

but also he stays, when he comes down to Long Island, he stays with us.

Q. How often is he down there?

A. Well, right now he got married so he has only been down twice at this point, for a couple days.

Q. His date of birth is January 26, 1963?

A. Yes, it is.

Q. Do you know his Social Security number?

A. No.

JOSEPH WAIKENIS: Sworn:

BY MR. BANIK:

Q. State your full name please?

A. Joseph C. Waikenis.

Q. And where do you reside?

A. 48 Main Street, in Lawrenceville.

Q. Do you recall the day as it began on March 9, 1993?

A. Yes. Morning basically I got up about 5:00. Had a bite to eat. Went to work at 6:00. At the time, I think, my girlfriend and I got off work around 11:00. Went back to her parents house, and then about 11:30, 12:00, we headed to Sayre to move out the rest of her stuff. Or some of it. Basically. Back to her parents house. In doing so when we came back to her parents house, unloaded the truck, she decided that,

JW

okay, some of the boxes of her stuff could go to Lawrenceville. Because basically in a couple weeks or so, she was planning on moving in. So after that, pulled the truck back out of the driveway. And parked it back out on the street. And I think we went and had a bite to eat. We ate Chinese around, between 6:00, let's say. 6:00, 7:00. And then we ate and watched a little t.v. I was getting tired. It was about 8:00. You know. Then from there I go home. On the way home my truck was acting up. Which back in Sayre it actually stalled. I said instead of going the regular path I usually go, I usually go 17 through Corning, and 15 South, to avoid the problems I have been having in town with these police officers. But being on 17, basically, you know, if something happens, there is nobody around. Sometimes there's not even the police around. I went and I said I would chance it and take 328. Once again, a stupid thing, but, anyway. If something happens, there is houses around and I can call her parents or I can call someone else. Depending on where I broke down. And in doing so, when I hit Route 15, on the corner, I seen a police car that was parked there and the headlights was basically facing 15. I guess I would say 15 going north. And then I

JW

did everything correctly. Put my turn signals on. Passed them. I knew they noticed me. And I headed towards Lawrenceville. And I would say approximately about a half mile to a mile, let's say, as I was driving, I looked in my rear view mirror and thought maybe they wouldn't bother me. But sure enough, they sped upon me and started tail-gating me. In doing so, they put on their high white roof lights. Which is basically like a flood light. And they followed me for a good distance until I was turning the bridge, and then they put on the cherries. And the siren went off. And at that time, prior to that, I was pulled over about a month ago and it was harassment and was given a ticket. I figured, well, after that time, the first time, that the ticket that I got from one officer, I figured if at this time, if they pulled me over, for no reason whatsoever, because even before I left and drove back home, I even checked my back lights to be sure the turn signals worked and the brake lights worked. Which they did. So I just kept on driving, I was going the speed limit. And went over the bridge and cut it down to 35. I seen the other police officer. At the same time I was basically in front of me was basically a tractor

VW

trailer. Tanker. And when I caught up to him, the one police car put on the side and cut me off. And then basically after that, I stopped, and then Officer Shutt got out of the passenger side, and he had his hand on his gun and pointed to put my hands up. I said what am I going to get pulled over for. I don't know what is going on basically. When he got out of the car and told me to put my hands up, in doing so I put the truck in park. So I put my hands up and he come over and he said get out of the truck. I just put my hands up. He opened the door and he went to pull me out by my jacket, and in doing so, he noticed the shoulder harness on, and he didn't, you know, notice that. The other two officers jumped in, basically on top of me. One did the buckle. He pulled me out and the truck started to roll. I remember seeing Officer Shutt jumping back in the truck and putting it back in park. And he took me over to the police car, trunk area, and he pushed me against the truck, the car, and put my head down and handcuffed me, and the whole time they pulled me out, I was screaming, my back, because they were going

BY THE COURT: Mr. Waikenis, slow down.

UW
BY MR. BANIK TO JOSEPH WAIKENIS:

Q. Slow down.

A. I'm sorry, your Honor. I'm under stress right now. Okay. I noticed when they pulled me out of the truck, I said watch my back, I have a back injury. They pulled me out. This aggravated my back. I am screaming the whole time. They didn't care. They pushed me against the police car. They cuffed me. I had my wallet in my left pocket. They took my wallet. I am saying why did you pull me over. Why are you arresting me. They put me in the back of the police car. Basically after that they were going, the one officer went through my wallet and I remember yelling out my last name. Spelling it over the radio. And I heard on the background, I think most definitely it's Officer Beach, that said, one officer said what will we do with the truck and Officer Beach said we're going to impound it. So I thought to myself, oh, gee, here we go. They impounded my truck and took it to the police station, which was the fire house. The fire barracks. They took my downstairs. I sat there for a while with handcuffs behind me. Officer Beach was going through my wallet. Officer Young was getting some paperwork together. And then after a little

