

COMMONWEALTH OF MASSACHUSETTS
WRENTHAM DISTRICT COURT
CRIMINAL DIVISION

COMMONWEALTH OF)	
MASSACHUSETTS,)	
)	
Plaintiff)	
)	DOCKET NO.: 0257CR0260
v.)	
)	
CARLO ZALEWSKI,)	
)	
Defendant.)	

TRIAL TRANSCRIPT

SPEAKER	TESTIMONY
Bailiff	Commonwealth versus Carlo Zalewski, Docket Number 0257CR0260.
Bailiff	Thank you. Sir, will you raise your right hand and be sworn. Do you solemnly swear in the matter now hearing to tell the truth, the whole truth and nothing but the truth, so help you God?
Zalewski	I do.
Judge	Mr., uh, Zalewski. I'm going to ask you some questions. If you don't understand me, stop me if, uh, you want to talk to your attorney at any point, you can do that, okay sir?
Zalewski	Yep.
Judge	And you need, when you respond, you need to respond loudly enough so the microphones the uh, in the room will pick up your response.
Judge	State your name and your age, please, sir.
Zalewski	Carlo Zalewski. I'm 58.
Judge	How far did you go in school, sir?
Zalewski	Uh, 10 th grade.
Judge	Have you had any drugs or alcohol in the past twenty-four hours.
Zalewski	No.
Judge	Are you suffering from any mental condition that would affect your ability to understand what's going on here today sir?
Zalewski	No, no.
Judge	No. Do you know what you are charged with here?

Zalewski	Uh, yes I do.
Judge	Driving to endanger, also known as negligent operation of a motor vehicle, right?
Zalewski	Yes.
Judge	You have discussed this charge with your attorney?
Zalewski	Yes, I have.
Judge	Counsel, I will check your representation that you have, uh, discussed this matter with your client, you have advised him as to the nature and elements of this offense as to what the Commonwealth must prove in this case, uh, and as to any defenses, uh, that the defendant may have with respect to this matter?
Defense Counsel	Yes I have, your honor.
Judge	Sir, you understand if I don't accept what you have offered to resolve this case and is written down in the green sheet that, uh, you signed, you can withdraw this pleading and go trial, you know that?
Zalewski	Yes.
Judge	That if you go forward and you resolve this case today, you are giving up forever your right for a fair and partial hearing with respect to this trial, do you know that sir?
Zalewski	Yes, I do.
Judge	That you are giving up your right to present evidence, uh, on your own behalf. You are also giving up your right to cross-examine any witness the Commonwealth might call against you in this case, you know that?
Zalewski	Yes.
Judge	You have the right to a jury trial, sir. As part of the jury trial you, with the assistance in your attorney, could help select six jurors. Those six jurors would have to make a unanimous finding as to guilt or innocence, you understand that?
Zalewski	Yes, I do.
Judge	That giving up your right not to incriminate yourself and that means that nobody can make you stand there and say that you committed this offense and if the matter were to go to trial, nobody could force you to offer any testimony against yourself at the time of trial, sir, you understand that?
Zalewski	Yes.
Judge	You have a right to have this matter tried by a judge instead of a jury, sir, are you giving up that right?

