
17 done all these things to him, takes a \$400 bill for
18 changing his filters and creates a \$35,000 case for
19 damages.

20 He says, I had to fix my 1971 Ford truck, but
21 I haven't fixed it. He has never fixed it. He has
22 never cracked the engine open. He has never looked
23 inside of it. He can't tell you, nor can anybody tell
24 you, why his engine doesn't work right, maybe because
25 it's a 1971 Ford truck.

1 But from that he wants you to have Mr. Few pay
2 to repair his engine for \$5,000 and I guess replace his
3 truck, a brand new truck, a truck new to him, a truck
4 that he wants you to replace the truck for \$23,000.

5 He has sued Mr. Few for trespass. He has
6 alleged that Mr. Few went onto the real property of
7 Mr. Jenkins and trespassed on that property. He has
8 sued Mr. Few for conversion, wrongful conversion. He
9 says that by placing sugar in Mr. Jenkins' fuel tank,
10 Mr. Few and his corporation converted the truck to their
11 own use.

12 He also alleges conspiracy, and to conspiracy
13 he alleges that my client conspired with Johnny Lindsey
14 to damage Mr. Jenkins' vehicle. In order to prevail on
15 conspiracy, the Plaintiff must establish special
16 damages, aside from the other damage that they have
17 alleged.

18 They allege in this case a lost revenue for
19 nine days in which Mr. Jenkins could not open his
20 business. Mr. Jenkins cannot point to one customer,
21 one invoice, one single day of operation, one dollar
22 that he missed as a result of this alleged incident
23 against him.

24 He says, People must have called while my
25 truck was down. I don't know who they were, but they

1 must have gone on and done some other business. To top
2 it all off, Mr. Jenkins wants to sue Mr. Few and Few
3 Farms, Incorporated for unfair trade practices.

4 He says that the act of placing sugar in a
5 truck tank is somehow involved in trade or commerce.
6 Somehow it's related to the sale or advertisement of
7 products, and it affects the public interest somehow.
8 And for that he wants to allege that somehow somebody
9 has committed an unfair trade practice, a very serious
10 cause of action, very serious remedies.

11 Now, ladies and gentlemen of the jury, what
12 you need to do is listen carefully to the evidence and
13 the witnesses and look at the lack of evidence and the
14 lack of witnesses.

15 Because not only has Mr. Few himself been sued
16 personally, but his family company has been sued, and
17 it's his wallet that is at stake and the business. But
18 not only that, his reputation in the business is at
19 stake.

20 Because here we have two criminals who are
21 saying that my client, who has a stellar reputation,
22 stellar business history, has conspired with two
23 criminals to injure Mr. Jenkins.

24 I think these folks have done a good job with
25 Mr. Jenkins. I think Mr. Jenkins has been rightfully

1 angered about what they say, but ultimately Scott Few
2 didn't do anything to Mr. Jenkins that would damage
3 Mr. Jenkins. He did not want to damage Mr. Jenkins, and
4 any person would know that putting sugar in a fuel tank
5 is not going to do anything to damage anybody.

6 So I want you to listen carefully to the
7 evidence, listen to what they have to say, as far as
8 what evidence they have that Mr. Few was involved in
9 this, what evidence they have that Few Farms,
10 Incorporated was involved in this, what evidence they
11 have as to whether or not damages were incurred and
12 what were the damages, what was the nature of the
13 damages.

14 At the close of this case, after both sides
15 have presented evidence, I will ask you to present a
16 verdict in favor of the Defendants because the Plaintiff
17 in this case cannot prevail based upon the evidence they
18 have, and they should not prevail because Mr. Few did
19 not do this, had no reason to do this, and would have no
20 reason to even try to do this.

21 So listen carefully. At the conclusion of the
22 evidence, we will get to argue what we have heard from
23 the witness stand, as opposed to what we have heard from
24 our mouths today.

25 You will get to hear the witnesses speak up

1 here on the stand. You get to judge their credibility
2 and their believability and why you think they would be
3 telling the truth and why you think they wouldn't. When
4 you have done that, all we ask you to do is carefully
5 deliberate, weigh the evidence, and reach a verdict that
6 speaks justice. Thank you.

7 THE COURT: Mr. Suggs, you may call your first
8 witness.

9 MR. SUGGS: Thank you, Your Honor. We would
10 call Mr. Rocky Stokes at this time. May I step outside
11 and grab him?

12 THE COURT: Yes, sir.

13 (Pause).

14 BUFORD WESLEY STOKES, being
15 first duly sworn, testified as follows:

16 CLERK: State your full name for the record,
17 please.

18 THE WITNESS: Buford Wesley Stokes.

19 CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MR. SUGGS:

22 Q Mr. Stokes, as you know, I'm Trey Suggs. Introduce
23 yourself to the jury, will you.

24 A I'm Buford Stokes.

25 Q Where do you live?

- 1 A I live in Greer.
- 2 Q How long have you been there?
- 3 A In Greer a little over a year.
- 4 Q Do you have any kids?
- 5 A Two daughters.
- 6 Q Are they still living with you?
- 7 A No, they are grown.
- 8 Q May I call you Rocky?
- 9 A That's fine.
- 10 Q Rocky, have you ever worked as a mechanic?
- 11 A Yes.
- 12 Q When was that?
- 13 A In the late '80s, I worked for Kevin Whitaker's
- 14 Chevrolet when it first opened up.
- 15 Q How long were you working as a mechanic?
- 16 A Two and a half years there.
- 17 Q Did you ever see any vehicles which had been
- 18 sugared?
- 19 A Once or twice we had seen a couple.
- 20 Q We will get to that in a little while. First, I
- 21 want to talk to you a little bit about the reason
- 22 we are here. Do you know Mr. Jenkins?
- 23 A I do now. I didn't at the time but I do know him.
- 24 Q What about Mr. Few?
- 25 A Yes.

1 Q How long have you known Scott Few?

2 A I'm not good with years. I will say ten years
3 approximately.

4 Q Prior to all this coming up, how would you
5 characterize your relationship with Mr. Few?

6 A Before this we were friends.

7 Q Y'all had been friends about ten years; is that
8 correct?

9 A Give or take.

10 Q Tell the jury about the conversation you had with
11 Scott Few in early 2004 when he called you.

12 A Well, we were friends and we talked back and forth,
13 you know, call on the phone and stuff. He asked me
14 about what would do the most damage to a vehicle,
15 either metal shavings in the oil or sugar in the
16 gas tank.

17 I said I always heard sugar in the gas tank
18 would do the most damage. He expressed to me there
19 was -- he didn't say who -- but he said there was
20 somebody that he was going to put them out of
21 business. He was going to get them.

22 Q Someone in his industry?

23 A In his spreading business, and I expressed to him,
24 you know, with his equipment and, you know, it
25 would come back to him if he did. I tried to talk

1 him out of it several different times.

2 Q So y'all had more than one conversation?

3 A Yes.

4 Q Did he ever ask you to help him?

5 A Yes.

6 Q Did you help him?

7 A No.

8 Q Did you ever suggest to him that Mr. Jenkins would
9 just go buy a new truck if his other truck was
10 damaged?

11 A Well, what he had told me when I said, you know,
12 Scott, I don't understand how that is going to help
13 you any, you know. And like I say, I didn't know
14 it was Mr. Jenkins or whoever it was at the time,
15 but he said that I didn't understand how the
16 business worked.

17 He said at a certain time of the year, if they
18 weren't available for all the calls in the
19 business, then they would be out of it. It must be
20 a time sensitive kind of businesses.

21 Q Do you work in the spreader business?

22 A No, I do not.

23 Q Have you ever worked in the fertilizer or lime
24 business?

25 A No.

1 Q Did you tell anybody else about this conversation
2 you had had with Scott Few?

3 A Yes, I told a couple of other friends. One was a
4 farmer, which is Mark Turner. Then another friend
5 that I went to high school with that we all were
6 acquaintances of was Greg Lewis.

7 Q Did you tell them about this conversation prior to
8 you learning that Ken Jenkins' truck had been
9 sugared?

10 A Yes, I did.

11 Q How did you learn that Ken Jenkins' truck had
12 gotten sugared?

13 A Mark Turner found out and called Greg Lewis, and
14 Greg Lewis called me and told me --

15 MR. CHILDS: Objection, hearsay.

16 THE COURT: Sustained.

17 BY MR. SUGGS:

18 Q Tell me about or tell the jury better about the
19 conversation you had with Ken Jenkins regarding the
20 incident.

21 A After I was informed of what went on --

22 MR. CHILDS: Objection. That's hearsay.

23 THE COURT: Sustained.

24 BY MR. SUGGS:

25 Q Go ahead. Try not to talk about --

1 A Okay. I called Mr. Jenkins on the phone. I met
2 him up at his store, and I talked to him about it.
3 I told him what I knew from Scott.

4 Q Why? Why didn't you just stay out of it?

5 A Well, for two days I thought about it. I couldn't
6 sleep over it. I really thought Scott wouldn't do
7 it because it went on for awhile but nothing
8 happened, you know.

9 After the conversations I thought maybe he had
10 listened to me and decided that it wasn't the thing
11 to do. Then when I found out, you know, like I
12 say, it bothered me. So I told the man what I
13 knew.

14 Q How did Ken react to you when you went and met him
15 and told him what you knew?

16 A Well, he didn't believe it. I mean, to start with
17 he was like, you know, I can't understand why, you
18 know. So I said all I can tell you is what I know,
19 and you can handle it from there.

20 Q Rocky, at that time were you aware of any reward?

21 A No, there was nothing like that mentioned
22 whatsoever.

23 Q So when you went and volunteered information to Ken
24 Jenkins, you had not seen a reward poster, and
25 nobody had told you that there was a reward?

1 A No.

2 Q Did you eventually get some reward from
3 Mr. Jenkins?

4 A Eventually he decided to split it after he had put
5 out a reward to get more information. That's the
6 reason he did it.

7 Q Now, since you came forward and met with Ken
8 Jenkins, have you had any interaction with Mr. Few?

9 A On the phone I have been threatened.

10 Q Tell me about that.

11 A Well, he called me on the phone and wanted to
12 fight, wanted to spar as he called it, wanted me to
13 meet him at some karate school where he goes. I
14 just basically told him I didn't have to go to no
15 karate school to settle it. If he wanted to get
16 into it, we could meet somewhere and handle it that
17 way.

18 Q But y'all didn't -- did y'all have any kind of
19 altercation, physical altercation, at any time?

20 A No.

21 Q Have you had any other dealings with Mr. Few since
22 that time?

23 A No, I have not.

24 Q I want to go back to our conversation earlier.

25 Based upon your experience as a mechanic and having

1 seen a vehicle which had sugar introduced into the
2 gas tank, what is your opinion as to whether that
3 causes --

4 MR. CHILDS: Objection. This witness is not
5 listed as an expert, nor is he qualified to testify
6 about sugar in a gas tank.

7 MR. SUGGS: Judge, he is not listed as an
8 expert. In his deposition I was explicitly asked
9 whether I was going to use him as an expert, and I said
10 we would later make that determination.

11 I would offer him as an expert at this time.
12 He has stated that he has worked for two and a half
13 years as a vehicle mechanic, and that he has seen a
14 vehicle --

15 THE COURT: Okay, thank you.

16 Ladies and gentlemen, we are going to go ahead
17 and take our lunch break now. Just be back in the jury
18 room at 1:45, and we will resume the case at that time.
19 Keep an open mind and don't talk about the case. Thank
20 you very much.

21 (The jury is excused for lunch at 12:36 p.m.)

22 THE COURT: Do you want to qualify him as an
23 expert? There is an objection.

24 MR. CHILDS: Let me further state.

25 THE COURT: Yes, sir.

1 MR. CHILDS: He has not been designated as an
2 expert yet today. He was never identified in
3 interrogatory responses as an expert, and I specifically
4 asked him in his deposition -- when Mr. Suggs asked him
5 in his deposition about that -- and he said: I'll make
6 that determination later. I mean, I've got another
7 expert I might use.

8 So I don't think I got a proper opportunity at
9 that point to even be of concern that he might be
10 attempting to put him up as an expert. I certainly know
11 he has never been listed as an expert, and they have had
12 an opportunity to do that since his deposition was taken
13 back in July of 2007.

14 THE COURT: What is it you are trying to ask
15 him?

16 MR. SUGGS: I am just asking him -- in his
17 opening statement, Mr. Childs suggested to the jury that
18 sugar in a gas tank doesn't hurt an engine. We have got
19 a witness right here who works as a mechanic, has seen a
20 vehicle with sugar introduced in the gas system.

21 I'm asking for his opinion on that matter
22 which he has already testified to under oath in his
23 deposition. He already answered that question in his
24 deposition. So Mr. Childs is hardly being caught by
25 surprise.

1 THE COURT: Well, do you have another witness
2 that is going to say that? I don't know much about the
3 case obviously.

4 MR. SUGGS: Judge, I have another mechanic who
5 has looked at the vehicle who will be testifying on that
6 issue, but I would also state that the Defendants will
7 be calling two expert -- quote, unquote -- witnesses in
8 this case.

9 THE COURT: And you alluded to some objection
10 you had to his experts. What is that?

11 MR. SUGGS: Judge, he is going to be offering
12 a chemist as an expert in this case. The chemist has
13 done some out-of-court experiment. I have researched
14 the case law in South Carolina on the admissibility of
15 out-of-court experiments.