~~141~~ JW

while of sitting down there, Officer Young put a piece of paper in front of me and said I needed to sign this. And they uncuffed me and said to sign it. I said what's this. Officer Young said this is your rights in Pennsylvania for one year and a right to an attorney. I refused to do so. I said for what? What did you pull me over for? Officer Shutt at the time stated that you should have pulled over. It was a routine check. And Officer Young stated because I don't like you. Then I felt more threatened. But I refused to sign that. So I pretty much stayed quiet. After refusing to sign it, they made me stand up again and they made me take off my jacket. And they patted me back down. To see if I had anything on me. And then Officer Beach stated, well, give him a sobriety test. Which they did. In doing so, Officer Young told me to stand on my one foot. I stated I had a back injury. I can't stand. Which I didn't. In doing so, Officer Shutt was standing there and he said, well, you know, if you want to get home tonight, you better do it. So at that time I was getting aggravated. I stood on one foot and counted to thirty. I stood on the other foot and counted to thirty. Then he made me touch my nose, which I did. And then I walked in front of him ten

JW

paces, and turned around and walked back, which I did. And in doing so, Officer Beach was asking me questions about, so, Joe, what are you doing in New York. Who else lives with you. Whose car is that. And he is pumping me for information and some of the questions I asked him, not what ones I didn't, he was hot and heavy on getting my phone number. He wanted to know if I dealt in firearms or illegal narcotics. He wanted to know who my girlfriend was at the time. He wanted to know how good a friend I was with my neighbors. He wanted to know where in Long Island, what the address on my license, do I own that place. I explained that's my parents place. Well, in doing so, when he was asking me the questions, and after I refused to take a test, I sat back down. And then we were just waiting around and then the next thing Officer Beach stated to the officers, what's next. And then Beach stated to take my photograph. So then they put me against the wall and made me stand forward and took a snapshot, then they turned me to the side and took a snapshot. And then I sat back down again. And then in doing so, one officer said, well, is that it for that night. After a while, they were, that one officer said

SW

something about a courtesy ride. And then he would bring the subject home. And then even before I was released, Officer Beach stated to Officer Young, fingerprint him. In doing so, fingerprinting me, they were still asking me more questions. And so basically, you know, I was in fear of my life because I didn't know what these police officers were up to. I had been harassed before. I tried to play it as cool as possible. Trying to, you know, do things their way. But after doing so, after they asked me this, give up my rights to drive and give up my rights entirely, they were going to take me home. I said to the one officer, my keys, what about my keys. And the other officer stated, I think they were with the truck. In doing so, I think they called the Mobil guy up and then after a few minutes later on, they took me to the squad car and from the squad car, they pulled up in front of the Mobil station and they told me to wait in the back of the squad car. They went in the Mobil station, and climbed up on the flat bed where my truck was, and opened the doors and started stripping my truck apart again. I had a bag, like a trash bag, with garbage in there. I can see through the window of the car, in the

JW

back of the Mobil station, that they were thoroughly searching my truck again. I figured I ain't going to worry about it. So about ten minutes, he finishes. They came back to the car. They gave me back my keys. And we went to my residence, they passed my residence and dropped me off in my other neighbors yard on the other side of me. In doing so, when we was leaving the squad car, both of them stood next to me and Officer Shutt said, you better go straight home to bed and off the street. So at that point I thought I was home free. I went home and in doing so, I took a couple pain killers. I went straight to bed. And then the following morning, I spoke to my girlfriend at the time. And I said I have a story for you. And that's when she came in there, and I showed her basically what happened to me.

- Q. You have, I am sure, totally confused the jury. Now, I'm going to go back and ask you a few questions. A little bit slower. When you wre on Route 15, when you first got on 15, what position was the squad car?
- A. It was parked in the lumber yard and the headlights were facing 15 north. It was catty corner.
- Q. How quickly did they pull out behind you?
- A. I would say maybe about, I looked in my rear view

JW
mirror, and they started pulling me over, maybe about a half mile down the road, I thought I was home free. And then the squad car came pulling right along me and put on his flood lights.

Q. What do you mean flood lights?

A. Big bright lights. Basically, you know, it was so bright in my rear view mirror, I had to turn to the side because it was that bright.