Zalewski	Yes.
Judge	And, finally, you are giving up your right to require the Commonwealth prove each and every element of this offense beyond a reasonable doubt, sir, is that correct?
Zalewski	Yes.
Judge	Okay. Can I have the facts, please?
ADA	<p>Yes, your honor. Summarizing from a Medway Police Department Report and the State Police Reconstruction Report, your honor, on the, uh, on the 9th day of January of last year at approximately 1:12 p.m., officers at the Medway Police Department were summoned to a motor vehicle accident on Route 109, a public way, in the Town of Medway, Massachusetts. When they arrived they saw a 1997 Toyota Corolla bearing Mass. Registration 787 ELO. Uh, it was off the road into the road into the woods down an embankment. It took half an hour to remove the victim in that car to an ambulance to Milford Hospital. She was later transported to UMASS Medical Center. What had occurred, uh, there was some tree stump grinding going on on the side of the road and, a, officers of the Medway Police was directing traffic. Uh, they were stopping traffic one way and allowing traffic to go. Uh, Sergeant Boltenhouse was directing traffic. While he had stopped traffic eastbound, specifically the Toyota, uh, that I mentioned previously, he was looking westbound and he heard a crash. Looking over, he saw a tractor trailer unit pushing the blue Toyota toward where he was standing. He ran into the woods to avoid being struck. Uh, he stated the tractor trailer unit pushed the Toyota into the woods and that it went down the side of the embankment and came and hit a tree. Uh, Officer Kingsbury interviewed the driver. The driver stated he thought, as he, he stated that he thought that he was driving eastbound on Milford Street, his attention was diverted to a prior vehicle that had pulled out of Trotter Drive and had proceeded westbound. He stated he thought this vehicle was too close, was driving too close to his truck so he was watching it in the side view mirror, not watching was in front of him. He stated that when he turned his attention back before him, he saw the Toyota had stopped in front of him, but was unable to stop, striking the Toyota. He would not elaborate any further. Uh, Trooper Jaworek conducted an investigation of the tractor trailer unit. Uh, he found a number of administrative violations and one inoperative brake. Trooper Jaworek, according to Trooper Jaworek, this brake, one of ten brakes, would not be a factor in the accident. Trooper Jaworek concluded the condition of tractor trailer in no way contributed to the accident, which appeared to be, which appeared to be caused by driver error. Your Honor, uh, one final part I would like to add is that in, uh, as a result of the Trooper's reconstruction, uh, uh, it was the opinion of the reconstruction expert that driver inattention or driver distraction on the part of Mr. Zalewski was a factor in this collision, is based on the</p>

	opinion that the skid mark of vehicle one, which was the tractor trailer, uh, did not, vehicle one did not lock its brakes until impact or after impact of the vehicle two. These are essentially the facts that the Commonwealth would prove if this went to trial, your Honor.
Judge	Okay. It is my understanding that, uh, there was no issue with respect to alcohol or drugs here at all.
ADA	None that the Commonwealth is aware of, your Honor.
Judge	And, uh, um, except for the failing to stop, there is no issue with respect to erratic operation in terms of speed or anything along those lines, excessive speed?
ADA	Uh, there is no indication that the speed limit was being exceeded.
Judge	Okay. Alright, uh, Mr. uh, er uh, Zalewski, did you hear those facts, sir?
Zalewski	Yes, I did.
Judge	Do you have any questions concerning those facts?
Zalewski	Uh, no, no questions as they state them.
Judge	I'm sorry, sir?
Zalewski	No questions about it as they state them.
Judge	Okay, so those facts are essentially true?
Zalewski	Uh
Defense Counsel	Judge, if I may
Judge	Yeah.
Defense Counsel	Uh, I know his one contention is he did, he believes he attempted to hit the brakes even before our, the police officer in his report . . .
Judge	I understand.
Defense Counsel	. . . thinks he did it.
Judge	I understand.
Defense Counsel	Mr. Zalewski said he did, he just it wasn't, it didn't stop it in time.
Judge	Okay, so with that exception that he attempted to hit the brakes, uh, I presume because he is indicating he saw this car at the last moment . . .
Defense Counsel	Correct.
Judge	Alright. Uh, except for that, otherwise as communicated by the, uh, the Assistant District Attorney, those facts are true?
Zalewski	Uh, yep.
Judge	Anyone force you to make this plea, sir?

Zalewski	No.
Judge	Anybody threaten you at all?
Zalewski	No.
Judge	Anybody promise you anything?
Zalewski	No.
Judge	Have you had enough time to talk to your attorney about this case?
Zalewski	Yes, I have.
Judge	Are you satisfied with his advice?
Zalewski	Yes, I am.
Judge	Has he acted in your best interest?
Zalewski	Yes.
Judge	Are you confused, sir, by any of the questions that I have asked you?
Zalewski	No.
Judge	Do you know if you are not a citizen of the United States, a conviction or an admission with respect to this charge could result in your deportation exclusion from the United States or denial of naturalization. Understand that?
Zalewski	Yes.
Defense Counsel	Your Honor?
Judge	Yes.
Defense Counsel	May I be heard?
Judge	Yep, uh, this is the time.
Defense Counsel	Your Honor, uh, I move to ask that the victims, uh, Marcia Rhodes who was driving the car and her husband, be allowed to address the Court before you render your decision specifically < > I reserve the right to speak after that.
Judge	I understand the Commonwealth is requesting a guilty, uh, with probation. Um, the defendant, uh, is requesting a continuance without a finding. Um, and, is it my understanding that, uh, this defendant has no record at all? That's what I . . .
ADA	I think it's right on your right-hand side, your Honor.
Judge	Uh, that's okay, I've got it here. Thank you. Alright, nothing with respect to. Okay. Alright. There is no, there is no record, um, except for this offense. Mr. Engood?, I'm, I'm uh, I'll be happy to hear from . . .