16 There has to be a reasonable semblance. I
17 mean, one has to be reasonably similar to the other.
18 Here the question is: Sugar running through a vehicle,
19 does it cause damage? The chemist that he is offering
20 has taken a little bit of sugar, mixed it with a vial of
21 gas and shaken it up.

22 One has nothing to do with the other.
23 Essentially this chemist is nothing -- he is not an
24 expert. He could just as well have some Joe Blow off
25 the street do the same little experiment and come in

1 and testify about it. This isn't a chemistry case.

2 MR. CHILDS: Yes, Your Honor, it is. Sugar
3 will not dissolve in gasoline because of the nature of
4 the molecules. He will testify -- and he has not
5 taken his deposition, but I will tell you what he will
6 say -- the polarity of sugar is opposite that of
7 gasoline.

8 Sugar will not dissolve in gasoline. There is
9 no method by which sugar could reach the engine of an
10 automobile because of the fact sugar will not dissolve
11 in gasoline.

12 The only thing that sugar will do is clog the
13 fuel filter. That's the testimony of my chemistry
14 expert who has also reviewed the literature on this,
15 going back to the General Motors' analysis of whether
16 sugar will dissolve in gasoline.

17 The myth busters show, Well, they ran an
18 engine and put sugar in the gasoline and ran it all
19 night, and it didn't hurt the engine. So he's an expert
20 chemist, and he can say what substances do, how they mix
21 with each other and how they don't mix with each other.

22 He would also testify about the Plaintiff's
23 theory of the case, that there must have been some water
24 in the gasoline, and so the water must have dissolved
25 with the sugar, and that way it got to the engine

1 somehow.

2 But he says that doesn't work either. So I
3 think he is a relevant witness for the defense as far as
4 whether or not sugar will actually damage a motor
5 vehicle engine like their expert said, who says it will
6 somehow gather upon the springs involved in the valves
7 in the engine, but he hasn't looked at the springs or
8 the valves in the engine, but that's how it would
9 happen. It would kind of gunk it up a little bit.

10 So that's a dispute about the proximate
11 causation of the Plaintiff's damages. I think unless he
12 tore apart an engine and found sugar in the engine, this
13 witness isn't competent to testify about anything, not
14 just having seen two engines that were allegedly
15 sugared.

16 THE COURT: So how would you be prejudice by
17 him testifying to something that he has already
18 testified to?

19 MR. CHILDS: In the deposition? Well, he was
20 not put up as an expert. So I didn't ask him about his
21 experience, as far as engine repair or anything of that
22 nature. I simply asked him -- he said he thought it
23 crystalized in the engine.

24 THE COURT: So would you have objections to
25 his qualifications?

1 MR. CHILDS: I would have objections to his
2 qualifications, also the lack of notice that he is an
3 expert.

4 THE COURT: Right.

5 MR. CHILDS: Your Honor, I haven't heard his
6 qualifications yet, other than he worked at a Chevrolet
7 place, and he said: When sugar heats up, it crystalizes
8 and involves the cylinders and ruins the block.

9 These are questions Mr. Suggs had of him at
10 his own witness' deposition, and I asked him: Are you
11 presenting him as an witness? He said, No, not right
12 now.

13 MR. SUGGS: Judge, if I may. It was not at my
14 own witness' deposition. It was not my deposition. He
15 is an independent third party witness.

16 THE COURT: Do you want to ask him about --
17 why don't you go ahead and proffer him?

18 MR. SUGGS: Okay.

19 IN CAMERA EXAMINATION

20 BY MR. SUGGS:

21 Q Mr. Stokes, I believe you testified earlier that
22 you have worked as a mechanic in the past;
23 correct?

24 A Yes.

25 Q Again, will you tell the Court, please, how many

1 years you worked as a mechanic and where that was?

2 A Kevin Whitaker Chevrolet, approximately two and a
3 half years.

4 Q During that two and a half years, what type of work
5 did you do as a mechanic?

6 A Mainly every bit of it.

7 Q Did you work on engines?

8 A Yep.

9 Q Did you work on power systems?

10 A Yeah.

11 Q Did you work on a fuel delivery system?

12 A Yeah.

13 Q And during that two and a half years, did you have
14 the opportunity to inspect and/or work on a vehicle
15 which had sugar introduced into the fuel system?

16 A Yes.

17 Q Do you have an opinion to a reasonable degree of
18 certainty as to whether introduction of sugar into
19 a gas tank causes damage to a vehicle?

20 A Yes, it does.

21 Q Hold on one second.

22 MR. SUGGS: Do you want that answer, Judge?

23 THE COURT: Yes, he can answer it.

24 BY MR. SUGGS:

25 Q Go ahead.

1 A Any gas tank has a certain amount of water in it.
2 Any fuel tank in the ground has a certain amount of
3 water in it. Water is what the sugar mixes with,
4 and that's how it gets into the fuel system.

5 Q If it does get into the fuel system and then into
6 the engine, what kind of damage will it cause?

7 A It will damage the valves, the heads, the cylinder
8 block. I mean, it like crystallizes.

9 MR. SUGGS: Judge, we would offer Mr. Stokes
10 as an expert on these issues at the time.

11 THE COURT: Mr. Childs.

12 IN CAMERA EXAMINATION

13 BY MR. CHILDS:

14 Q Mr. Stokes, did you examine Mr. Jenkins' engine?

15 A No, sir, I did not.

16 Q You said you analyzed two engines over your career
17 that had sugar in the fuel tank?

18 A Yes, sir.

19 Q When were those?

20 A It would have been in the late '80s.

21 Q Do you recall what kind of engines those were?

22 A A Chevrolet 350.

23 Q And what was your capacity at that time when you
24 looked and saw those two engines?

25 A I was a mechanic.

1 Q Were you a lead mechanic or were you just an
2 assistant mechanic?

3 A I was a mechanic on the line, a line mechanic.

4 Q What does that mean?

5 A I was equal to any other mechanic, line mechanic.
6 Whatever comes in your bay is what you work on.

7 Q Are you a certified mechanic?

8 A Yes.

9 Q Who are you certified through?

10 A C.S.E.

11 Q And are you the one that actually removed the
12 cylinder heads and springs from those engines?

13 A Not the springs. The cylinder heads, yes.

14 Q And how did you determine that that was sugar on
15 the engines?

16 A Well, it had been reported to us, you know. All I
17 did was evaluate the damage.

18 Q So you don't know whether or not the engines
19 actually had sugar in them or not?

20 A No, sir.

21 Q All you know is somebody said they did?

22 A All I know is the damage that was done to the
23 motor.

24 Q So you never developed any evidence that sugar was
25 there?

1 A No.

2 Q So your experience with repairing engines was that
3 you repaired two engines that somebody told you had
4 sugar introduced into them?

5 A That's what they were brought in for.

6 Q But you don't know that of your own knowledge?

7 A No, sir.

8 Q And you didn't develop any sugar from the engines,
9 you didn't look at the filters, you didn't see the
10 filters clogged with sugar?

11 A We looked at the filters. We looked through all --
12 when that happens you have to replace the tank, the
13 gas lines, the filters, all of it. You can't just
14 replace part of it.

15 MR. CHILDS: That's all the questions I have.
16 I don't think he is competent to testify about that
17 issue.

18 THE COURT: I will review the criteria under
19 that Jumper versus Hawkins decision, and I will let you
20 know my ruling when we come back in at quarter till.
21 Thank you very much.

22 MR. SUGGS: Thank you, Judge.

23 THE COURT: Sir, you can't talk to any of the
24 lawyers during the break just because we are breaking.
25 If you were up here and had your entire testimony

1 without a break -- but you wouldn't be able to talk to
2 them outside of that. Thank you very much.

3 (Whereupon there was a luncheon recess).

4 THE COURT: As to the issue of excluding
5 Mr. Stokes as an expert witness, based on Jumper versus
6 Hawkins and Arthur versus Sexton Dental Clinic, I find
7 that Mr. Stokes was proffered as a witness earlier. Why
8 did we not have him listed? What was the reason?

9 MR. SUGGS: Oversight on my part, Judge. I
10 knew that it had been discussed at the -- I recalled
11 that it had been discussed at the deposition that we
12 would make that determination at a later time.

13 I was planning on -- if you were to look at my
14 outline, and I am not suggesting that you do, but if you
15 were to look at my outline of this witness' exam, I had
16 it in my outline. I had planned on it. It was just an
17 oversight on my part. I feel we identified him.

18 THE COURT: Well, he is a fact witness also
19 being sought to be allowed to be an expert witness. The
20 content of his testimony is related to one of the
21 central issues in the case evidently.

22 It was an oversight that he was not listed or
23 had the interrogatories or discovery requests been
24 updated -- the answers to them rather -- were updated to
25 list him as an expert or otherwise put Mr. Childs on

1 notice, but it certainly wasn't any kind of bad faith.

2 Based on the fact that this witness did
3 testify at his deposition about the same thing he will
4 testify to here today, and now that Mr. Childs had an
5 opportunity to voir dire him, I find the degree of
6 surprise and degree of prejudice is low.

7 After all, trials are supposed to be
8 determined on the merits. While he should have been
9 disclosed as an expert, I find that based on those
10 factors, I will allow him to testify.

11 The objections that Mr. Childs has to him
12 being qualified, as you both know, we have a low
13 threshold for the admissibility of expert testimony. I
14 find that his experiences as a mechanic meets that
15 threshold.

16 The other objections would just go to the
17 weight of the evidence. In ruling I am taking into
18 account the fact that the lawyers have represented to me
19 that there is going to be other expert testimony on this
20 same matter. So this would not be the only expert
21 testimony the jury would hear.

22 Anything further?

23 MR. SUGGS: Thank you, Your Honor. Nothing
24 further.

25 THE COURT: You can bring the jury on in.

1 Sir, you can resume your seat up here, Mr. Stokes.

2 BUFORD WESLEY STOKES, having
3 being previously duly sworn, resumed the witness stand.

4 (The jury returns to the courtroom at
5 1:55 p.m.)

6 THE COURT: Good afternoon. We are now going
7 to resume the testimony.

8 Yes, sir, Mr. Suggs.

9 MR. SUGGS: Thank you, Your Honor. May it
10 please the Court.

11 DIRECT EXAMINATION

12 BY MR. SUGGS:

13 Q Mr. Stokes, we were talking earlier about the
14 conversation you had with both Mr. Few, as well as
15 a conversation you subsequently had with
16 Mr. Jenkins. I want to go back to the conversation
17 you had with Mr. Few regarding whether sugar in the
18 gas tank or metal filings in the oil cause more
19 damage, okay?

20 A Okay.

21 Q During the course of that conversation, did Mr. Few
22 say anything about his competitor's mother or where
23 that truck may be parked --

24 MR. CHILDS: Objection, leading the witness.

25 THE COURT: Sustained.

1 BY MR. SUGGS:

2 Q Did Mr. Few tell you where the vehicle was parked?

3 A Yes, he did.

4 Q Where did he say?

5 A At Mr. Jenkins' mother's house.

6 Q Did he say anything else about Mr. Jenkins' mother?

7 A That she was in a nursing home.

8 Q When you subsequently spoke with Mr. Jenkins at his
9 shop, did you tell him anything about that
10 information regarding his mother?

11 A Yes, I did.

12 Q What did you tell him?

13 A I told him that that's where the truck was, and he
14 asked me how I knew that. I said that's what I was
15 told by Scott. Because I don't know where
16 Mr. Jenkins lives or where his mother lives.

17 Q Did Mr. Jenkins tell you whether his truck was, in
18 fact, parked at his mother's house?

19 A Yes, he did.

20 Q I also wanted to talk to you. You spoke briefly
21 earlier about your experience as an mechanic. How
22 many years did you work as a mechanic?

23 A About two and a half years.

24 Q Where was that?

25 A Kevin Whitaker Chevrolet.

1 Q Tell the jury a little bit about what you did as a
2 mechanic.

3 A I was a line mechanic. So whatever come in my bay,
4 you know, it could be from taking the motor apart
5 to taking the rear end apart, putting it back
6 together, brakes.

7 Q Were you certified as a mechanic?

8 A C.S.E. certified.

9 Q During your work as a mechanic, did you ever see a
10 vehicle that had had sugar introduced into the gas
11 tank?

12 A Yes.

13 Q Did you have an opportunity to inspect that
14 vehicle?

15 A Yes.

16 Q What damage had been done to that vehicle?

17 A It had messed up the valves, stuck the valves and
18 the cylinder heads with the pistons and rings

19 Q And in layman's terms, is that part of the engine?

20 A Yeah. What it does is it just gunks up the whole
21 inside of the motor.

22 Q So sugar --

23 A It crystallizes is what it does.

24 Q So sugar in the gas will result in damage to the
25 engine; is that your testimony?

1 A That's my opinion.

2 Q And that opinion is based upon you actually seeing
3 a vehicle that had sugar put in the gas tank?

4 A Yes..

5 Q Do you have an opinion as to whether more damage is
6 done if the sugar stays in the gas tank and the car
7 runs longer versus shorter?

8 A The longer it would run, naturally the more damage
9 it would do.

10 Q Do me a favor, Mr. Stokes. I appreciate your time
11 here. Will you answer any questions that
12 Mr. Childs has for you.

