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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CLARENDON COUNTY  
Court of General Sessions  
R. Ferrell Cothran, Jr., Circuit Court Judge

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Case No. 2021-000615

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The State,

Respondent,

v.

Lucretia Conyers,

Appellant.

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RECORD ON APPEAL

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1 State of South Carolina ) In the Court Of General Sessions  
2 County of Clarendon ) Indictment No.: 2020-GS-14-00263  
3 State of South Carolina, )  
4 Plaintiff, )  
5 vs. ) Transcript of Proceedings  
6 Lucretia Conyers, )  
7 Defendant. )  
8 \_\_\_\_\_ )

9

June 1st and 2nd, 2021

10

Manning, South Carolina

11

12 BEFORE:

13

The Honorable R. Ferrell Cothran, Junior,

14

Judge; and a Jury.

15

16 APPEARANCES:

17

18

Darla Pierce, Assistant State Solicitor  
Attorney for the State/Plaintiff

19

20

Tristan M. Shaffer, Esquire  
Attorney for the Defendant

21

22 ALSO PRESENT:

23

Lucretia Conyers

24

25

1 law and you will go back and deliberate and reach a  
2 verdict in this case.

3 Now, the opening statements of the attorneys is not  
4 evidence. The questions the attorneys ask are not  
5 evidence. The evidence comes from the testimony from  
6 this witness stand as well exhibits introduced and any  
7 facts that are stipulated to. So if you will pay close  
8 attention, we'll get started. And if at any time you  
9 need a break, as I said before, just raise your hand,  
10 okay?

11 MS. PIERCE: Thank you. Good morning. November  
12 19th, 2016 was a normal day for then Corporal Joshua  
13 Jackson on patrol with the Clarendon County Sheriff's  
14 Office. They received an anonymous call that there was a  
15 white van at a home of a deceased person taking items out  
16 of the home and this was about three, 4:00 in the  
17 afternoon. So he responds along with then First Sergeant  
18 Hickman and they start riding around that neighborhood  
19 looking for the white van. They see a white van at a  
20 residence. They stopped, they approached the homeowner,  
21 they get his license, or his ID, find out he's the  
22 homeowner. Thank you, sir. Have a good day. Continue  
23 looking for the white van.

24 They see another white van in that same neighborhood  
25 parked in front of a residence, they pull up behind it

1 and the driver is still in the vehicle. They made  
2 contact, asked for ID and they start explaining why  
3 they're in that area and what they're looking for. At  
4 that time Ms. Conyers comes out of the home that was her  
5 residence and she tells them to leave. They explain,  
6 ma'am, we're just trying to identify this white van  
7 in connection to a possible burglary. We will be off  
8 your property in just a minute. It escalates to the  
9 point, I hate the police. Get off my property. Ma'am,  
10 just let us get this information and we will be gone. It  
11 continues and continues and continues.

12 They're in a neighborhood. Houses are nearby.  
13 People are outside. The cussing, the profanity, the  
14 yelling again continues to escalate. She comes down from  
15 the house, wedges herself between the driver of the van  
16 and the officer. And they say, ma'am, please stop.  
17 Please stop. At that point, ma'am, we're gonna put you  
18 under arrest for breach of peace.

19 Well, she fights the police. The officer attempts a  
20 straight arm bar takedown. However, that does not occur.  
21 She loses her balance and falls. She continues to  
22 struggle. They finally get the handcuffs on her and she  
23 is arrested again for resisting arrest because she was  
24 told that she was under arrest for breach of peace and  
25 that resisting is what led to the subsequent charge of

1           resisting arrest.

2           You're going to hear from the officer. He'll tell  
3           you in his words what happened that day. I ask that you  
4           look at all of the witnesses today and you judge their  
5           credibility. You judge are they telling the truth and  
6           why, what motive would they have not to tell the truth.  
7           I'm confident after hearing all of the evidence  
8           that you will return with a guilty verdict for resisting  
9           arrest. Thank you.