Q. Did that suggest to you he wanted you to stop?

A. No.

Q. Did you cross the center line at all?

A. No.

Q. Not at all?

A. Not at all.

Q. Throughout this entire time, you were aware that the police were either directly behind you or somewhere close behind you?

A. Yeh. He was right on my tail.

Q. You were aware of that?

A. Yes.

Q. Did not cross the center line?

A. No.

Q. What speed were you traveling?

A. Well, when I turned the corner and came up, it was

about 55, and I stay 55 until I got to Lawrenceville. And then the speed was reduced to 35 so I started slowing down.

Q. How far did he follow you with his siren and flashing red and blue lights?

A. The lights and the siren came on somewhere before the bridge. Before you head into Lawrenceville.

Q. So how far would you have been followed with the lights and siren?

A. To a point, until I stopped, approximately one mile or so.

Q. And why did you choose that place to stop?

A. Because that's how...actually I tried to make it to my driveway and my neighbors house, where I have people around me. But when I was in town, in front of the Quick Fill, I felt I was safe enough. That I had people around me for witnesses in case I needed somebody.

Q. What were you afraid of?

A. Harassment.

Q. What form of harassment?

A. Well, I stated that about a month before he pulled me over the second time, I was coming onto 328 and turned on 15 and then Officer Young, his car was parked on the side. So in doing so, he turned and seen me and pursued

JW

me down 15. I got about one mile or so down the road and then he put on his lights and pulled me over. When he pulled me over, he came up to the window and asked me for my driver's license. I said why are you pulling me over. He said routine check. I said all right. He is just staring at me. I got my driver's license and he said you're the one at Joe's house. I said, yes. And so he disappeared and he comes back with my driver's license, where my license expired on my birthday and this is two days after my birthday. So, I told him, this ain't fair. I said my birthday, and I haven't had a chance to get down or whatsoever at the time. I explained it to him and he didn't want to hear anything. And then after that, he said well sign it, and I said I ain't going to sign that. I thought it was stupid. Because he came up with a sum of like \$90.00. He said if you don't sign it, he said I'm going to get you, I'm going to cite you for not wearing a seat belt. And that's going to cost you like \$60.00. It's like I knew right then and there he had me. I had no choice. So instead of, you know, putting up more of a fight, I signed it, I got the ticket and paid it.

- Q. When you were pulled over, was there any discussion about whether you had been drinking?
- A. None.
- Q. What was in the seat next to you?
- A. Nothing.
- Q. Was there anything on the floor next to you?
- A. I had a trash bag on the floor.
- Q. What was in it? And where did it come from?
- A. The contents is unknown. Since I was there, there was so much junk in the barn, and at times when I go to work, I'll take a garbage or two and throw in the back of my truck. And when I get to work I'll empty it at the dumpsters there. The contents at the time I did not know. What was actually in the trash bag. Until the following day, when I took photographs and cleaned up the truck.
- Q. How did it get from the back to the front?
- A. On the way back when we went to Sayre, to pick up her stuff, I had the one trash bag, and I figured I'd just throw it in the front of the truck, which I did, but the following day, instead of going in the back of the truck, I could throw it away. As soon as I got to work, take it out and dump it off.
- Q. And was the bag torn open?

JW
A. No. It was sealed. It had a tie on it.

Q. When you went back to your truck the next day, had the bag been opened?

A. Yes.

Q. And the picture that I showed the officer, earlier, who took this picture?

A. I did.

Q. When?

A. The very next day.

Q. Before, was this....?

A. That was right after I picked up the truck from the Mobil Station. And when my neighbor came over and seen the truck, we talked about it, and he said take a photograph, and on top of that he said clean out the truck thoroughly in case they planted something in there, and would pull me over again. Which I did.

BY MR. BANIK: I offer these as defendants exhibits one and two.

BY MR. COWLEY: I would like the opportunity to question the defendant before...to clarify a point.

BY MR. COWLEY TO JOSEPH WAIKENIS:

Q. These pictures are of the same vehicle?

A. Yes.

Q. And who took the pictures?

JW

A. I did.

Q. You took them?

A. Yes.

Q. With what?

A. 35 millimeter camera.

Q. And whose is that?

A. Mine.

Q. And where did you get them developed?

A. At the Mall. It's like a one hour photo.

Q. Did you take them in the morning the next day? Or when?

A. No. Probably within a week I would think. Actually not even a week.

Q. No. When did you take them?

A. Oh, the very next day. When I got the truck back from the Mobil gas station.

Q. When was that?

A. On the 10th.

Q. During the day on the 10th?

A. Yes.

Q. Sometime in the afternoon?

A. No. It was morning.

Q. You got the truck back in the morning?

A. Yes.

Q. And this is your truck basically is what you're saying?

A. Yes.

Q. It's got a bucket seat with a console in the middle, is that correct?

A. Yes.

Q. Where was the truck situated when you took the pictures? At your house?

A. Yes. In my driveway.

BY MR. BANIK TO JOSEPH WAIKENIS:

Q. If the trash bag hadn't been ripped, what would have been in the front of your vehicle?

A. I kept tools. I did have some other paper work that I use at Sears that was all up front. Basically behind the two back seats, the majority is just tools.