13 A Yes, sir..

14 THE COURT: Cross examination, Mr. Childs.

15 CROSS EXAMINATION

16 BY MR. CHILDS:

17 Q Mr. Stokes, when I took your deposition, I asked
18 you about your experience with automobile engines,
19 and you said that you had seen an engine that had
20 been sugared maybe once or twice. Is it your
21 testimony you have seen it once or twice?

22 A I will say twice.

23 Q And in both of those occasions, you have already
24 testified that you didn't discover any sugar in
25 those engines; did you?

- 1 A No, sir.
- 2 Q Somebody else told you that sugar had been put in
- 3 the engine?
- 4 A That's the reason it came in to be worked on.
- 5 Q So you don't know actually what caused the damage
- 6 to those engines that you worked on besides what
- 7 somebody told you?
- 8 A That's correct.
- 9 Q And you see that kind of damage to engines for
- 10 others reasons as well, don't you?
- 11 A Yeah, you can.
- 12 Q You could see damaged cylinder heads, damaged
- 13 rings, and valves for a number of different
- 14 reasons; isn't that correct?
- 15 A Yes.
- 16 Q And you really can't tell just simply by looking at
- 17 them what caused the damage?
- 18 A I won't agree with that.
- 19 Q Can you tell anything from looking at the rings
- 20 what caused the damage?
- 21 A You can tell if it's been crystallized and is like
- 22 running dry. It's the same as if it didn't have
- 23 oil in it.
- 24 Q So an engine that didn't have oil in it would look
- 25 the same as an engine that had crystallized sugar

- 1 in it?
- 2 A It would look somewhat the same.
- 3 Q Now, Mr. Stokes, you used to live next door to
- 4 Mr. Few?
- 5 A That's correct.
- 6 Q And why do you not live next door to Mr. Few
- 7 anymore?
- 8 A I've moved.
- 9 Q Why did you move?
- 10 A I moved to -- I bought a house about two miles
- 11 away.
- 12 Q And did you live in a trailer next door to
- 13 Mr. Few's home?
- 14 A No -- well, I lived behind my sister.
- 15 Q In a trailer?
- 16 A Yep.
- 17 Q Did that trailer get repossessed on you?
- 18 A Yes, it did.
- 19 Q Did Mr. Few help you with that?
- 20 A What do you mean, help me with what?
- 21 Q Your good friend, did he help you keep your trailer
- 22 from getting repossessed?
- 23 A No, he did not.
- 24 Q Did you ask him to help you?
- 25 A No, I did not.

1 Q This good friend of yours, Mr. Few, when you heard
2 back from Mr. Mark Turner and Greg Lewis that
3 Mr. Jenkins' truck had been sugared, did you call
4 your friend, Mr. Few, and say: Hey, I heard about
5 this truck that got sugared. Oh, lo and behold,
6 you talked to me a couple of months ago about
7 sugaring somebody's tank. Did you do that?

8 A No.

9 Q And as soon as you heard about this alleged
10 conversation Mr. Few had with you -- and when was
11 that again?

12 A Alleged conversation for what?

13 Q Before Mr. Jenkins' truck was sugared. When was
14 that?

15 A It was in -- it had to be around, I will say, it
16 was around December.

17 Q December --

18 A It was cold weather.

19 Q December of 2003?

20 A You've got to understand how long it's been. I
21 don't know how long it's been. I mean, we have
22 been awhile coming to court with this thing. So I
23 don't know.

24 Q So to the best of your recollection, it was
25 December 2003?

1 A It was cold weather.

2 Q So during cold weather Mr. Few was trying to hurt
3 his competitor in the fertilizer and lime spreading
4 business? Is that a busy time for Mr. Few, do you
5 know that?

6 A No. The busy time that I know, through knowing
7 Scott, was like the springtime, at the end of cold
8 weather when springtime starts.

9 Q Of course, when you had this alleged conversation
10 with Mr. Few, you told two other people about it;
11 didn't you?

12 A Yes, I did.

13 Q You told a Mark Turner?

14 A Uh-huh. (Indicating affirmative response).

15 Q And a Greg Lewis?

16 A Yep.

17 Q And you also told your wife according to your
18 deposition?

19 A That's correct.

20 Q Then it's the Mark turner and the Greg Lewis that
21 called you later and said, Hey, Mr. Jenkins' truck
22 got sugared?

23 A That's correct.

24 Q Do you still know Mark Turner?

25 A Yes, I do.

- 1 Q Where does he live?
- 2 A Travelers Rest.
- 3 Q Do you still communicate with him?
- 4 A No, I don't.
- 5 Q Why not?
- 6 A Me and Mark Turner was acquaintances.
- 7 Q Greg Lewis?
- 8 A Yes, I do.
- 9 Q You still communicate with him?
- 10 A Yes, I do.
- 11 Q You know where he lives?
- 12 A Yes.
- 13 Q You still communicate with your wife?
- 14 A Yes, I do.
- 15 Q Do you still live with her?
- 16 A Yes, I do as a matter of fact.
- 17 Q Are y'all divorced now?
- 18 A Yes, we are.
- 19 Q Now, when you went to Mr. Jenkins, you said that
- 20 you split the reward at some point. Did you split
- 21 a reward with somebody?
- 22 A Mr. Jenkins -- I didn't split any reward. There
- 23 was no reward to start with.
- 24 Q Well, you got a reward; didn't you?
- 25 A Mr. Jenkins gave me a thousand dollars, which was

1 half the reward.

2 Q And you don't know who he split that other reward
3 with?

4 A No, sir, I don't know his name.

5 Q You knew Mr. Few and you knew Mr. Jenkins before
6 this incident happened?

7 A No, I did not.

8 Q You didn't know that Mr. Jenkins ran the
9 convenience store?

10 A No, sir, I did not.

11 Q Then how did you know to call him at the
12 convenience store?

13 A Because Mark Turner told me who it was. I thought
14 his brother owned the store. I never met him
15 before and never see him before.

16 Q Are you the same Buford Wesley Stokes, Jr., that
17 was convicted of assault and battery of a high and
18 aggravated nature on August 10, 2000?

19 A Sure am.

20 MR. CHILDS: That's all the questions I have.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MR. SUGGS:

24 Q The reward money you received, that was a thousand
25 dollars?

1 A Yes, sir.

2 Q And you received that in November of 2006, correct?

3 A Yes, sir.

4 Q And that was well after you had gone to Mr. Jenkins
5 and come clean about what you knew?

6 A I will say at least a year.

7 Q Thank you, sir.

8 THE COURT: Any recross?

9 MR. CHILDS: No, sir.

10 THE COURT: Thank you, Mr. Stokes. You can
11 step down, sir.

12 MR. SUGGS: Judge, may this witness return to
13 work and be excused to return to work?

14 THE COURT: Is there any objection?

15 MR. CHILDS: Yes, sir, we do have an
16 objection.

17 THE COURT: Yes, sir, you are still under
18 subpoena.

19 MR. SUGGS: May we approach, Judge?

20 THE COURT: Yes.

21 (Whereupon there was a bench conference off
22 the record in the presence of the jury but out of the
23 hearing of the jury).

24 THE COURT: Ladies and gentlemen, I will ask
25 you to go back to the jury room just for a moment. I

1 want to take up one matter out here. Don't talk about
2 the case. We will resume in just a few minutes.

3 (The jury retires to the jury room).

4 THE COURT: Mr. Stokes, tell me a number where
5 we can get in touch with you if we need you to come
6 back, sir.

7 THE WITNESS: 879-7770.

8 THE COURT: What is your address?

9 THE WITNESS: My address is 100 Connecticut
10 Avenue, Greer, South Carolina.

11 THE COURT: Well, you are still under order of
12 the Court to return if you need to, if you are needed.
13 I will go ahead and excuse you right now with the
14 understanding that you are still under the Court's order
15 to return if we call you and need you to come back up
16 here to testify further in the case. Do you understand
17 that, sir?

18 THE WITNESS: Yes, sir.

19 THE COURT: So you understand if we call you
20 and can't find you or something, you could be subject to
21 contempt of Court. Do you understand that?

22 THE WITNESS: Yes, sir.

23 THE COURT: We don't want to have to send the
24 deputies out there to help you find your way back up
25 here if we call you.

1 THE WITNESS: No, sir, I will be right back.

2 THE COURT: All right. Thank you, sir.

3 THE WITNESS: Thank you, sir.

4 THE COURT: You can bring the jury.

5 (The jury returns to the courtroom).

6 THE COURT: I apologize that we have to send
7 you out and back in so frequently, but I didn't want you
8 to serve this week without seeing the beautiful hallway
9 space that the county has. So we are going to resume
10 the testimony at this time.

11 I should have told you this earlier because
12 sometimes jurors will ask. If you want to take notes,
13 you are certainly welcome to. If anybody does want to
14 take notes, just let one of the bailiffs know, and they
15 will provide you with the pads.

16 If you do decide to take notes, just bear in
17 mind as I told you at the beginning, one of your jobs is
18 to determine the credibility of the witnesses. Don't
19 become so engrossed in taking notes that you don't pay
20 attention to the witness.

21 Likewise as we all know from our school days,
22 sometimes our notes are just wrong. So don't give them
23 anymore importance than you would give your own memory.
24 Certainly just because someone took notes doesn't mean
25 that their recollection is better than someone who did

1 not.

2 So with that, Mr. Suggs, you may call your
3 next witness.

4 MR. SUGGS: Thank you, Your Honor. We call
5 Johnny Lindsey to the stand.

6 JOHNNY TRUMAN LINDSEY, being
7 first duly sworn, testified as follows:

8 THE COURT: Would you state your full name and
9 spell your last name, please.

10 THE WITNESS: Johnny Truman Lindsey,
11 L-I-N-D-S-E-Y.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY MR. SUGGS:

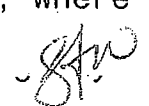
15 Q Mr. Lindsey?

16 A Yes, sir.

17 Q May I call you Johnny?

18 A Yes, sir.

19 Q Johnny, where do you live?

20 A  South Carolina.

21 Q How long have you been there?

22 A I've been there for approximately eight months, six
23 or eight months.

24 Q Have you lived in Greenville County the better part
25 of your life?

- 1 A All my life.
- 2 Q Born and raised around these parts?
- 3 A Yes, sir.
- 4 Q Johnny, I am going to go ahead and cut to the chase
- 5 on one aspect that we need to get out. You have
- 6 had some rough times?
- 7 A All brought upon by myself, yes, sir. I had some
- 8 rough times.
- 9 Q Have you had problems with drugs and alcoholism?
- 10 A Yes, sir, most of my life.
- 11 Q Have you had some run-ins with the police?
- 12 A Yes, sir.
- 13 Q More than a few?
- 14 A More than a few, sir.
- 15 Q Are you straight and clean now?
- 16 A Yes, sir.
- 17 Q How long have you been clean?
- 18 A I've been clean -- I rededicated my life to the
- 19 Lord January the 23rd of this year, and I have been
- 20 clean the biggest part of this year.
- 21 Q Now, you are here because I have sent you a
- 22 subpoena; correct?
- 23 A That's exactly right.
- 24 Q Do you want to be here?
- 25 A No, I really -- for the simple fact that I was

1 raised in the community with both these families.
2 It's hard for me to sit up here and testify, you
3 know, against a friend, you know, against somebody
4 that I was raised with.

5 Q And how long have you known Scott Few and his
6 family?

7 A All my life.

8 Q Johnny, I need you to tell this jury about the
9 phone call you received from Scott Few around about
10 February 24, 2004.

11 A The phone rang and I answered it. It was Scott.
12 We greeted one another over the phone, and Scott
13 said he had a favor he would like for me to do,
14 that he had had a problem with a competitor.

15 He said, Well, it's really not a favor. I
16 would be willing, you know, to pay you to do it. I
17 say, What is it concerning, Scott? He said, Well,
18 do you know anything about putting sugar in a gas
19 tank?

20 I said, I have heard of it, but I have never
21 done it. He said, Well, one of my competitors has
22 been going behind my back and calling my
23 distributors and getting my prices so he could cut,
24 you know, beat my prices putting out lime and
25 fertilizer.

1 One of my old acquaintances was sitting on my
2 couch. He is not a friend. I thought he was a
3 friend at one time, but he is not a friend, but a
4 drug-related friend, okay. I told Scott, I said, I
5 can't do it. I won't do that. The other guy said,
6 Well, what is it he wants? I said, Here you talk
7 to him.

8 Q Johnny, was Mr. Jenkins' name mentioned during the
9 course of this conversation?

10 A Yes.

11 Q Was it your understanding that Ken Jenkins was the
12 competitor that you were being asked to sugar?

13 A Yes.

14 Q How do you feel about damaging another man's
15 property?

16 A Well, I should have -- I mean, I was guilty because
17 I had a part in it. The phone call came through my
18 house. At the time my mind wasn't on what was
19 right or wrong. It was on getting me another fix,
20 you know.

21 But my daddy always taught me, you know, if
22 you got something against a man and you can't go
23 man to man and settle it, don't take it out on his
24 equipment.

25 I always tried to live by that. I wished I

1 would have lived by a whole more he told me, but I
2 didn't. Now, that I look back on it, I'm as guilty
3 as anybody because I had a part in the phone
4 conversation and what happened.