10          THE COURT: Mr. Shaffer.

11          MR. SHAFFER: I have a confession to make. This  
12          case makes me a little bit nervous and it's not the  
13          normal stage fright every lawyer experiences or might  
14          experience before a jury. What makes me nervous is the  
15          fact that people like thinking that officers don't do  
16          anything wrong, that our government doesn't do anything  
17          wrong. This is a case where they did do something wrong.  
18          And this is gonna be a short case, but it's a real  
19          important case because it's about rights that every  
20          single person has. Every single person has the right to  
21          express their opinion even if it's something that nobody  
22          else agrees with. They have the right to say to an  
23          officer and speak to an officer and tell the officer that  
24          they don't want them there. Every single person has this  
25          right.

1           And I've said they did something wrong. The police,  
2           the government did something wrong in this case and  
3           there's a reason I'm saying that, is that even good  
4           people whenever they make a mistake a lot of times  
5           they'll sit there and they know there's something wrong  
6           and they'll go back and justify what they did. Backwards  
7           thinking. You go in, okay, well, this could have been  
8           this and this could have been that and that's why I was  
9           right to begin with and they convince themselves they're  
10          right. Every single person does it. Every single person  
11          that I've ever met whenever they've done something wrong,  
12          they've tried to justify it in their mind or mitigate it  
13          to some degree and that's what happened here.

14          These officers, Officer Jackson, because Lucretia  
15          Conyers, a lady standing in her own yard, an allegedly  
16          disabled lady, decided that she was going to say to the  
17          officers get off her property and annoyed the officers,  
18          these officers or Officer Jackson decided to use force  
19          against her and going back in his mind he had to justify  
20          that use of force. And how does he justify that use of  
21          force? By claiming she was resisting arrest.

22          Now, I'm gonna talk about something very important.  
23          In every criminal case, but also in this one, the  
24          government has to prove their case, okay? This happened  
25          nearly four and a half years ago, a little bit more than

1           four and a half years right now. The government is in a  
2           position to do things. The government was in a position  
3           to preserve evidence, to present their case and to prove  
4           their case and because they're in that position and have  
5           access to the resources that they have, the law puts a  
6           burden on them that they actually have to prove their  
7           case beyond a reasonable doubt. It's not beyond any  
8           doubt. You will probably hear that later from the Judge,  
9           but it's beyond a reasonable doubt. They have to present  
10          evidence. All the evidence has to come from them to  
11          convince all of you individually and as a group that  
12          Lucretia was resisting arrest that day.

13                I imagine you'll hear that they could have recorded  
14          this. That there was video. And you'll hear that they  
15          lost that video. I don't know what happened to it.  
16          Never gotten a real good explanation for it, but I  
17          imagine you'll hear about that today.

18                Like I said, my client is intellectually disabled,  
19          that she had every right just as much as each and every  
20          one of us has the right to speak their mind and she's  
21          standing in her own yard. And police, I mean, I  
22          understand, I hear from a lot of cops that they have a  
23          hard job and I don't doubt that because I have never been  
24          a police officer myself, but that doesn't give them an  
25          excuse to lose their temper and it doesn't give them an

1           excuse to cover something up.

2           Now, this is gonna be a very short case, but like I  
3           said, it's gonna be very important. Please take your  
4           duties seriously because if our society can't protect the  
5           rights of Lucretia, they can't protect the rights of any  
6           of us. Please pay attention and hold the government to  
7           their burden and at the end of this case I imagine you're  
8           going to find that they have not proven their case and  
9           that Lucretia did not do this and this was not a  
10          resisting arrest. Thank you.

11          THE COURT: You may call your first witness.

12          MS. PIERCE: Thank you, Your Honor. At this time  
13          the State would call Lieutenant Matthew Stone.

14        Thereupon,

15                               MATTHEW STONE

16        after having been first duly sworn, testified as follows,

17                               DIRECT EXAMINATION

18        BY MS. PIERCE:

19           Q.    Lieutenant Stone, what is your occupation?

20           A.    I'm a Lieutenant at the Clarendon County Sheriff's  
21        Office.

22           Q.    How long have you been with the Clarendon County  
23        Sheriff's Office?

24           A.    I will start my 15th year in the middle of this  
25        month. I started in 2007.

1 Q. How long have you been an officer?

2 A. Since 2008. I started in dispatch in 2007 and  
3 dispatched from June of 2007 until January of 2008 where I  
4 moved over to the patrol unit in the Sheriff's Office.