Q. Do you have any idea where two empty Piels beer cans would have come from?

A. No. At the preliminary hearing they asked me and the only thing I would have thought was maybe they came out of the garbage bag. Which is very possible because I do remember plenty of times throwing all kinds of bottles and cans and whatsoever in the barn in the trash bag, and then when I get around to it, I'll get rid of the trash bag. So it's very possible they could have been

JW
in there.

Q. How about the forty ounce bottle of Budweiser?

A. That was in the back of the truck in the box with the rest of the stuff of Dawn's.

Q. It wasn't something you intended to drink?

A. No. It was in the back of the cab.

Q. Were you drinking anything?

A. Nothing whatsoever.

Q. Not even a ginger ale?

A. Before I left.....

Q. That was a leading question obviously. I apologize. Did you drink any alcohol at all?

A. None whatsoever.

Q. What did you consume?

A. That night? Well, when we had dinner, I was drinking ginger ale.

Q. What did you have to eat?

A. Chinese.

Q. And you left, as you said, about 8:00?

A. Yes. 8:00.

Q. And consistent, you believe that you were stopped according to the officers' testimony around 8:27

A. Yes.

Q. Now I want you to slowly tell us your recollection of

JW

the form that you were presented with? And what it was explained to be?

- A. All right. Well, at the time I was a little bit excited, and I was, also had a question of why was I in trouble. Why was I handcuffed. Why was I arrested. The only thing I was told was you should have pulled over. You should have pulled over. One officer, that Young over there, pulled me over a month earlier and he harassed me. So at the time I was talking to Shutt and Young got, I guess whatever he was doing, the paper work, put it next to me and he uncuffed me and stated I need you to sign here. I said what's this. And he stated this gives up your right to drive in Pennsylvania for one year and it gives up your rights to an attorney.
- Q. Was it ever clear to you that a blood sample was being requested?
- A. No.
- Q. Would you have given one?
- A. A blood sample? Yes. If I went to a hospital.
- Q. Did they explain the procedure of giving blood for a blood test to you?
- A. No. It was never mentioned.
- Q. You have heard the officers indicate that Kirby

Young said eight to ten times and Scott Shutt says up to six times.

- A. It was never mentioned once. Because that whole time I was puzzled about why I was being pulled over. They state it was just a routine check. And the other officer said because I don't like you. Young got in front of me. And with the paper, I think they were trying to pull a fast one on me. And then after refusing to do so, to sign it, and basically that's when the games began. Because they had me constantly, almost two hours there. By the time I got home. And the whole time I was there, I was asked questions, I was made to do stupid things. They didn't have no concern about my back whatsoever.
- Q. How long did they spend at the Mobil station after the interrogation was complete?
- A. They spent approximately, I would say, ten to fifteen minutes. Around ten.
- Q. Who got out of the vehicle?
- A. What? To go search....?
- Q. To get your keys?
- A. Both of them left the vehicle and both of them went to the Mobil station. And both of them climbed on the flat bed and started to search my truck again.

JW

Which at that point I thought, I had nothing to hide so...and then they came back and they gave me back my keys and brought me in front of my other neighbors house and dropped me off.

Q. Do you have a micro-cassette recorder in your vehicle?

A. I had a micro-cassette recorder which I remember I had it with me because after the first time I was pulled over, I spoke to a few people. They said if you get pulled over again, put it on tape on what they said. So I had two extra tapes with me. And I had this Sony micro-cassette recorder with me. In this like compartment.

Q. Have you seen it since?

A. No. The following day when I got my truck back, and I was talking to some people, they stated that, you know, I better thoroughly clean out my truck in case they planted anything on you at the time. In doing so, the recorder was missing.

Q. Had your truck been locked at the Mobil station?

A. I have no idea.

Q. When you picked it up, was it unlocked or locked?

A. It was opened. Because I remember when I went there, the fellow just opened up the door and jumped in there and they were backing it off the flat bed.

JW
Q. It was on the flat bed all night?