5 Q So what happened next? What did y'all do that
6 night?

7 A We met with Scott and got the sugar and went back
8 and waited until a later time and went to where the
9 truck was sitting. The other gentleman got out and
10 put the sugar in the gas tank while I rode around
11 the block.

12 Q Were you the driver?

13 A Yes, sir.

14 Q And Billy Guest was your accomplice?

15 A Yes, sir.

16 Q Did you watch and did you see him?

17 A I saw him as he walked up to the truck because I
18 never had taken off at that point in time. I saw
19 him walk up to the truck and take the cap off and
20 raise the bag up and pour the sugar in.

21 Q Did y'all get paid?

22 A Yes, sir.

23 Q How much?

24 A A hundred dollars.

25 Q What did you do with it?

1 A Went to the crack house.

2 Q And was it Mr. Few that paid you this hundred
3 dollars?

4 A Yes, sir.

5 Q Would you tell me and the jury about the next
6 conversation that you had with Mr. Few on the
7 telephone.

8 A I'm not sure how long it was between the next time
9 I talked to him, but he called and said the truck
10 was still operable on the road and wanted to know
11 did I think we needed to do it again.

12 Well, there again, the drug addiction kicked
13 in, and I was wanting another hundred dollars, and
14 I know that's wrong, but I agreed to do it and did
15 it.

16 Q Tell me about that. How did you go about sugaring
17 the gas tank the second time?

18 A I can't recall the exact times and dates that any
19 of it happened. I did get a gas can and put five
20 pounds of sugar in it. The truck had been moved
21 from Steve Pruitt's garage over to Mr. Jenkins' mom
22 and dad's house.

23 I know it was raining and sleeting that night.
24 I do know that much. I don't know what day it was
25 or the date of that day. But sometime after

1 midnight, I went and poured that gas in the truck.

2 Q And that gas had the sugar you had already put in
3 it, right?

4 A Yes, sir.

5 Q Did you collect your hundred dollars?

6 A Yes, sir.

7 Q And at some point did you turn yourself in?

8 A Yes, sir.

9 Q How did you go about doing that?

10 A Well, Officer -- we call him Honey Bee -- came up
11 to my house and a sheriff's deputy and told me that
12 he had two warrants on me. I said, What for? He
13 said, I don't know. They just sent me up here.

14 I had just come out of court the day before.
15 I had been waiting 14 months to go to trial. I
16 just got out with five days community service the
17 day before. I said, Why didn't they add this in?
18 He said, I don't know.

19 So anyway, to make a long story short, he
20 said, Get your stuff together. I am carrying you
21 downtown. While you are getting your stuff
22 together, I will find out what it's about.

23 So I got myself together and got the house
24 locked and went next door and called my lawyer,
25 Hank Mims, and told him what was going on. He

1 said, Go on down and I will come to the detention
2 center and pick you up.

3 When I came back out, I asked Honey Bee what
4 it was about. He said, Well, they've lost the
5 warrants. So I'm not going to take you down. So I
6 just told him, I'm going down today.

7 He said, They don't have any warrants. I
8 said, Well, they can make some more out. I said,
9 I've had stuff over my back for the last 13 years,
10 and y'all can type some more warrants up.

11 So I got in his vehicle and locked the door,
12 and he carried me over there. Officer Gillstrap
13 said they had two signed statements against me and
14 Scott that this had been done, you know. He said I
15 got signed statements saying --

16 MR. CHILDS: Objection, hearsay.

17 THE COURT: Sustained.

18 BY MR. SUGGS:

19 Q Try not to say what other people told you.

20 A I'm sorry.

21 Q Go ahead.

22 A So anyway they typed the warrants up, and I gave a
23 statement of the truth about what happened, the
24 same thing I told you here.

25 Q Did you plead guilty to malicious damage?

1 A Yes, sir.

2 Q Since the second incident where you went and
3 sugared the gas tank, did you have any further
4 communications with Mr. Few?

5 A Only one time right after -- the day after the
6 warrants was signed on me, a day or two after the
7 warrants was signed on me.

8 Q Tell us about that.

9 A I just ran up on him on Buncombe Road right there
10 off 29 at Greer and told him that they had served
11 -- that they had statements on us, somebody had
12 signed statements on us and that they had come and
13 got me, and I pled guilty to it.

14 Q All right. What did he say?

15 A He just told me he didn't understand how anybody
16 could know anything about it. I said, Well, Scott,
17 I don't either, you know, but undoubtedly somebody
18 has. Because of that reward that was put up,
19 somebody went and told something.

20 Q Since you agreed to testify, have you spoken with
21 Mr. Few?

22 A Only on one occasion. It just so happened that me
23 and him was on the same job. He came driving up as
24 I was leaving. He was putting lime on a pasture or
25 fertilized one for a guy that I had done the

1 clearing for.

2 Q How did that conversation go?

3 A Well, he was ill at me, you know. I could
4 understand why, but, you know, we never -- we
5 didn't get violent or anything.

6 Q Did he cuss you?

7 A We had some pretty strong words with one another.

8 Q Johnny, are you mad at Mr. Few?

9 A No, sir, I'm ashamed of myself to be honest with
10 you.

11 Q And have you made any kind of deal to be here
12 today?

13 A No, sir.

14 Q Have I paid you to be here today?

15 A No, sir.

16 Q Have I told you what to say to this jury here
17 today?

18 A Well, no, sir. Nobody told me anything to say.

19 Q Have you told the truth?

20 A Yes, sir.

21 Q Thank you. You have got to wait for Mr. Childs to
22 ask you some questions.

23 THE WITNESS: Can I get a drink of water?

24 THE COURT: Yes, sir.

25 (Pause).

CROSS EXAMINATION

1
2 BY MR. CHILDS:

3 Q Mr. Lindsey?

4 A Yes, sir.

5 Q I believe you told me that same story about finding
6 the Lord when I took your deposition in August of
7 2007?

8 A Yes, sir.

9 Q And I guess you backslid up until January of this
10 year again?

11 A Well, I did have problems, yes, sir.

12 Q And at present today aren't you on house arrest?

13 A Yes, sir.

14 Q So you are not even supposed to be out of your
15 house?

16 A No, sir, that's not true.

17 Q Have you got permission to come up here?

18 A Yes, sir. I have permission to work six days a
19 week, 12 hours a day.

20 Q Did you coordinate that with Mr. Suggs so you could
21 come up here from house arrest?

22 A Yes, I called my house arrest this morning and told
23 them where I would be.

24 Q How long have you been on house arrest?

25 A This coming December will be a year and a half. I

1 will be finishing it.

2 Q Okay. And weren't you just recently in court about
3 this?

4 A Yes, sir.

5 Q For violating house arrest?

6 A For violating and I had an old driving under
7 suspension charge that they went ahead and gave me
8 six more months.

9 Q That six more months you are serving while in your
10 house?

11 A Sir?

12 Q You are serving that six more months on house
13 arrest?

14 A Yes, sir.

15 Q You indicated earlier in your testimony that you
16 got feeling guilty about all this, about sugaring
17 the fuel tanks, and that you basically told the
18 police officer what you had been up to you when
19 they arrested you on these other charges?

20 A I don't understand the question.

21 Q How did you happen -- did you go to the police
22 yourself or did they just come back and pick you
23 up?

24 A No, sir. Like I just stated, Officer Honey Bee
25 came with two warrant on me.

- 1 Q For something else?
- 2 A No, for this.
- 3 Q For this. Then you told him -- or you cooperated
- 4 with him?
- 5 A Yes, sir, I told him -- at that time he didn't know
- 6 what the warrants were for until I got to Officer
- 7 Gillstrap, and he is the one that told me what they
- 8 were for.
- 9 Q And after all the trouble you've been into over all
- 10 these years, what did you get sentenced to for
- 11 putting sugar in Mr. Jenkins' gas tank?
- 12 A Sixty days.
- 13 Q Were you supposed to pay him restitution?
- 14 A Yes, sir.
- 15 Q How much?
- 16 A \$220, I believe it was.
- 17 Q Did you pay him?
- 18 A Hadn't paid him yet.
- 19 Q Haven't paid him yet.
- 20 A I've been recently in a wreck and just gone back to
- 21 work here this year.
- 22 Q Wasn't that like in 2005 --
- 23 A Yes, sir.
- 24 Q -- that you pled guilty?
- 25 A Yes, sir.

1 Q You hadn't paid him yet and this is 2008? You got
2 60 days for more than just this, didn't you?

3 A No, I got 60 days for these two warrants that was
4 served on me for this case.

5 Q You didn't get sentenced to 60 days, you were in
6 jail waiting trial for 60 days?

7 A Sir?

8 Q You were in jail awaiting trial for 60 days?

9 A No, I was in jail waiting trial for violation of
10 probation.

11 Q Oh, I see. So what happened with your violation of
12 probation?

13 A I got two years.

14 Q And that's what you are doing now?

15 A No, sir.

16 Q You got out from underneath that?

17 A Yes, sir.

18 Q You had known Mr. Jenkins for a long time, had you
19 not?

20 A Not personally but I have known the Jenkins family
21 all my life.

22 Q Been by his store over there?

23 A Yes, sir.

24 Q On a number of occasions?

25 A Yes, sir.

1 Q As a matter of fact, after you did this to his
2 truck, you went by and bought mulch from him;
3 didn't you?

4 A Yes, sir.

5 Q Did you tell him anything about having sugar in his
6 truck when you bought mulch from him?

7 A No, sir.

8 Q You can't remember the date that this alleged phone
9 call took place between you and Mr. Few?

10 A No, sir.

11 Q That's because you were on crack at the time?

12 A Well, I have been trying to forget everything that
13 I done in the past and look forward, sir. I can't
14 dwell on the past and ever get anywhere in life.

15 Q I am trying to understand your recollection of this
16 stuff. Were you on crack at the time?

17 A Yes, sir.

18 Q And how much crack were you doing?

19 A Whatever I could get.

20 Q How could you get it?

21 A I was selling stuff out of my shop, tools and jacks
22 and chainsaws and whatever I could sell out of my
23 shop and working here or wherever I could get a
24 little job to do.

25 Q This fellow that was staying with you, William

1 Guest?

2 A Yes, sir.

3 Q Is he the one that actually put the sugar in the
4 gas tank the first time?

5 A Yes, sir.

6 Q Are you testifying that you went to Mr. Few's home
7 and got a five-pound bag of sugar to put in
8 Mr. Jenkins' tank?

9 A Yes, sir.

10 Q What time of morning did you come over there?

11 A It wasn't in the morning. It was in the afternoon.

12 Q You did this at 4:00 o'clock in the morning, didn't
13 you?

14 A Yes, sir.

15 Q And you saw and you drove Mr. Guest over to --

16 A No.

17 Q Didn't you drive Mr. Guest?

18 A To where?

19 Q Over to sugar the gas tank according to your
20 testimony?

21 A Yes, sir.

22 Q Did Mr. Few tell you that the truck was over at
23 Mr. Jenkins' mother's house?

24 A The second time he did.

25 Q That was right before this happened. You knew

- 1 where Mr. Jenkins' truck was though, didn't you?
- 2 A The first time Mr. Jenkins' truck was sitting at
- 3 Pruitt's garage.
- 4 Q And you knew that?
- 5 A Yes, sir.
- 6 Q Nobody had to tell you that?
- 7 A Yes, sir.
- 8 Q Because you had your eye on it before, hadn't you?
- 9 A No, sir.
- 10 Q How did you notice it?
- 11 A How are you going to miss a parking lot full of
- 12 vehicles, you know. Steve Pruitt is my friend. I
- 13 gaze over at his shop about every time I go up the
- 14 road.
- 15 Q So you knew that Mr. Jenkins' truck was over at the
- 16 parking lot?
- 17 A I had saw it there.
- 18 Q And for a hundred dollars you went out and drove
- 19 Mr. Guest over there at 4:00 o'clock in the
- 20 morning --
- 21 A Yes, sir.
- 22 Q -- is that right? And you watched him pour sugar
- 23 into Mr. Jenkins' gas tank?
- 24 A Yes, sir.
- 25 Q Which gas tank did he pour it into?

1 A On the driver's side.

2 Q Did Mr. Jenkins have another gas tank on the truck,
3 too?

4 A Not that I know of.

5 Q What kind of sugar was it?

6 A A five-pound bag of sugar.

7 Q Was Mr. Guest able to pour that in the tank, the
8 whole thing?

9 A Yes, sir.

10 Q Where is Mr. Guest now?

11 A I have no idea, sir.

12 Q The second time you went around to Mr. Jenkins'
13 vehicle, you actually testified that you mixed the
14 gasoline with the sugar in the fuel tank?

15 A In a gas jug.

16 Q Did that work?

17 A The sugar, I mean, I poured the sugar in after the
18 gas, okay. I had the gas in first, poured the
19 sugar in it, and it sit for awhile. I went and
20 poured the gas in the truck that night.

21 Well, then, I don't know, a week or maybe so
22 later, I go to pick the gas jug up, and the sugar
23 was hardened in the corner of the jug where the
24 sugar -- all the sugar didn't pour into the gas
25 tank.