ADA	I would ask that the victims be allowed to address the Court, sir?
Judge	Sure, absolutely.
	Long pause as Marcia is wheeled to the witness stand.
Marcia Rhodes	I can't see how a piece of paper I wrote yesterday is going to really impact how I feel, but I'll try.
Judge	Sure. Do, would you just identify yourself, please?
Marcia Rhodes	My name is Marcia Rhodes. I was driving the Toyota.
Judge	Mmhmm.
Marcia Rhodes	<p>It is always sad and disheartening when a major turning point in a person's life becomes a negative thing and all the more upsetting if the negative change was through the misdeeds of another person. In the interest of clarity, I have broken my victim impact statement into three different areas. My life before the accident, my life as a direct result of the accident, and a typical day in my life now, eleven months later. Before this accident, my life was a series of typical days filled with household chores, chauffeuring my daughter, Rebecca, who was 13 at the time and working on my antiques and collectibles business. I could play mahjong and bingo, attend trade shows, auctions and estate sales as well as place my inventory out in eight different stores. I enjoyed an intimate and joyful relationship with my husband, Harold, and a close, loving relationship with my daughter, including all the things that mothers and daughters like to do. Then came the horrendous period between the exact instant I was rear ending by Mr. Zalewski's semi-trailer, tractor trailer carrying 70,000 pounds of tar on January 9th, and today's trial. I shall be glossing over the indignities and humiliations that I had to endure, although they should be told, because it's too painful for me to do so. My life altering account of the events of January 9th through the end of January are sketchy at best. I have read the front page article from the Milford News but only one time two days ago and only in preparation for this case. I remember asking the police to call my husband. I even remember giving them the number to do it. I remember the fireman telling me not to be scared of the jaws of life and, finally, I saw my wonderful husband's head peak through the passenger side and assure me he was there. At that point, I demanded and received pain killers. I do not remember being rushed to Milford-Whitinsville Hospital emergency room, nor do I remember the transfer to the trauma unit at UMASS Worcester. In fact I don't remember anything of the first month it took the doctors and nurses and stabilize me, prepare me for surgery, undergo surgery where I was treated for a T12 fracture, blood edemas and multiple fractured ribs. I do know that I have two titanium rods in my back, which cause incessant pain and I also know about the filter near my heart placed there in the event of recurring blood clots. I don't even remember the first blood clot. But</p>