A. Yeh. The only reason why they stated they would not give me back my truck is, they stated they got to keep it over night so they could thoroughly search it the next day. That was the only reason they given to me as to why they were keeping my truck.

Q. They did not say you had too much to drink?

A. They didn't say anything about....the only questions that they asked was basically Walt Beach was more or less interested about my welfare of living there. He wanted to know what I did. What I do. My family. How long do I plan on living there. Those kinds of questions. And in doing so, to keep me there, he's telling these other officers, well, now, we can give him the sobriety tests and fingerprint him. And then take my photograph.

Q. Did any of the officers suggest that they suspected intoxication?

A. None.

Q. When you did those heel to toe tests and the finger to your nose test, and standing on your foot for thirty seconds test, did they give you an indication that you were a suspect for DUI?

A. No. But I felt I was a suspect for something. Because

Walt Beach stated, well, give him a sobriety test, just like that. And then Officer Young brought me over by one little area. Scott Shutt was just standing there with both hands on his hips. And told me to do it. I explained to him, it aggravated my back, I can't do it. I have a pinched nerve and I can't stand on one side. But he said you got to do it anyway. So I did it. At that time I was mad, that I stood on both feet and I did what they told me to do and at the end, I even made a comment, I said I passed.

Q. Did they suggest you hadn't passed?

A. No.

Q. Was any comment made about your performance of any of the field sobriety tests?

A. No. There was no comment whatsoever. They just stared at me.

Q. Did anyone suggest that you will be receiving a citation in the mail?

A. No. No citation or nothing.

Q. You got up at what time in the morning?

A. Approximately 5:00.

Q. Were you tired at this point?

BY MR. COWLEY: Objection as to what point we're talking about.

JW
 BY MR. BANIK TO JOSEPH WAIKENIS:

Q. At the point you were stopped?

A. Yes. It was a long day.

Q. So you recall whether or not you were drifting off to sleep while you were.....?

A. No, no, no. Because if I was tired enough, I would have spent the night there. But I had my own room at the time at the Dunlaps.

Q. Was there anything in the Chinese food that you had, spices, flavors, soy sauce, or anything....?

A. At the time I had mu mu gi pan. And yeh, it didn't have any spices in it. Which I, we got that night at China Royal, I believe the name of it, on the south side. We eat there quite often.

BY MR. COWLEY TO JOSEPH WAIKENIS:

Q. Mr. Waikenis, can you hear me all right?

A. Yes.

Q. How far did you go in school?

A. Twelfth grade and then I went to technical school.

Q. So you have a high school degree?

A. Yes.

Q. You are currently, I think your Mom said thirty years old?

A. Yes.

- JW
- Q. And you were thirty years old at the time on March 9, you were thirty years old?
- A. Yes.
- Q. The test that we have described, the one legged stand, touching the nose, the walking and turning around, heel to toe, did you know they were field sobriety tests?
- A. I heard of it, yes.
- Q. Now, what I'm asking you is, do you know, that they were field sobriety tests?
- A. Well, as I stated, I remember Officer Beach stating to give him sobriety tests. So, you know, I put two and two together.
- Q. All right. We have got two and two, and what do you come up with? They were sobriety tests?
- A. Yes.
- Q. So you knew they were sobriety tests? Correct?
- A. Yes. The reason why they asked me to do them, I have no idea.
- Q. Since you are thirty years old, and have a high school education, and some other training, and you live in the world, you know that sobriety tests deal with driving under the influence? Is that correct?
- A. Yes.

Q. So did you think they, at that time, that they might be interested in you because of driving under the influence?

A. No. I think at that time they just said that as an excuse to keep me there longer.

Q. So it was your belief that they were having you take these drunk driving tests only for the purpose of harassing you?

A. Yes. Why wouldn't they do it right on the spot when I pulled over.

Q. I'll ask the questions.

BY THE COURT: Mr. Waikenis, let me direct you, the questions put to you by counsel, just answer the questions. If your counsel wishes to ask you some questions, on redirect, he can do that.

BY MR. COWLEY TO JOSEPH WAIKENIS:

Q. Now, you have been present in court today? Is that correct?

A. What?

Q. You have been present in court today?

A. Yes.

Q. And you have heard the testimony of Officer Young and Officer Shutt?

A. Yes.

Q. And I'm not sure, but, I think Officer Beach, do you remember them, all of them testifying that on numerous occasions you were asked to consent to the blood test? Do you remember them testifying to that?

A. Yes.

Q. Now, going back to March 9, do you remember anybody whether it be Mr. Young or Mr. Shutt, asking you to consent to take a blood test?