1 Q So the sugar stayed in the gas jug?

2 A In the plastic jug.

3 Q So the second time you didn't get any sugar in
4 Mr. Jenkins' gas tank?

5 A Sir?

6 Q So the second time you didn't get any sugar in his
7 tank?

8 A Well, I mean, I don't know how much went in there,
9 but there was some sugar still left in the corner
10 of the jug.

11 Q Now, when was it that you gave your statement to
12 Deputy Gary Gillstrap?

13 A I have no idea what the date was.

14 Q Would that have been October of 2004?

15 A If that's what the paper says. I have no idea what
16 the date was that they served the warrants on me.

17 Q Would that be about right?

18 A I would say so.

19 Q Have you been sued by Mr. Jenkins for sugaring his
20 gas tank?

21 A No, sir.

22 Q Has Mr. Jenkins been over to visit you?

23 A He only came by to let me know when we had a -- if
24 we had something coming up in court when I didn't
25 have a phone.

1 Q Did he come see you in the hospital?

2 A Yes, sir, he did.

3 Q Has he helped you out in other ways?

4 A No, sir.

5 Q You said that you have been more or less straight
6 since January of 2008?

7 A Yes, sir.

8 Q That's not exactly true, is it?

9 A Well, I have made mistakes since then, and I will
10 probably make more mistakes if I live, but I'm in
11 church and trying to my best to do what I'm
12 supposed to do to live by the word of the Lord to
13 the best of my ability. I'm sure everybody in here
14 has made mistakes in life.

15 Q So the first time you put sugar or Billy Guest put
16 sugar in Mr. Jenkins' gas tank, you don't know
17 exactly when then was. It was somewhere in the
18 spring or the fall or what?

19 A The best of my recollection, it was somewhere
20 around February of 2004.

21 Q And it didn't stop the vehicle from running, it
22 kept running?

23 A Scott said he had seen it on the road.

24 Q Had you seen it on the road?

25 A I had seen the truck, I don't know how many times.

1 I don't know what the date was, but I had seen the
2 truck being drove.

3 Q Okay. Are you the same Johnny Truman Lindsey that
4 was convicted of possessing and receiving stolen
5 goods in 2007, August?

6 A Yes, sir.

7 Q And was that a Stihl's chainsaw?

8 A Yes, sir.

9 Q And was that some of the stuff that you have been
10 selling to try to support your drug habit?

11 A No, sir.

12 Q Are you the same Johnny Truman Lindsey who was
13 convicted as a habitual traffic offender on
14 August 13, 2007?

15 A Yes, sir.

16 Q Were you a habitual traffic offender in February of
17 2004?

18 A I really don't know, sir.

19 Q Did you have a license?

20 A No, sir.

21 Q Were you driving under suspension when you were
22 driving Billy Guest around, and you were going over
23 and putting sugar in Mr. Jenkins' gas tank?

24 A Yes, sir.

25 Q Are you the same Johnny Truman Lindsey that has

1 pled guilty to a driving under suspension third and
2 above offense, August 13, 2007?

3 A Yes, sir.

4 Q Are you the same Johnny Truman Lindsey that also
5 pled guilty to another count of habitual traffic
6 offender on August 13, 2007?

7 A Yes, sir.

8 Q Are you the same Johnny Truman Lindsey that was
9 convicted again of another D.U.S. on August 13,
10 2007?

11 A Yes, sir.

12 Q Are you the same Johnny Truman Lindsey that was
13 convicted of a driving under suspension third and
14 above offense on June 9, 2008?

15 A Yes, sir.

16 Q Did you also plead guilty June 9, 2008, to habitual
17 traffic offender?

18 A Yes, sir. Those charges were a year or better old.
19 I hadn't drove in over a year.

20 Q Are you the same Johnny Truman Lindsey convicted of
21 possession of marijuana on February 24, 2005?

22 A Yes, sir.

23 Q Driving under suspension fifth offense -- let me
24 check -- on February 13, 2004?

25 A More than likely, yes, sir.

- 1 Q Are you the same Johnny Truman Lindsey that was
2 convicted on October 21, 2003, of breach of trust
3 with fraudulent intent?
- 4 A Yes, sir.
- 5 Q Are you the same Johnny Truman Lindsey that was
6 convicted on March 16, 2005, for driving under
7 suspension fifth offense?
- 8 A Yes, sir, more than likely.
- 9 Q June 24, 2003, driving under suspension?
- 10 A Yes, sir.
- 11 Q Failure to return rental object, April 22, 1999?
- 12 A Yes, sir.
- 13 Q Driving under suspension, October 13, 1999?
- 14 A Yes, sir.
- 15 Q Another habitual traffic offender from October 13,
16 of 1999?
- 17 A Yes, sir.
- 18 Q Driving under suspension, November 30, 1998?
- 19 A Yes, sir.
- 20 Q Forgery, April 22, 1999?
- 21 A Yes, sir.
- 22 Q Fraudulent check, 1997?
- 23 A Yes, sir.
- 24 Q Bunches of fraudulent checks?
- 25 A Yes, sir, 146 and a half years worth.

1 Q A hundred forty-six and a half years of fraudulent
2 checks?

3 A I made some mistakes, sir.

4 Q Criminal domestic violence high and aggravated
5 nature?

6 A Yes, sir.

7 Q Malicious injury to personal property?

8 A Yes, sir.

9 Q From 1995?

10 A Yes, sir. That was the first time I was ever in
11 trouble.

12 Q Along with the assault and battery with intent to
13 kill?

14 A First time I was ever in trouble.

15 MR. CHILDS: Just one minute, Your Honor.

16 THE COURT: Yes, sir, take your time.

17 (Pause).

18 MR. CHILDS: That's all the questions I have
19 of this witness.

20 THE COURT: Redirect?

21 MR. SUGGS: May it please the Court.

22 **REDIRECT EXAMINATION**

23 BY MR. CHILDS:

24 Q Johnny, have you ever had a dispute of any kind
25 with Mr. Few?

1 A With Mr. Few?

2 Q Yes.

3 A No, sir.

4 Q Do you have any reason to try to hurt him here
5 today?

6 A No, sir. I would like to consider Scott Few still
7 as a friend. I don't know if it will ever happen
8 again, but I'm sorry for what I did and the part
9 that I took in it.

10 There is no use in me trying to hide or deny
11 what happened. That don't make it go away. What
12 makes it go away is standing up and accepting
13 responsibilities for what you do. Then you can
14 look forward in life.

15 I used drugs to try to hide the things that I
16 put myself and my family through for 13 years. I
17 lost my children, my wife, my house, my land. A
18 business I started with \$60 six months after I got
19 saved, and two years later it was grossing half a
20 million dollars a year.

21 My life was singing gospel music. I threwed
22 it all away for cocaine. I'm not proud of it, and
23 I don't want to be here today, you know. I really
24 don't want to be here, Your Honor.

25 But I'm here because they summoned me to come

1 and tell the truth about what I did, and that's all
2 I know to do to set myself free inside. No matter
3 what it does to anybody else, I can't live with the
4 guilt.

5 Q Thank you, Johnny.

6 **RECROSS EXAMINATION**

7 BY MR. CHILDS:

8 Q Mr. Lindsey, you are here today because you gave a
9 statement to the police; isn't that true?

10 A Yes, sir.

11 Q And you would be in a heck of a lot of trouble if
12 you tried to change that statement now, wouldn't
13 you?

14 A I wouldn't change it, for you or anybody else.

15 MR. CHILDS: That's all the questions I have.

16 THE COURT: Thank you. You may step down,
17 Mr. Lindsey.

18 THE WITNESS: Thank you, sir.

19 THE COURT: You can call your next witness.

20 MR. SUGGS: Thank you, Judge. We call

21 Benjamin Scott Few.

22 THE COURT: This is a good time for a break,
23 apparently a good time for a break. Go back to the jury
24 room and don't discuss the case. Thank you very much.

25 (The jury retires to the jury room).

1 THE COURT: We will take about a ten-minute
2 break.

3 MR. SUGGS: Thank you, Judge.
4 (Whereupon there was a recess).

5 THE COURT: You can bring the jury.
6 (The jury returns to the courtroom).

7 THE COURT: Yes, sir, Mr. Suggs.

8 MR. SUGGS: May it please the Court. The
9 Plaintiff will call Benjamin Scott Few to the stand.
10 BENJAMIN SCOTT FEW, being
11 first duly sworn, testified as follows:

12 CLERK: State your full name for the record,
13 please.

14 THE WITNESS: Benjamin Scott Few.

15 **DIRECT EXAMINATION**

16 BY MR. SUGGS:

17 Q Mr. Few, you are president and owner of Few Farms,
18 Incorporated?

19 A Yes, sir.

20 Q That's a fertilizer and lime spreading business,
21 correct?

22 A Yes, sir.

23 Q And Ken Jenkins, the Plaintiff in this case, is in
24 the identical kind of business; correct?

25 A Yes, sir.

1 Q He is one of your main competitors up in the
2 upstate of South Carolina, right?

3 A He was, along with some other people, yes.

4 Q Like Ken Davis and Al Harland?

5 A That's right. That's correct.

6 Q Mitch Pack?

7 A Sure.

8 Q Y'all were all competing for the same business in
9 the same general area, right?

10 A Sure, but there is enough for everybody --

11 Q Right.

12 A -- there is enough work out there. It's seasonal.

13 Q I have a bad habit of cutting witnesses off. If at
14 any time I don't let you finish your answer, you
15 say, Watch out now. Then go ahead and finish your
16 answer.

17 Would you agree with me that you can't
18 operate, you can't run a spreader business, if you
19 don't have your truck, your spreader truck?

20 A We use bull spreaders as well.

21 Q Right.

22 A Where you would take and pull them with a tractor.

23 Q But if you don't have the apparatus with which you
24 spread the fertilizer and lime, it's pretty hard to
25 run your spreading business; right?

1 A Yes.

2 Q And in your fertilizer and lime business, you rely
3 primarily upon repeat business; right?

4 A I don't know. The way the older farmers are dying
5 off, we seem to be getting new landscaping type
6 business. There's not that much farming in the
7 upstate. It's more of hobby farmers. So, yeah, we
8 do change. It changes a lot from year to year.

9 Q Has that changed since you gave your deposition and
10 testified that you relied primarily on repeat
11 business?

12 A I mean...

13 Q Is that a new development?

14 A Yeah, it changes from year to year. Of course, we
15 do -- again, back to the deposition, we do have a
16 core group of big time farmers that you do work
17 with seasonally, yes.

18 Q And there are two primary high seasons, for lack of
19 a better term, early spring when things are
20 greening up, and then later on like early fall? Is
21 that accurate?

22 A That's accurate as far as fertilizer goes.

23 Q Okay.

24 A Now, lime spreading is different. It's pretty much
25 year round.

1 Q Few Farms is not the only business you own,
2 correct?

3 A Yes, that's the only business I own.

4 Q Did you recently sell one?

5 A No. Few Farms -- I brought a larger sawmill. In
6 1999 we starting sawing wood along with to
7 compensate the down time, like in the winter.

8 Q Right.

9 A Recently I got larger with my sawmill, but again
10 Few Farms owns it.

11 Q I apologize, Mr. Few. I misunderstood earlier.
12 You bought that sawmill and you made it part of Few
13 Farms?

14 A Yeah, I just took over an older sawmill.

15 Q And you paid somewhere a little north of half a
16 million dollars for that sawmill?

17 A That's right.

18 Q When was that?

19 A In May of '07.

20 Q Now, we have heard from Johnny Lindsey and from
21 Rocky Stokes. How long have you known Johnny
22 Lindsey?

23 A Johnny is a few years older than me. He may be 20
24 years older than me, but Johnny used to work around
25 the farm growing up. So I knew his family. I know

1 his daddy well.

2 Q Would you agree that y'all are family friends?

3 A We just live in the same community. Johnny and I
4 didn't have as much to do with one another as like
5 my dad and his dad did. Back in the '60s and '70s
6 before my time, they did some jobs together and
7 what not.

8 Q I believe in your deposition you told me that he's
9 a pretty good guy?

10 A Johnny is a good guy. He's had some rough knocks
11 with addictions, and it's just kind of ruined his
12 life because he was a talented guy.

13 Q Y'all didn't have any type of falling out though,
14 correct?

15 A Well, no, not to speak of. I just, at some point
16 when he gets on that, he was -- I bought some tools
17 from he and his dad like he was talking about when
18 he needs to, but it got to be aggravating because,
19 you know, just all the time he was bringing stuff
20 over there, and I know some of it was hot. I
21 didn't really want to deal with that. So I just
22 kind of cut it off.

23 Then on the other thing, I had more than
24 enough work to do. So a lot of times I would flip
25 Johnny a job. Again, he doesn't work for me. In

1 no capacity was I getting anything for it. I was
2 just letting him know about some work, as far as
3 grading and clearing goes, mulch, small stuff that
4 I didn't really want to fool with.

5 Q He doesn't do lime or fertilizers or anything?

6 A No, it was more or less landscaping, tree trimming,
7 that type of thing.

8 Q We heard from Rocky Stokes as well. You have been
9 friends with Rocky for ten some years; is that
10 correct?

11 A Well, to begin with my mother was a Stokes and he's
12 a Stokes. And to begin with, he said they were
13 from the same set, but as we got deeper in
14 the woods, I realized it wasn't the same set of
15 Stokes.