	<p>the second, which was in my left leg, is something that I will never forget. For the first five months of my recovery, my left leg was so swollen that it took two people to lift it when I was transferring from my bed to my therapeutic wheel chair. This and the persistent bacterial infections were just two of the primary reasons my recovery was moving depressingly slow. Degradation of fluids was a clear memory from UMASS although < > from the medications they are pumping into you, and one memory I will always have from both UMASS Hospital and Fairlawn Rehabilitation were the never ending blood samples being drawn to monitor my progress. At this point in time, my arms are so scarred blood cannot be drawn from them. When I finally got the word that I was to be transferred to a rehabilitation center, I wasn't scared because knew nothing could possibly be as bad as the past three weeks at UMASS Medical. In many ways I was wrong, but I thought that I was now finally approaching a forward process to recovery and not being in pain anymore. But, for six of the nine weeks at Fairlawn Rehabilitation Center, I was in isolation due to multiple infections. This, plus my broken ribs, and the enormous weight of my swollen leg, hindered any real physical or occupational therapy. People who visited me had to wear gowns, gloves and masks and whenever I was not in bed I had to wear a rib and chest protector which resembled a giant white tortoise shell. As the weeks passed, I received messages of good cheer, visitors, friends and most of all family, but nonetheless I slowly slid into a profound depression. It does not help to tell who is depressed that they should cheer up, that the feeling will go away, that things will get better or, my personal favorite, I was lucky, things could have been worse. People want to see you trying and want to see a stiff upper lip. Obviously, these are people who have never their lives upended by a debilitating personal injury. I finally for home in mid-April, three months after my accident. Now my days were filled with complete strangers involved in my most personal needs. My afternoons were made up or nurses visits, occupational and physical therapists and trips to a long list of doctors I had to start meeting. On May 23rd, and my second, my next major set-back, I returned to emergency at Milford Hospital. This time, the consensus of medical opinion was that I had had a gangrene gallbladder which was needed to come out immediately. At the risk of sounding too melodramatic, had my back fracture been anything higher than a Level T12, I would not have felt the pain caused by the gangrene gallbladder and most probably would have died. Those are the doctor's opinions, not mine, although I don't disagree. I spent one week in Milford Hospital and then three weeks in Whittier Rehabilitation Center. Finally, at the end of the third week, I was released and came home. But, within a matter of weeks, I was faced with another major set-back. I had developed both bursitis and tendonitis in both arms and shoulders. All physical and occupational therapy was suspended while</p>
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	<p>I received several weeks of ultrasound treatment. It was not until mid-July that I could finally get down to the matter of day-to-day living. Now, on a typical day, and solely due to the negligence on the part of the defendant, every minute of every day has to be carefully planned for, carried out or compromised. I have a home care aid coming to the house to wake me up at 7:30. She helps me out of my air cushioned hospital bed. The air cushions are there to prevent skin breakdowns which are a common to quad and paraplegics and even serious life threatening conditions. My care aide helps me transfer to a specially-sized special order wheel chair, again with a special air cushion for dermatological reasons. My aid then wheels me into the bathroom where I transfer onto a padded commode and start a bowel program that I prefer not to go into specifics on, but suffice to say, it takes about two-and-half to three hours every morning. This is also when they empty my catheter which I must wear, now wear every minute of every day. I then transfer back to the wheel chair and then transfer to a specially-modeled shower that a paraplegic needs. At this point, I want to tell you that somehow in the months that followed my continuing hospital recovery, my wonderful husband managed to have the house remodeled for a paraplegic, bring in an income, raise our wonderful daughter, Rebecca, and still tend to my physical and emotional needs, and at the risk of digressing even further, I want to briefly touch on the subject of remodeling and how much is really involved. Tonight as you walk through the first floor of your house pretend you need room for a wheelchair. The sheer number of changes that have to be made to accommodate you in a wheel chair are staggering. That presumes that you are not using the second or basement floor. Quite frankly, the upfront costs of becoming disabled are staggering. I don't know how less fortunate people, newly paralyzed victims can do it. I have been lucky in that my wonderful husband has managed to pay for the \$450 wheel chair cushion with the \$350 transfer board I need to get from bed to the wheel chair, where I < >. Most people wouldn't even dream of having these, most people couldn't even dream of having these luxuries, which are really necessities. Back to my typical day, after I shower, which is a very scary proposition, I transfer back into the chair and get back into the bed so my care giver can look over my body for any skin abrasions, cuts or bruises. Talk about an intrusive experience. My care giver then helps me get special stockings on that I must wear to tone my now unusable leg muscles and to facilitate blood circulation. By the time I am fully clothed and back in my wheel chair, it is usually around 12:00, and the whole morning has been lost. My care giver gives me lunch since my husband and I haven't had a chance to remodel the kitchen. The time between 1:00 to 3:30 is usually filled with medical appointments. Before this accident, I had a wonderful general physician in Dennis which I saw twice a year. Today, I have a spinal cord specialist, a physiatrist, a urologist, a dermatologist, the use</p>
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	<p>of different medical labs, a radiologist, a psychologist, an endontic specialist and a new OB/GYN since my previous one could not handle the needs of a patient in a wheel chair. I see a physical therapist, an occupational therapist, and I also have frequent body fluid tests, x-rays, and other forms of radiation tests. We have been fortunate in one area, again, solely through the efforts of my loving husband, we have been able to buy an electric <> for my muscle stimulation, an electric wheel chair which was prescribed because of my tendonitis and bursitis, are even looking at a piece of equipment that allows quads or paraplegics to stand in place. Of course, we are talking thousands of dollars here. I can't begin to guess how the typical American family can afford anything that's needed. After the doctors or lab appointments, I usually have about two hours to conduct any personal work or related business. The hours of 5:00 p.m. to 6:00 p.m. are taken up by physical therapy. My husband has to get up at 5:00 a.m. to be able to come home from work early enough to feed me and my daughter, help with whatever work needs to be done and assume the role of chauffeur, errand boy, or cheerleader. Most, because of the stressful hours, I have to be transferred back into my hospital bed by 8:00 p.m. Before the accident, I always used this time after dinner and before bed to do things with my family, to work on my business. Now I find myself with a lot of wasted time sitting in bed and even worse, it now takes a long to fall asleep, even with medications. From the moment I wake until I am put in bed, I am monitored by somebody. My care aid, family members, friends. I very rarely find myself alone, which for me is one of the most devastating results of this accident. I have always been a person who helped others out. Now I suddenly find that I rely on others and I hate it. I am also the type of person who does not like to be the center of attention. Now I am because of this damn wheel chair, and I hate it. Before all this, others relied on me. Now I must rely on others for getting me the simplest of things or helping to do what I had always done for myself. Before this accident, I was one of the lucky few who actually loved their work. As a dealer of antiques and collectibles much of my work was leg work requiring me to go to estate sales, auctions, yard sales and flea markets, as well as trade shows. I have had to give up running my business as I did. Most stores are not wheel chair accessible, as they were built before ADA laws were passed. I dread every upcoming doctors visit and medical test, which requires hours of preparation just to go out to and return from. Perhaps one of the most significant changes are the ones my daughter has had to go through. She suddenly had to grow up and face and deal with something that you hope that no one you love ever has to face. Before the accident, Becca and I used to go down to the Cape, just us girls, and stay for two or three days going to arcades, flea markets, antiques or just shopping at the mall. I can't do any of these things alone with my daughter any more. All the spontaneity we had to do fun things are</p>
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	<p>now a chore. When we arrive, we need special hotel facilities, we need ramps. Arcade machines need to be reached. Shopping is a major exercise instead of a relaxing diversion. This is particularly true of a our Saturday yard sales throughout the Spring, Summer & Fall seasons and now, I now particularly dread Winter. Between the ice and cold, snow and other typical New England conditions, I don't see much of a chance to venture out of doors in a wheel chair with the exception of the endless doctors appointments. There is really no place for me to go. Most of my friends' homes are not wheel chair friendly, even with the portable ramp we carry in our specially-equipped van. I already endured being ADHD. Just imagine what it's like for someone who is hyperactive to be stuck in a wheel chair. My life has no spontaneity, no privacy, no intimacy with my husband and no long term foreseeable medical improvements in my condition. These are the things that the defendant has cost me. I ask your Honor to find him guilty of vehicular negligence on my part.</p>
Judge	Thanks very much. Sir, did you want to be heard at all?
Harold Rhodes	No, thank you.
ADA	Your Honor, given the profound impact this accident has had on the victim, the victim's family, her way of life, and, uh, given the facts in the case, the Commonwealth would ask that you return a verdict of guilty with conditions attached for any kind of < >, your Honor.
Judge	Counsel, you want to be heard concerning your recommendation?
Defense Counsel	<p>Thank you, your Honor. On behalf of Mr. Zalewski, he is extremely sad for the injuries that Mrs. Rhodes sustained. This is a terrible accident that took place. He has tremendous sympathy for her and her family to go through this. However, on behalf of Mr. Zalewski, your Honor, he has no prior record whatsoever. He was within the speed limit on the roadway. Uh, driver inattention, uh, from the facts presented by the Commonwealth certainly show that they believe that there was negligent driving in the accident, but there was nothing intentional here your Honor. Alcohol, he was tested for alcohol. He was tested for drugs. The accident reconstruction expert even saw that he was within the speed limit of the, um, the roadway at the time. We just ask this Court so that he can go on with his life and continue with his CBL license, that the Court would continue the matter without a finding for two years. Thanks.</p>
Judge	<p>These cases are always tough. This defendant made a mistake. We all make mistakes. This mistake cost somebody so very much. And if there was anything I could do to go back to that day to reverse what has happened, I would certainly do that. I would not be bashful about not just imposing a guilty finding but incarcerating this individual if I thought that that would somehow give you, Ms. Rhodes, back your mobility. But, this is a criminal court. There is nothing I can do here to</p>