A. None.

Q. Noone?

A. Noone.

Q. Let's look at the exhibits. Is this that form? Is this that form? Does it look like the form that they put in front of you?

A. It's hard to say. I don't remember what the form actually looked like. When he put the form in front of me, he just stated to sign here. And I said what's this for and he said...I was looking at him at the time and....

Q. Just....can you recognize that form?

A. No.

Q. But you do remember a form being given to you?

A. Yes.

Q. Did, or were, you given the opportunity to read the

JW
form?

A. No.

Q. You were never given the opportunity to read the form?

A. None whatsoever.

Q. Because they took it from you?

A. As soon as I refused it, they took the form. Yes.

Q. They didn't allow you to read it?

A. No. They never read it to me either.

Q. No one read it to you?

A. No. Nobody.

Q. Do you remember anyone giving you miranda warnings?

You have the right to remain silent?

A. None whatsoever.

Q. Now I'm going to ask you two questions. Do you remember whether the miranda warnings were given at the scene, which I recall the Quick Fill scene, were they given there? You have the right to remain silent, anything you say can and will be used against you in a court of law?

A. No.

Q. All right. how about the Police Department? Were the miranda warnings given to you then?

A. No.

Q. All right. So you couldn't see the form and they never

JW
gave you the miranda warnings, right?

A. True.

Q. They kept you there two hours?

A. Approximately,

Q. Two hours?

A. Yes.

Q. Two hours? Did you ask to see the form then?

A. No.

Q. Okay. Did they ask you to sign the form?

A. Yes.

Q. What did you say?

A. I asked them what's this form. And he just stated, as I was sitting there looking down...

Q. He being who?

A. Officer Young. This gives up your right to drive in Pennsylvania for one year and it also gives up your right to an attorney. I said for what. What did I do?

Q. So, he told you that this form said this gives up your rights to drive in Pennsylvania?

A. Yes.

Q. And gives up your right to an Attorney?

A. Yes.

Q. But he wouldn't let you read the form?

JW
A. No.

Q. Okay. Now, you testified that, actually you were aware of the presence of that police car all of the way up 15, after you turned off 328, according to your testimony? Right?

A. Yes.

Q. So you were aware when the lights came on?

A. The back lights? Those big white flood lights? Yeh.

Q. And how about, we have heard a lot about lights today but how about the ones that were blinking?

A. Basically not until I got to go over the bridge.

Q. Did you hear the siren?

A. Yes.

Q. Why didn't you stop when you knew it was a police car....let me finish the question....you knew it was a police car, you knew they had their lights on, all sorts of lights. And you heard a siren. And it was behind you. Why didn't you stop?

A. Harassment.

Q. Harassment. Okay. Harassment from this police department?

A. The whole police department.

Q. The whole police department? Of what State? I mean this State, some other State....?

- JW
- A. Lawrenceville.
- Q. Lawrenceville Police Department?
- A. Yes.
- Q. All right. You mean Chief Shutt of Lawrence Township?
- A. Yes.
- Q. He had harassed you?
- A. Yes.
- Q. In the past?
- A. No. Not true.
- Q. So Shutt never had anything to do with you, right?
- A. I met Shutt once before.
- Q. Did he harass you before?
- A. No.
- Q. All right. So you met him, did you know who was in the car?
- A. Basically, yes. When I
- Q. How...you said yes, now, how did you know who was in the car?
- A. At that time, when I had my girlfriend with me...
- Q. No. I'm talking about the night in question. How did you know who was in the car?
- A. Oh, basically, I didn't.
- Q. You didn't?

JW
A. No.

Q. So you're driving down the road and the police car is chasing you, but you don't know who's in the police car, but you say they're harassing me and I'm not stopping. Is that your position?

A. True.

Q. You didn't know who was driving the car?

A. No.

Q. But you say this guy, and I'm referring for the record, Mr. Young, has harassed you in the past?

A. Yes.

Q. And his harassment, now, is this harassment once or twice, what's the deal here?

A. Once.

Q. Once. And that harassment was when he stopped you and asked you for your license?

A. He stopped me the first time.

Q. And he asked for your license?

A. He asked for my license and I stated why. He said routine check. And basically after I gave my license, he said you're the one that lives at 48 Main.