16 Q So y'all are not family?

17 A We are not family, no. He just happened to live
18 next door to my -- in behind my neighbor.

19 Q But you have been friendly with him for about ten
20 years, right?

21 A Well, I don't know if that's long or not. We did a
22 couple of jobs. Rocky was wanting to learn how to
23 operate some equipment. So he would come and go
24 with us from time to time. We didn't go out to eat
25 or socialize or go to ball games together, no. We

1 weren't that...

2 Q But y'all never had any kind of falling out, did
3 you?

4 A No.. The only thing is he was fixing to lose his
5 house, and, you know, I didn't want to help him
6 with his mortgage payment because I've got my own
7 boat I'm floating, you know.

8 Q Now, although y'all didn't have a falling out, I
9 believe you told me in your deposition that Rocky
10 was jealous of you. Can you tell the jury about
11 that.

12 A You asked me why I think he fabricated this story
13 or something.

14 Q Right.

15 A The only thing is he is just not very talented as
16 far as equipment operation. It would be kind of
17 like me being a lawyer. I'm just not built that
18 way. I'm very talented at equipment. He wanted to
19 do that for awhile, and it couldn't work out. I
20 thought maybe he was jealous of me. That's just
21 speculation. I don't know.

22 Q I don't particularly like to get into this, but
23 there has been testimony from Mr. Lindsey and
24 Mr. Stokes. They were asked a number of questions
25 about their background, criminal background. You

1 have a criminal background, don't you?

2 MR. CHILDS: Objection, Your Honor.

3 THE COURT: Sustained.

4 MR. SUGGS: Okay. Judge?

5 THE COURT: I would be glad to talk to you.

6 (Whereupon there was a bench conference off
7 the record in the presence of the jury but out of the
8 hearing of the jury).

9 MR. SUGGS: Thank you, Your Honor.

10 BY MR. SUGGS:

11 Q Mr. Few, you've known Ken Jenkins for a number of
12 years; correct?

13 A Yes, sir.

14 Q Y'all haven't ever had any kind of falling out?

15 A No, sir.

16 Q Would you agree with me that it's important in our
17 society to respect one another's property?

18 A Sure.

19 Q And you would agree, I'm sure, that it's wrong to
20 interfere with a man's ability to provide for his
21 family?

22 A Sure.

23 Q Then why did you call Mr. Stokes up and ask him
24 what would hurt a truck more, putting sugar in the
25 gas tank or metal filings in the oil?

1 A I didn't call Mr. Stokes up and ask him that.

2 Q Do you think he testified to that because he's
3 jealous of you?

4 A I'm not real sure where Rocky was going with that,
5 but again I wish him and everybody else well, but I
6 did not call him and ask him -- I took organic
7 chemistry at Clemson.

8 I'm not the brightest kid on the block, but I
9 can tell you that sugar is not going to melt in
10 that. Also, to think you could get that done for a
11 hundred dollars? No, it's just something he
12 dreamed up, I guess. I don't know.

13 Q Okay.

14 A I know after I agreed not to help him with his
15 mortgage payment, and that was probably in '03 or
16 '04 maybe -- it's been a few years back -- he just
17 didn't want to have anything to do with me.

18 Q But you didn't mention anything about his mortgage
19 payment in your deposition when you were given
20 every opportunity to, did you?

21 A The mortgage never came up. I at that time thought
22 he was maybe just jealous because he wasn't ever
23 going to make a tractor operator.

24 Q But now that you have had a little more time to
25 think about it since your deposition --

1 A Yeah.

2 Q -- you realize maybe it's because of that mortgage
3 issue?

4 A Well, you know, in life everything comes down to
5 money. Some have had some better opportunities or
6 whatever. I just thought maybe he was jealous or
7 whatever.

8 Q And that would be why he fabricated this story? Is
9 Johnny Lindsey jealous of you, too? Is that why he
10 made up this story?

11 A No, Johnny is not jealous of me. He can operate as
12 good as I can or better. Johnny is kind of a
13 unique guy. He will do anything for the reward.

14 Q But he didn't get a reward, did he?

15 A Well, he says he didn't get a reward, but I'm sure
16 he didn't just come and do that for nothing.

17 Q Are you suggesting to this jury that Ken Jenkins
18 has paid for Mr. Lindsey's testimony?

19 A No, sir. But, again, I'm kind of unsure because he
20 is saying Billy Guest did it, and he drove him to
21 do it. Well, Billy Guest wasn't even involved in
22 the thing that I knew of. I don't even know who
23 that is. It's just the stories don't add up that
24 they are saying is what I'm implying.

25 Q Tell me, did business improve after Mr. Jenkins'

1 truck was sugared?

2 A For me?

3 Q Yes, sir.

4 A No, sir.

5 Q But that was the goal, right?

6 A No, sir, not from my part. I don't look at it like
7 we have all got competition. The weather pretty
8 much is our competition. If it's raining in
9 February and March, and you can't get in the
10 fields, it's kind of like selling fireworks. It
11 just goes away. You can't sell them after the
12 4th of July. You have to get it while it's there.
13 There is enough work for everybody to do.

14 Q But you agree with me that if Mr. Jenkins is down
15 and out for eight days, someone is going to get
16 that work?

17 A I doubt it. I doubt it. Again, back to the loyal
18 customers you were talking about and the base that
19 you build up, I feel pretty sure my customers will
20 wait on me eight days. I can pick up the phone and
21 say, Hey, I got equipment trouble. I will be there
22 next week. Eight days is not going to put anybody
23 out of business.

24 Q You know a lot more about that business than I do,
25 but my understanding -- and correct me if I'm

1 wrong -- is that if they need fertilizer at a
2 certain time, they need it now or the next day.

3 They don't need it 10, 12 days later. Am I wrong?

4 A No, sir, you are wrong. Because as long as you get
5 your fertilizer down on these hay fields before
6 May, then you are fine. When it starts warming up,
7 you want your grass high where you can cut it. I
8 will say the window is from February to May. Eight
9 days is not going to affect it.

10 Q Mr. Few, would you agree with me that it would be
11 pretty crazy to turn yourself in and plead guilty
12 to something you didn't do?

13 A Yes, sir, I agree with you. That is pretty crazy.
14 But knowing Johnny Lindsey and all the charges
15 that's involved with him and the crazy stuff he has
16 done over the years, it doesn't surprise me.

17 Q I appreciate your time. Thank you.

18 THE COURT: Mr. Childs.

19 CROSS EXAMINATION

20 BY MR. CHILDS:

21 Q Mr. Few, how old are you?

22 A I'm 39.

23 Q Are you married?

24 A Yes, sir.

25 Q What is your wife's name?

- 1 A Melissa M. Few.
- 2 Q And how long have you been married?
- 3 A Since '91, 17 years or so.
- 4 Q Do you have any children?
- 5 A We've got two children.
- 6 Q How old are your children?
- 7 A The boy is 10 and the girl is 12.
- 8 Q And what kind of education do you have?
- 9 A I have a B.S. from Clemson University in ag/mec and
10 business.
- 11 Q What did you do after -- when did you graduate from
12 Clemson?
- 13 A In '92.
- 14 Q All right. What did you do after you graduated
15 from Clemson?
- 16 A Went to work for a fertilizer company, Carolina
17 Eastern.
- 18 Q How long did you work for them?
- 19 A I will go on memory, but I will say maybe a year
20 and a half.
- 21 Q What did you do after that?
- 22 A I purchased a spreader truck and began spreading
23 along with them.
- 24 Q Okay.
- 25 A And once in a while I would do a little landscaping

- 1 job when things get slow, cut hay, and what not.
- 2 Q How has that business gone since the early '90s?
- 3 A The fertilizer business?
- 4 Q Yes, sir.
- 5 A Well, it went real good up until 2001 or 2, and
- 6 then fertilizer starting climbing up, along with
- 7 gas prices.
- 8 Q What kind of fertilizer operation did you have back
- 9 in 2004?
- 10 A In '04 I had three trucks running and pretty much
- 11 just spreading lime and fertilizer. Then, again,
- 12 when it rained us out of work, we would saw there
- 13 at the farm on the sawmill I had bought back in
- 14 '99.
- 15 Q Now, did you know Mr. Jenkins prior to 2004?
- 16 A Yeah.
- 17 Q How did you know him?
- 18 A Well, I just knew the family. I mean, I didn't
- 19 know him personally, like we had any dealings
- 20 together or anything. I just knew who he was.
- 21 Q Do you remember when he got in the fertilizer
- 22 business?
- 23 A Yeah, sure do.
- 24 Q How do you remember that?
- 25 A He bought his business and truck from Mack Brown.

1 Back in probably the mid '90s, I worked with Mack
2 some. He was a fine fellow. Ken moved back home.
3 He had been out of town for a number of years, and
4 he purchased that business from Mack.

5 Q Did you make an offer on that business?

6 A No. At the time, like I say, I had the sawmill and
7 had a little bit of grading, and I had those trucks
8 going. I didn't really want to do anymore than I
9 was doing with the manpower I had. My kids were
10 coming along. I was working a lot of hours as it
11 was.

12 Q Did you have an opportunity to offer -- I mean, was
13 that business offered to you in any way?

14 A Yes, it was offered to me. Mack, like I say, was a
15 good fellow. He offered it to me first. I had
16 worked with him to begin with some, and I want to
17 say it was \$17,000 to buy the truck and the
18 business.

19 Q You had too much going on at the time?

20 A At the time, yes. I mean, there is only so much
21 you can do in a short amount of time, and it then
22 plays out.

23 Q So if you were worried about competition in the
24 fertilizer spreading business, you had an
25 opportunity to buy Mr. Jenkins' business before he

1 did?

2 A Sure ---

3 MR. SUGGS: Objection, leading the witness.

4 THE COURT: Sustained.

5 BY MR. CHILDS:

6 Q Now, after Mr. Jenkins got in the fertilizer
7 business and you were in the fertilizer business,
8 too, was there any problems that y'all had?

9 A No, I never had a problem with Ken.

10 Q How many people are in the fertilizer business in
11 the upstate?

12 A Trey mentioned a few. You've got Mitch Pack,
13 there's Easley Farm Supply, there's Al Harland --
14 he is no longer in it -- Ken Davis of Spartanburg.
15 Let's see, there's a father and son up at
16 Gaffney -- I can't think of their name -- and then
17 you have some people in Hendersonville.

18 Q And how do you get your clients, your customers?

19 A Most of them just call, usually call me on the cell
20 phone or call at night or to begin with, until I
21 was getting my client based built up, they would
22 call the fertilizer plant.

23 Again, they are overrun. They only have two
24 trucks during the season, and they would give
25 everybody jobs, depending on what area they are in

1 and so forth. We'd go spread the jobs like that,
2 but as time went on, I got the client base built up
3 and pretty much just worked like that.

4 Q Would you have received any economic benefit at all
5 from disabling Mr. Jenkins' truck?

6 A Me? No, sir.

7 Q Why not?

8 A Again, I think, you know, there's only so many days
9 that you can do this. It's in a concentrated
10 period. I had more to do than I could do as it
11 was. I am sure Ken will agree to that.

12 When people call and they want it put on, I
13 mean, you can't get to all of it before it goes
14 away and it starts getting hot weather. So I
15 didn't really consider -- I considered the weather
16 pretty much my competition.

17 Q Did you ever contact Johnny Lindsey and ask him to
18 put sugar in Mr. Jenkins' 1971 Ford F-700 truck?

19 A No, sir, I did not.

20 Q Did you ever talk to Buford Stokes and ask him the
21 best way to disable a truck?

22 A No, sir, I did not.

23 Q Did you ever pay a hundred dollars to anybody to
24 sabotage Mr. Jenkins' business?

25 A No, sir.

1 Q Did you ever go onto Mr. Jenkins' real estate or
2 property?

3 A No, sir, I've never been on Ken's property.

4 Q Did you ever take his vehicle and try to use it for
5 your own purposes?

6 A No, sir.

7 Q Did you conspire with Johnny Lindsey and another
8 individual to harm his business?

9 A No, sir.

10 Q Did you ever engage in any type of unfair or
11 deceptive trade practice as it relates to
12 Mr. Jenkins?

13 A No, sir.

14 MR. CHILDS: That's all the questions I have.

15 MR. SUGGS: Nothing from us, Your Honor.

16 THE COURT: Thank you, sir. You can call your
17 next witness.

18 MR. SUGGS: Judge, may I approach real
19 quickly?

20 THE COURT: Yes.

21 (Whereupon there was a bench conference off
22 the record in the presence of the jury but out of the
23 hearing of the jury).

24 THE COURT: Mr. Suggs.

25 MR. SUGGS: We would call Ken Jenkins to the

1 stand.

2 KENNETH B. JENKINS, being
3 first duly sworn, testified as follows:

4 CLERK: State your full name for the record,
5 please.

6 THE WITNESS: Kenneth B. Jenkins.

7 CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. SUGGS:

10 Q Ken, will you introduce yourself to the jury,
11 please.

12 A My name is Kenneth B. Jenkins. I'm 67 years old.
13 I was born and raised on a farm in upper Greenville
14 County. I'm married. I have two children, four
15 grandchildren. I graduated from Blue Ridge High
16 School in 1959, and I attended North Greenwood
17 Junior College for two years.