	give you back what you lost. This gentleman, no matter what happens here today, is going to live with this for the rest of his life. I am sure there isn't anything I can do to make it worse for him and I don't know that that's really what the administration of justice is all about. You know, he made a mistake. It was a terrible mistake. It maybe was a split-second mistake. God knows we all make them.
Judge	I am going to continue the matter without a finding for two years. I'm going to require that he, uh, he pay \$250 in court costs, that he do a, uh, some driver training, re-training. I don't know whether he will ever drive a truck again, whether or not he'll ever be capable or desire to do that, but some training certainly wouldn't hurt if he ever decides that he's inclined to want to drive a truck again. Beyond that, there's not much I can do here. There's the civil side which will proceed, and hopefully will compensate you in some small way for what you have suffered. I can't do that here. Okay.
Judge	We need to have the, uh, defendant put his John Hancock here.
	Discussion between Bailiff and Judge -- incomprehensible.
Judge	Since I have altered the recommendations, counsel, you need to accept it.
	Bailiff asks Judge question -- incomprehensible.
Judge	No, just, just counsel. Yep.
Bailiff	Mr. Zalewski in this matter, Docket Number 0257CR0260, on the charge of negligent operation of a motor vehicle, the matter is continued without a finding for two years to November 25, 2004, \$125 head injury assessment, \$250 court costs, \$50 to the Victim and Witness Fund, and you must successfully complete a driver training course for the Probation Department. Um, sir, how much time do you need to make that payment of \$425?
Defense Counsel	60 days?
Zalewski	I don't have a job.
Defense Counsel	Your Honor, as much time as possible. He does not have a job right now . . .
Judge	I understand.
Defense Counsel	. . . His unemployment has run out . . .
Judge	I understand.
Defense Counsel	Thank you.
Judge	Yeah, why don't we put it down for a ninety day review. That's fine. Mr. Zalewski, you need to know that, um, you are on probation. If you violate probation, you cannot come back and try this case, do you