Q. Was your license expired?

A. On my birthday, yes.

Q. And this was after your birthday?

- JW
- A. Yes. The day after my birthday.
- Q. This happened March 9, about a month before. The Officer testified to a few days. So a day or two to a few days after your birthday, you're driving around with an expired license? Is that correct?
- A. If you want to look at that, yes.
- Q. Is that correct? You were driving around with an expired license?
- A. Correct.
- Q. You got a ticket for an expired license?
- A. True.
- Q. And that's the harassment?
- A. No. Because when I was talking to him, I said, why are you giving me a ticket. And I said it's my birthday. Give me time. He said no. You have to sign it. The fine is \$90.00. And he stated if I don't sign it, right there, he will ticket me a \$60.00 ticket for not wearing a seat belt. At that time I figured he got me. So I'll sign it. Isn't that harassment?
- Q. That's not for me to decide. But let me ask you this. Isn't it true when he gave you the ticket he told you that it didn't acknowledge guilt or innocence? Do you remember that?

- JW
- A. When he gave me the ticket?
- Q. Yeh. That's just signing it saying you got it.
You don't give up any rights?
- A. Yes. But he knew who I was.
- Q. I know that, but, that didn't admit anything, did it?
- A. Admit what?
- Q. When you signed and received the first ticket?
- A. That I was guilty? No.
- Q. All right. You at some point sent the thing saying
yeh, I'm guilty?
- A. Yes. I signed it and sent it in and paid the fine.
- Q. Is that the only time that this young man here had
stopped you?
- A. Yes. It's the first time I met him.
- Q. And Chief Shutt of Lawrence Township had never stopped
you for anything?
- A. No. Once before he did stop me.
- Q. I thought you said he hadn't?
- A. Well, I was jogging at the time and it was the night he
pulled up and asked me who I was. And I stated who I
was. He said you live at John's old place and I
said yes.
- Q. I mean a traffic violation. He didn't stop you for a
traffic violation at that time?

- JW
- A. No.
- Q. So based upon the one thing, that was the harassment and that was why you chose to keep driving straight ahead?
- A. Well, in that car, Chief Walt Beach could have been in that car and...who knows. I was in fear of two things. The reason why I didn't stop was safety of my life and my life itself. So....
- Q. Now, you have heard all three officers say that they detected an odor between moderate to strong odor of alcohol on your person and in the cab of the vehicle.
- A. Today, yes.
- Q. Is that an accurate and honest statement or is that an incorrect and dishonest statement?
- A. When he pulled me over that night, it's dishonest.
- Q. Not true?
- A. Not true.
- Q. They are wrong?
- A. They are wrong.
- Q. They are incorrect?
- A. Incorrect.
- Q. Okay. They didn't tell the truth on the stand?
- A. No.
- Q. Your goal was to drive to your house or somewhere

JW
where you could get witnesses? Right?

A. True.

Q. Because of this harassment you had endured about the expired license, you had a micro-cassette tape recorder in your vehicle?

A. True.

Q. If you ever got stopped again, you're going to tape it, is that right?

A. Basically true, yes.

Q. Did you tape the stop?

A. Didn't have a chance to.

Q. You didn't have a chance? You had a mile and a half before you stopped?

A. Well, at the time he was just following me, and I thought maybe he was just following me and he would pull away and let me go.

Q. When did you think he might not pull away and let you go? When the lights went on or the sirens went on?

A. Basically by the Quick Fill. I pulled behind the tanker, tractor trailer.

Q. Did you think they were going to let you go when you're going up over the bridge, and over the river, with the lights and siren going, they're going to let you go? Is that what you thought?

- OW
- A. Well, no. This is before the sirens came on.
- Q. Why didn't you pull out the tape recorder when the sirens and lights came on?
- A. At the time I couldn't think. When I did stop, I didn't think they would drag me right out of the truck like they did. I figured I would stop, you know, and I would question, why are you pulling me over.
- Q. Okay, let's go back. You're stopped. You're in the truck. Chief Beach had testified that on two occasions he told you to get out of the truck. Do you remember hearing that?
- A. That's not true. Not true.
- Q. They just pulled you out of the truck?
- A. True.
- Q. They never told you to get out of the truck?
- A. False.
- Q. They never told you to get out of the truck?
- A. No.
- Q. Okay. And Chief Beach said twice he yelled in a very loud voice to get out of the truck?
- A. False.
- Q. False. So, now, I think you said on that day that you helped your wife move stuff from Sayre back to Elmira?

JW
A. True.

Q. She went with you to Sayre?

A. True.

Q. In your truck?

A. I can't recall if she went in the truck or she drove her car. I think at the time she might have taken hers along. I'm not too sure about that. But I do remember at the time....

Q. Did you make on or two trips?

A. Just one.

Q. One trip?

A. Just one trip.

Q. And you're saying you left the garbage bag in your front area of....?

A. The garbage bag was in the back of the pickup truck. When I put the two boxes of her stuff in the back of the truck, I grabbed the bag and put it in the front of the truck.