18 Q Ken, what kind of business do you have?

19 A Right now I have a partnership with my brother in a
20 convenience store, and I have this fertilizer
21 business that I started after -- I was out of the
22 State for quite a while. I didn't mention that and
23 then moved back down here, and I started this
24 fertilizer and lime business.

25 Q What is the name of your store?

1 A It's the Mini Market, L.L.C.

2 Q Where is that located?

3 A 5041 Highway 101 North.

4 Q That's up in the north Greenville area?

5 A Yes.

6 Q Is that Blue Ridge?

7 A The Blue Ridge area, north of Greer.

8 Q Ken, tell us a little bit about how the fertilizer
9 and lime spreading business works.

10 A Well, basically you will get calls from individuals
11 that needs the lime or fertilizer. They will tell
12 you what type fertilizer they need or they will
13 have a soil sample that will designate the mixture
14 of fertilizer.

15 They will usually call you or they will call,
16 and my wife will take down their number. I return
17 their call. They will tell you how many acres they
18 have, how much they want to put down per acre, and
19 then the order is taken.

20 From there you go to Spartanburg is where we
21 haul out of, the fertilizer plant there. You give
22 them the order, how much phosphate, potash or
23 nitrogen you want in the mixture.

24 They will mix that particular mixture of
25 fertilizer for you. You load it on your truck, you

1 weigh it, and then you deliver it to the farm. On
2 the farm this particular truck has two hydraulic
3 spinners on the back that spin.

4 The fertilizer is transferred from the front
5 of the truck along a conveyor to the back of the
6 truck, where it drops down on these spinners, and
7 then it spreads it some 25, 30 feet each side of
8 the truck.

9 Q That's what you call a spreader truck?

10 A That's what you call a spreader truck.

11 Q And how many spreader trucks did you own back in
12 2004?

13 A One.

14 Q What kind of truck was it?

15 A It was a 1971 Ford F-700.

16 Q What kind of condition was that truck in?

17 A Mechanically it was in excellent condition.

18 Q Had you done any work on that truck?

19 A In '99 or 2000 -- I don't remember exactly -- I had
20 the engine completely overhauled. In a period of
21 the next year or two after I had it overhauled --
22 at the time I had it overhauled, I put a new
23 starter on it. I put a new fuel pump.

24 I put a new alternator on it. I put a
25 pressure plate, clutch and pressure plate in it, a

1 new radiator. I put a heavy duty front end under
2 it, redid the breaks on it. I had the transmission
3 rebuilt, the rear end replaced. Actually the truck
4 was in excellent condition.

5 Q It didn't look too pretty though, did it?

6 A It didn't look too good at all. When you've got a
7 vehicle like that and the fertilizer gets on it in
8 damp weather, it will rust. But the old saying is
9 it's like an old plug mule. You can hook it up to
10 a wagon, and it's going to carry the load and it
11 did.

12 Q Tell the jury a little bit about the seasons and
13 how your work is affected by the seasons.

14 A Well, the seasons, the way I best could explain it,
15 if you were in your house and you had 12 windows.
16 If you looked at January as being one window,
17 February being two, three, four to 12, you work in
18 windows.

19 The fertilizer season starts, as far as
20 fertilizer and lime, but mostly fertilizer, starts
21 when the grass starts growing, things start turning
22 green, and the farmers start planting.

23 That is somewhere, according to the weather,
24 around the end of February. So you've got a
25 window. In January you probably haul lime. More

1 lime is hauled in the fall. Even though it's year
2 round, there is more lime hauled in the fall.

3 So if you look at that window from the end of
4 February, March, and into April, that is the
5 busiest time. You are running six days a week, 12
6 hours a day.

7 If you don't get it in there, if you have a
8 farmer call you and say, I'm going to sow my corn
9 tomorrow. I'm going to plant my corn, he wants
10 that fertilizer tomorrow. If you are down and you
11 can't get it, then he's going to move on to
12 somebody else.

13 Q Back in 2004 how much were you making? What you
14 were getting paid, minus your expenses, what was
15 your profit on a daily basis?

16 A The way I did it, I took that busiest season when I
17 would have been the busiest, I took what the
18 fertilizer cost me, subtracted it from what I
19 charged the client, and it came up on about a
20 30-day period of an average of somewhere around
21 \$722 a day.

22 Q Now, did you have any competitors in this business?

23 A Yes.

24 Q Was Scott Few and Few Farms one of your
25 competitors?

1 A They were the number one competitor.

2 Q Did you ever have any problems with Scott Few and
3 his company, Few Farms, prior to February 2004?

4 A No, I did not.

5 Q Had y'all ever had any kind of words?

6 A No, we did not.

7 Q I got ahead of myself. I need to hand up something
8 to you. We were talking about that truck of yours.
9 Take a look at that for me. I hope the court
10 reporter doesn't mind. I had premarked it and we
11 will show it to her, but it has been marked for
12 identification as Plaintiff's 1.

13 A Uh-huh. (Indicating affirmative response).

14 Q What does that appear to be?

15 A That's the certificate of title of vehicle, the '71
16 Ford.

17 Q That's the spreader truck?

18 A That is the spreader truck, yes, sir.

19 Q Did you provide that title to me?

20 A Yes, sir, I did.

21 MR. SUGGS: Judge, at this time we would like
22 to move the title to the 1971 Ford F-700 into evidence
23 at this time.

24 MR. CHILDS: No objection.

25 THE COURT: It's in evidence.

1 (Plaintiff's Exhibit Number 1 is received into
2 evidence).

3 BY MR. SUGGS:

4 Q Ken, you testified earlier that it was ugly, but it
5 ran pretty well?

6 A Yes.

7 Q Did you at any point start experiencing trouble or
8 problems with that spreader truck?

9 A Yes, I did.

10 Q Tell us about when it happened and what kind of
11 symptoms your truck began having.

12 A It began in, I believe, about the 24th of February
13 of '04. That's when I started full-time hauling.
14 I was delivering fertilizer in the Bakersville
15 area.

16 The truck -- I had finished, I believe it was,
17 and I forget whether it was the first load or the
18 second load, and the engine stopped. On this
19 particular truck, I have two fuel tanks. There's
20 one fuel tank that was added to the truck by my
21 uncle who I purchased it from.

22 There was a saddle tank behind the driver's
23 side, and then the regular fuel tank is behind the
24 seat. As soon as it stopped, I switched the fuel
25 from the saddle tank to the other one and restarted

1 the truck.

2 Q What happened?

3 A Well, it restarted at that time. I thought maybe I
4 was out of fuel. I might add, too, it's one of
5 these trucks when they are -- if you have ever
6 driven a vehicle with hydraulic brakes, you have a
7 booster on it.

8 It had power steering on it, and the minute
9 that engine stopped, you lose your power steering.
10 You lose about 90 percent of your brakes. If you
11 are not fast enough to get that switched over, you
12 are in a dangerous situation, especially when that
13 truck is loaded with 25,000-pounds of fertilizer.

14 It puts you in a dangerous situation, and
15 that's what happened. I did get it started back
16 onto the road. I stopped at the first service
17 station. I filled it up. It didn't take as much
18 fuel as I thought it should have, and I started
19 back from White Horse Road down 85, interstate
20 highway.

21 I switched that tank back to the saddle tank,
22 and it shut down again. I took it on to my
23 mother's place where I keep it parked. At that
24 time I had an inline fuel filter on it.

25 I took that inline fuel filter off. It's

1 actually covered in a metal one. You can't see
2 into it. I tapped it a little bit and a white
3 substance came out of it, and I knew that was
4 suspicious.

5 You just don't think about -- that someone
6 would put sugar in your vehicle. It was sugar. I
7 touched it to my tongue. It was sweet. So I put
8 another filter on the truck, which was a clear
9 filter. The next morning I went out again with it.
10 Do you want me to continue from there?

11 Q Sure.

12 A I hauled the -- I went to Spartanburg and I filled
13 up with my first load. Coming down this time with
14 a load, the truck stopped again or the engine
15 stopped again. I got the truck under control,
16 pulled it over, looked, and this filter you could
17 see the white in it. You could see that it was
18 fully stopped up.

19 Q Now I will interrupt you. I have taken the liberty
20 of marking this baggie as Plaintiff's Exhibit 2 for
21 identification purposes. I will pass this up to
22 you. Can you identify that?

23 A That's it.

24 Q That's what? Tell the jury what that is.

25 A That's the filter that I took off or that's the

1 filter that was on it. I had switched back to the
2 main fuel tank, made that delivery, went back to my
3 mother's place where I leave the truck, and took
4 this filter off.

5 Q Shake it for me.

6 A (Witness complies).

7 Q What is that?

8 A That's sugar.

9 MR. SUGGS: We would move Plaintiff's Exhibit
10 2, which is the filter removed by Ken Jenkins, into
11 evidence at this time.

12 MR. CHILDS: No objection.

13 THE COURT: It's in evidence.

14 (Plaintiff's Exhibit Number 2 is received into
15 evidence).

16 BY MR. SUGGS:

17 Q Did you taste the substance out of this one?

18 A Yes.

19 Q Out of this filter?

20 A Yes, both of them.

21 Q How did it taste?

22 A It's sweet. I didn't do much tasting. I just
23 touched it to my tongue, but you could tell it was
24 sweet.

25 Q You didn't take a teaspoon full?

1 A Didn't take it, no.

2 Q Ken, you mentioned something and I don't want to
3 interrupt your train of thought too much, but you
4 mentioned to me that your truck was at your
5 mother's house?

6 A Yes.

7 Q Where is your mother?

8 A Where is my mother?

9 Q Where was she at the time?

10 A My mother was in a nursing home.

11 Q Was anyone living at your mother's house when your
12 truck was parked there?

13 A No, there is not.

14 Q Did you get anybody else involved in trying to
15 determine what was wrong with your truck at that
16 point?

17 A The second time, which was this time that I took
18 the filter off, I knew that I had a problem. I
19 went and talked to several mechanics because I had
20 not been through it, and I don't think many people
21 have been through something like this and know what
22 to do, how you get it out of your tanks and what do
23 you do.

24 So I talked to a couple of mechanics. I
25 talked to a gentleman with one of the auto parts to

1 see what I could do, and it was decided probably --

2 MR. CHILDS: Objection, I believe that is
3 hearsay.

4 THE COURT: Sustained.

5 BY MR. SUGGS:

6 Q Again, try to avoid, as I have instructed the other
7 witness, try to avoid talking about what other
8 people told you.

9 A I decided at that time to take the bottom plug out
10 of the tank and try to clean what I could out of
11 it, the sugar out of it. I purchased some fuel
12 treatment, oil treatment.

13 I changed the oil, drained the gas out of it,
14 put this treatment in it. Then that was
15 somewhere -- let's see, that was on the 25th. On
16 the 26th, 27th, and I believe 28th, along in there,
17 I tried to run it again the next day. I believe I
18 run it half a day, one load.

19 It shut down on me again. From that point I
20 can't remember, going back four and a half years,
21 at one point there I hired a person to take the
22 tank -- help me take the tank off.

23 We took the tank off, flushed it out several
24 hours, took fuel filters off, flushed everything
25 out on it, and put it back together. I think this

1 was on the 4th or 5th of March.

2 I started -- at that time the truck was
3 running okay. Then I also had a Ford 555 backhoe
4 sitting in the same area. Not knowing what
5 happened to the first vehicle, if something was
6 done to the second one, so I had to go take all the
7 fuel out of it and change the oil and all in that
8 backhoe at the time for a safety factor.

9 Q All in all, how many days were you out of
10 operation?

11 A It was a little over eight days.

12 Q Tell me, after you thought you had resolved the
13 problem, did you get the truck running back the way
14 it should?

15 A Yeah. At the end, once we took the tank off and
16 flushed it out and changed everything, it started
17 operating normal at that time.

18 Q And that was about March 8th of 2004; is that
19 accurate?

20 A Yes, 2004.

21 Q So how is your truck now?

22 A Well, it began to, as time went on, it began to
23 smoke. It begin to loose power. I mean, when you
24 drive a truck daily down the same road and you have
25 the same load, you can tell whether or not it's

1 going to make it up that hill and in what gear.

2 It begin to loose power. It would backfire.

3 It begin to get harder to start. I knew something
4 was wrong with it. I didn't know exactly what.

5 Because this was not an immediate thing after the
6 first time around.

7 So I changed the plugs, points. That's a
8 normal procedure you would do to get the engine to
9 run better, and I did that. It seemed to help it a
10 little bit. In September of that year, I took the
11 carburetor off and had it rebuilt, and that helped
12 it for a little bit, but it never did recover from
13 it.

14 Q Have you had any other mechanics look at your truck
15 to try to determine what is wrong with it?

16 A I had one mechanic.

17 Q Who is that?

18 A Juan. Are you going to ask me his last name?

19 Q If you can say it.

20 A I had this mechanic to look at it and do an
21 evaluation and test on it to see if he could
22 determine what he thought was wrong with it, with
23 the results of what I was -- the problems I was
24 having.

25 Q Ken, I'm holding here an invoice from Delta Power

1 System and it's my understanding that Juan
2 Faneytte -- is that pretty good?

3 A Yes.

4 Q -- is the owner of that business, and we are going
5 to be hearing from him first thing tomorrow
6 morning. I had marked that invoice as Plaintiff's
7 Exhibit 5. Will you review that invoice for me and
8 tell me if you have ever seen it before?