	understand that? Okay? Because you are admitting to the offense today. Do you understand that sir?
	Defense counsel discusses with Zalewski – incomprehensible.
Bailiff	And so the matter . . .
Judge	No, hold on, excuse me.
Zalewski	I need to know if I pleaded guilty to what he just said.
Defense Counsel	Excuse me, your Honor. He thinks, he said to me he thinks he is pleading guilty . . .
Judge	He, he's admitting to sufficient facts okay?
Zalewski	Alright.
Judge	And, you are going to be on probation for two years. Alright. What you're saying to the Court is, listen, there are sufficient facts out there that if the Court, and if the Court believes them, I could impose a guilty finding based on what I've heard here today, and I could. Okay. I'm not doing it, but I could. You are on probation for two years. If you violate probation, sir, you can not come back and say now I want to try this case because I want to get a not guilty.
Zalewski	Uh-huh.
Judge	You understand that?
Zalewski	Yeah.
Judge	Okay, and you should also understand if you are found in violation of probation, some other judge at some other hearing can revoke this continuance and impose a guilty finding, sir, and incarcerate you for up to two years on this charge, sir. Do you understand that?
Zalewski	Yes.
Judge	Okay. I'm sorry, go ahead.
Bailiff	Uh, February 27, 2003, for, uh, payment review. You want to keep in touch with the Probation Department and if the money is not paid, uh, by that date you need to check with Probation for an extension of payment.
Zalewski	Okay.
Defense Counsel	Your Honor, the probation, I understand, would be unsupervised?
Judge	It's unsupervised. Just, he needs to do the program. Um, so whatever limited supervision is necessary to do that, I suppose we'll put, but other than that, it's unsupervised. I understand he lives in New Jersey, right?
Defense Counsel	Yes he does, your Honor.

Judge	Okay.
Defense Counsel	Thank you, your Honor.
Bailiff	Thank you, sir.
Judge	Good luck folks. Thanks. Thank you.
Bailiff	You will need to report to the Probation Department <>.
Judge	Why don't we take a minute and let them, uh, depart.
	BAILIFF CALLS NEXT CASE