Q. Do you remember telling the police officer you didn't know how the Piels cans got there?

A. True.

Q. You do remember that?

A. At the preliminary hearing.

Q. Do you remember telling the police officers that

JW
night?

A. No.

Q. Did you remember telling the police officers anything about the Budweiser, the 40....?

A. No. It was never brought up.

Q. But you knew it was there though because you said it was in the back seat?

A. Well, yeh.

Q. You did know it was there?

A. If it was there, it was in one of the boxes because when we packed up her stuff, I do remember putting the beer in there. I do remember that she had two bottles of wine that was put in the boxes. And what box whatsoever that was taken at the time was placed in my truck and taken out of my truck because she wanted to leave them at her parents house, and what was in the truck to take back to my place, I can't recall that.

Q. Your wife didn't testify she went to Sayre that day, do you remember?

A. Yes.

Q. Your wife testified the truck wasn't too reliable? Is that right?

A. That's true, yes.

Q. Mr. Waikenis, I think you testified that Chief Shutt

opened the door and pulled you out. Is that right?

A. He started to. Yes. That's true.

Q. He started to and yes, that's true. Did he open the door?

A. Yeh. He opened the door and started to pull me out and I told him, I said my shoulder harness. When he couldn't get me out, he reached over and then Officer Young and Officer Beach reached in with him and grabbed me. And he undid the buckle and pulled me out of the truck.

Q. Did Chief Shutt pull you out of the truck?

A. Basically all three of them did.

Q. All three of them....?

A. All three of them. Until when the truck started to roll because I never put it in park.

Q. Who put it in park?

A. Officer Shutt jumped in and put it in park.

Q. You heard Officer Young say he put it in park? Is he wrong?

A. Yes, he's wrong.

Q. He is wrong?

A. Yes.

Q. You heard Officer Beach, Chief Beach, say he pulled you out and he was the one there, he was over your left

shoulder. Remember?

A. Yeh.

Q. Is he wrong?

A. Yes. He stated that he put me against my own truck.
Which was false.

Q. False. That's incorrect?

A. True.

Q. Now, I think you started your testimony by saying
usually you go a different route to get to
Lawrenceville?

A. Yes. Usually I feel the truck was up to par at the
time. I basically take Route 17 and 15 south into
Lawrenceville, and go right at the light.

Q. Okay, now, that means you have to go over the bridge
in Elmira, and out to 17? Right?

A. Yes.

Q. And then you have to go all of the way past the Mall?

A. Yeh. And into Painted Post.

Q. Yes.

A. And then go south, yes.

Q. Well, that's a long ways from over near Dunfield?

A. Well, yes and no. There's an exit not too far. I
am not too sure what the exit is. But, less than
five minutes I am on 17 and heading towards Corning.

- Q. But you have to go Elmira to Corning and all of the way from Corning to Painted Post and from Painted Post down to Lawrenceville, don't you?
- A. Well, it's right on 17. It ain't too far from it. To go on to 17.
- Q. Well, she lives on the south side?
- A. Yes.
- Q. And 17 is all of the way over....?
- A. Not all of the way over. It's not that far away.
- Q. But tonight you decided you would take a chance and come 328, which is kind of a rural road?
- A. True.
- Q. But you felt safe because there are houses there?
- A. Excuse me?
- Q. You felt safe because there are houses around?
I think you testified?
- A. Her house?
- Q. Houses around, if you had any problem?
- A. Oh. One time her and I broke down, but, it was not her automobile.
- Q. You think Officer Young's relative owns that gas station?
- A. From what I was told. Yes. He has been seen there working. And I heard and...yes.

Young
SW

Q. But you don't know that?

A. No. It's just basically hearsay.

BY THE COURT: Any additional testimony?

BY MR. BANIK: No additional testimony.

KIRBY YOUNG: Called as on rebuttal.

BY MR. COWLEY:

Q. Do you own this, do you know where this gas station is?

A. Yes, I know where the Mobil station is.

Q. It's right on 249?

A. No. It's on 15.

Q. Do you own it?

A. No, I do not own it.

Q. Does your brother, sister, mother, father...?

A. None of my relatives own the station.

Q. Have they ever owned it?

A. Yes.

Q. When did they own it?

A. My father owned it. Actually it was my grandfather.

I'm not sure when. Sometime in the '50's. '60's.

My grandfather died. My dad took over and ran the

station. In July of 1988, he sold it to Duane

Biehler, who is no relative of mine. He has been

running it since July of 1988.