9 A Yes.

10 Q What is the amount of that invoice?

11 A \$296.40.

12 Q Have you paid that?

13 A Yes.

14 Q And that was related to the work or tests run on
15 your spreader truck, correct?

16 A Yes, that was 4/24/08.

17 MR. SUGGS: Judge, we would like to move this
18 into evidence at this time. I will note that it's
19 marked as Plaintiff's Exhibit 5 versus 3. We can remark
20 it however --

21 MR. CHILDS: I object until Mr. Faneytte
22 testifies. They have not established that these are
23 damages that may have resulted from the sugar in the gas
24 tank. This was done this year, Your Honor, by the way.
25 This was April of 2008.

1 THE COURT: May I see it.

2 (Hands to Court).

3 THE COURT: Thank you.

4 (Pause).

5 THE COURT: I will overrule the objection.

6 It's a bill to Mr. Jenkins from this gentleman. Thank
7 you.

8 (Plaintiff's Exhibit Number 3 is received into
9 evidence).

10 BY MR. SUGGS:

11 Q Ken, do you know why you started having additional
12 problems with your truck?

13 A I didn't know why until November the 8th, '06.

14 Q What is your understanding as to why your truck
15 started fouling up again?

16 MR. CHILDS: I believe that is hearsay unless
17 he observed something. I think he is going to try to
18 testify about what somebody else told him.

19 THE COURT: I sustain the objection.

20 BY MR. SUGGS:

21 Q Ken, when your truck was out of commission for
22 those eight days, were you able to work?

23 A No.

24 Q Did you have work to do?

25 A Yes.

1 Q During this period of time, are you busy every day?

2 A Yes.

3 MR. SUGGS: Bear with me just a moment.

4 (Pause).

5 BY MR. SUGGS:

6 Q I am handing you up two set of documents. We are
7 going to take a second here to remark these for
8 identification purposes if that's okay as
9 Plaintiff's Exhibit 4 and 5.

10 (Plaintiff's Exhibits Number 4-5 are marked
11 for identification).

12 BY MR. SUGGS:

13 Q Ken, I will hand you Exhibit 4 and Exhibit 5. I
14 will steal back Exhibit 1 so you don't get it
15 confused and mixed up. Ken, what is Exhibit 4?

16 A It's a list that I compiled with the invoice
17 number, the date, the cost of the fertilizer that I
18 purchased and the sale price of that fertilizer,
19 and the difference of the two is the revenue that I
20 received.

21 Q Slow down for me. This is a document you prepared,
22 correct?

23 A Yes.

24 Q And what are the dates? What is the time frame
25 that this document reflects?

1 A February the 24th of '04, through March the 23rd,
2 '04, 30 days. I'm sorry, I didn't go to the back.
3 It's 3/25.

4 Q Look at the top of the document. I believe you
5 have the time frame, first page, very top.

6 A Yes.

7 Q Right here (indicating).

8 A 2/24/04 through 3/25/04. I didn't see the last
9 page here.

10 Q Based upon your experience in the spreader
11 fertilizer and lime business, are you typically
12 busy from February 24 to March 25, 2004?

13 A Absolutely.

14 Q During these eight days you were down, which I
15 believe was February 25th through the 29th, and
16 then again March 1st, half a day, 2nd and 3rd.
17 Then the 5th, 6th and 7th. Did you have work to do
18 on those days?

19 A Yes.

20 Q And do you still have a record showing who called
21 you and who you would have been working for those
22 days?

23 A I have a list of the people that have called and
24 requested fertilizer. Sometimes they will have --
25 with that list you will have people that will call

1 and may need fertilizer tomorrow.

2 They are going to plant some corn. They are
3 going to plant something, and they will need a
4 list (sic). So I have a list of the people that
5 called, but I don't necessarily go down that list
6 one, two, three, four.

7 It may be raining in Greenville, and I can
8 haul in Spartanburg or I can haul in Dacusville.
9 So I have a list of the people that I am going to
10 haul, yes.

11 Q Ken, I asked Mr. Few a little bit about how, I
12 guess, quickly you need to be able to react to a
13 phone call. In your experience is it one of those
14 things that if you are not there today, the work
15 will be gone tomorrow?

16 A If it's in the planting season, it will be gone
17 tomorrow or if somebody else can get it quicker.
18 These farmers, they will want -- on their hay field
19 or on their pasture, they want it the next day.

20 They will work with you to a certain point,
21 but if they can get somebody else to haul it, they
22 are going to move on. I go down that list and I
23 call up that person and say, I'm going to get your
24 fertilizer tomorrow. He'll say, I have already got
25 it. You have got that window. If you go back to

1 that window, you have got to haul it then. If you
2 don't, they will move onto somebody else.

3 Q Ken, I'm not able to share this with the jury right
4 now, but it's going to be going back to them.
5 Since they can't look at the document right now,
6 tell us what the five columns -- kind of six
7 columns -- are across this page.

8 A I give them an invoice. I write out an invoice.
9 It has a number on the invoice. I write that
10 number. That's what is in column one is the
11 invoice number.

12 Column two is the date that I spread the
13 fertilizer. The date sometimes will not be the
14 same as the invoice because some days the farmer
15 will be there when you finish.

16 If he is there, I write out the bill, and he
17 will pay you that day. When I come home at the end
18 of the day, I either write or try to write the
19 receipt that day or bill that day.

20 If I don't, it might be two days later. But I
21 have a copy of the invoice from the fertilizer
22 company that gives the date I picked it up, and
23 that's the date it was delivered.

24 So that's the date I have down here is the
25 date it was delivered. The third column is the

1 cost of the fertilizer that I paid for.

2 Q Is that how much you actually paid for the
3 fertilizer?

4 A I paid that money out to the fertilizer company,
5 yes.

6 Q What is sales? What's the next column?

7 A Sales is what I charge the client, and revenue is
8 the difference in the sales and the costs.

9 Q Sales minus costs equals revenue?

10 A Yes.

11 Q Did you use this spread sheet to compute your daily
12 average?

13 A Yes, I did.

14 Q And what did you determine your daily average to
15 be? It's on the last page.

16 A \$722 a day average.

17 Q If you were down eight-some-odd days, 8.16, I
18 believe?

19 A It was some two-thirds days in there and a half a
20 day that I worked. When you took the full average
21 of it, it come out to 8.16 days times that.

22 Q Have you calculated for the jury what you represent
23 to be the money you lost due to the eight days
24 down?

25 A Yes, I have.

1 Q What is that amount?

2 A That's \$5,891.

3 Q Your other exhibit there, Exhibit 5, is a packet?

4 A Yes.

5 Q Tell the jury what that is.

6 A This Exhibit 5 is the actual invoice that I write
7 to the client. On a customer's order, I usually
8 put which fertilizer company I picked it up at.
9 There's two -- there is only one now -- but then
10 there were two fertilizer companies in Spartanburg.

11 R.C. was a Royster Clark. C.E. was Carolina
12 Eastern. I write down the purchase order number on
13 their receipt. I date it the day I did the
14 invoice. I usually write their name down.

15 I don't exactly put everybody's address
16 exactly because if it's a return customer, I know
17 his address. I let my wife figure out where she
18 has got to mail the bill.

19 I put down the tonnage, the type of
20 fertilizer. A triple 17 is 17 percent nitrogen,
21 17 percent phosphate, and 17 percent potash. You
22 will have different types of that. I put the total
23 tonnage down at what per ton, and I compute what
24 the total cost of it is.

25 Q Ken, let me ask you, did you use that stack of

1 invoices or work orders to compute your spread
2 sheet?

3 A That's correct. The invoice number here
4 (indicating) should correspond on this one over
5 here (indicating).

6 MR. SUGGS: Judge, at this time we would like
7 to move Exhibits 4 and 5 into evidence.

8 MR. CHILDS: No objection.

9 THE COURT: They are in evidence.

10 (Plaintiff's Exhibits Number 4-5 are received
11 into evidence).

12 BY MR. SUGGS:

13 Q Ken, when you told the jury briefly that you
14 weren't able to operate for 8.16 days, why? Why
15 couldn't you run your truck? Why couldn't you get
16 a spare?

17 A Repeat the question.

18 Q I'm sorry. You told them that you weren't able to
19 operate for about eight days. Why were you not
20 able to operate your vehicle?

21 A I was trying to clean that mess out of the truck.
22 Not never going through this before and not many
23 mechanics know what to do, it was impossible. I
24 did not want to run the truck without trying to
25 clear the sugar out of it because it would just

1 make it worse. Basically that's the reason.

2 Q Once you realized that someone had put sugar in
3 your truck's tank, what action, if any, did you
4 take? Did you try to find out who had done it?

5 A Not at first, no. I kind of thought it would be
6 impossible. I mean, you just don't think that
7 somebody would do that to you. It gets pretty low
8 for somebody to come and do something to interfere
9 with your business, and I just didn't think there
10 was any possibility of finding out who did it.

11 Q Did you try to find out?

12 A Not at that time.

13 Q Later on did you try to find out?

14 A Yes. It wasn't two long after the third time that
15 I tried. At the very beginning, I was trying to
16 get back on the road. I knew if I did not get back
17 that truck running, I was going to lose a lot of
18 business. As soon as I got it running, that's when
19 I tried to.

20 MR. SUGGS: If you would mark this one,
21 please, as Number 6.

22 (Plaintiff's Exhibit Number 6 is marked for
23 identification)..

24 BY MR. SUGGS:

25 Q Ken, tell the jury what that is.

1 A It's a reward poster that I posted out, distributed
2 in the area.

3 Q Where all did you put it?

4 A Mostly businesses up in the upstate around where I
5 worked at. There were several stores that my wife
6 actually was taking them out to because I was busy
7 with the hauling. She was the one that distributed
8 them for me.

9 Q Your wife did?

10 A Yes.

11 Q Did you have to pay anything to get those printed
12 up?

13 A I think we paid about \$35. Her and I made the
14 poster up itself and had it printed.

15 Q And there is a photograph on that reward poster?

16 A Yes.

17 Q Is that your truck?

18 A Yes, it is.

19 Q How much is the amount of the reward?

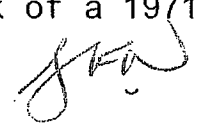
20 A It's a \$2,000 reward.

21 Q Did you come up with the copy there? Did you come
22 up with the words?

23 A Yes, I did.

24 Q Read those for the jury.

25 A Two thousand dollar reward for information leading

1 to the arrest and conviction of the person slash
2 persons responsible for placing sugar and/or
3 foreign substance in the fuel tank of a 1971 Ford
4 fertilizer truck located at 
5 Road, Greer, South Carolina, on or about mid
6 February, 2004.

7 If you have any information, please contact
8 Detective Tracy King at the Greenville County
9 Sheriff's Department at 371-3618 or Ken Jenkins at
10 895-1681, and the case number, 0439156.

11 MR. SUGGS: Judge, we like to move this into
12 evidence at this time.

13 MR. CHILDS: I object to the relevancy of
14 that, Your Honor.

15 MR. SUGGS: I can move forward with the
16 testimony and the fact that he paid this reward. We are
17 claiming this as part of his damages.

18 THE COURT: I will let it in evidence. Go
19 ahead. I overrule the objection.

20 (Plaintiff's Exhibit Number 6 is received into
21 evidence).

22 BY MR. SUGGS:

23 Q Ken, did you pay the reward money?

24 A Yes, I did.

25 Q Who did you pay it to?

1 A I paid half of it to Mr. Stokes, Rocky Stokes, in
2 November of '06, and I paid the other half to a
3 gentleman by the name of Gary Gantt at the same
4 time in November of '06.

5 Q Ken, I'm not allowed to ask about your
6 conversations with other people due to hearsay
7 rules. But let me just ask you, when Mr. Stokes
8 came forward and y'all had a discussion in 2004,
9 had you posted the reward at that time?

10 A No.

11 Q Did he ask for money?

12 A No.

13 Q Did you pay him money at that time?

14 A No.

15 Q Did you in fact pay him money almost two years
16 later?

17 A The only money I paid him two years later was that
18 reward.

19 Q Have you paid Johnny Lindsey anything to come here
20 and testify?

21 A No, sir.

22 Q Have you paid anyone else?

23 A I'm sorry?

24 Q Have you paid anyone else to come here and testify?

25 A No.

1 Q Ken, we were talking earlier and I apologize, I
2 skipped around a bit, and I got away from what we
3 were talking about. We were talking about your
4 spreader truck and the fact that you started having
5 problems with it during the course of the season of
6 2004.

7 A Yes.

8 Q Did you eventually park that truck?

9 A Yes, I did.

10 Q Did you buy a replacement vehicle?

11 A Yes, I did.

12 Q How much did you pay for that replacement vehicle?

13 MR. CHILDS: Objection. It's not relevant,
14 Your Honor.

15 THE COURT: Overruled.

16 A I paid a little over \$38,000 for it.

17 Q Does 38,272 sound accurate?

18 A Yes.

19 Q Why did you purchase that replacement vehicle?

20 A The old truck, the one that I had parked, was going
21 to cost quite a bit of money to get it back going.
22 I was determined that I was not going to let
23 somebody put me out of business.

24 I was 60 whatever -- 63 years old, and I would
25 like to retire within a year or two, but I couldn't