5 Q. What was your position in November of 2016?

6 A. I was a sergeant over the road, over the deputies  
7 that answered calls. I was a supervisor part of the shift  
8 that day.

9 Q. What were some of your duties as sergeant back in  
10 2016?

11 A. My duties are to oversee the deputies under me, make  
12 sure all the calls are answered in a timely manner, make sure  
13 they're answered correctly, review any camera footage that  
14 needed to be reviewed and then handle any other issues that  
15 came up.

16 Q. Were you involved in the incident that we are here  
17 today with Ms. Lucretia Conyers?

18 A. No, ma'am. I was not.

19 Q. Were you aware of it?

20 A. Yes, ma'am.

21 Q. Lieutenant Stone, is there currently any video  
22 footage from the body cameras of the incident from 2016?

23 A. No, ma'am. There's not.

24 Q. Why not?

25 A. Because we use a camera system, and you can see one

1     that's on my chest here, it's called a body camera. It is  
2     made by L3 which is a manufacturing company that makes body  
3     cameras. These are not the same cameras we had back in 2016.  
4     The camera system has a storage data on it and there's  
5     regulations where you set your retention on there. In 2016 we  
6     were under a different administration.

7           Q.     What do you mean by that? What do you mean by a  
8     different administration?

9           A.     The administration, the Sheriff at that time was  
10    Sheriff Randy Garrett. It's not Sheriff Tim Baxley who is in  
11    office at this time. So there was other people that ran our  
12    L3 system. I did not have anything to do with the system at  
13    the time.

14          Q.     So that still doesn't answer my question. Why isn't  
15    there any video footage now?

16          A.     Because after a certain amount of time depending on  
17    when the retention period is set on those cameras that video  
18    is deleted off the server because so long has passed that it's  
19    no longer available at the time. The system keeps filling up  
20    and it takes them off the server to make room for new cases so  
21    being that long ago whatever the retention period was set for,  
22    it erased it after that retention period or it erased off of  
23    the server so it's no longer on the server at this time so we  
24    cannot go back and pull it.

25          Q.     Would it be fair to say that the retention period

1 depends on the administration, the Sheriff in office?

2 A. Yes, ma'am. The retention periods can be changed,  
3 but it's set by the guidelines of the state and we've set a  
4 certain time. If anything gets questioned, an arrest now, and  
5 I can tell you what ours is now, if there's an arrest, they're  
6 able to be archived and what it does is burn it to our server  
7 and once it's burned to our server, it will be placed on a  
8 disk. Once it's placed on that disk it will be placed up in a  
9 room in evidence upstairs and it stays on that disk. So say  
10 if I arrest someone today and I need to pull that disk later  
11 on, I can go upstairs, get that disk, re-upload it and put it  
12 on a disk now.

13 Q. But you were not able to do that from the 2016  
14 case?

15 A. No, ma'am.

16 Q. Did you try?

17 A. Yes, ma'am. I searched the server myself, looked  
18 back through all the videos and on our server, on our computer  
19 system, if you pull it up it will show you what's called a  
20 thumbnail, which is just a brief picture of the incident. I  
21 pulled up that day and there's nothing from this case on that  
22 day so what the retention was set back then I do not know. I  
23 cannot answer that. I just know it's not there.

24 Q. And you did not have access at that point?

25 A. No, ma'am. I only had access to view certain

1 videos. I did not have access to burn videos, review data,  
2 any of that at this time.

3 Q. But by the time that you did have that right and  
4 access it was too late?

5 A. Yes, ma'am.

6 MS. PIERCE: Please answer any questions that  
7 Mr. Shaffer has.

8 THE WITNESS: Yes, ma'am.

9 CROSS EXAMINATION

10 BY MR. SHAFFER:

11 Q. And this may be my confusion here, but are you  
12 saying that there are no videos from any body cameras from  
13 2016?

14 A. No. There are some.

15 Q. Okay.

16 A. But I don't know where they -- Like you can see the  
17 thumbnail, but I don't know where the rest of the videos from  
18 that time are. Like I said, the retention period must be  
19 gone.

20 Q. Okay. So if there was a five year old murder case,  
21 you couldn't go back and pull the video for it at this  
22 point?

23 A. It depends on the retention period and what it was  
24 set at at that time. Each case is different. Whatever it was  
25 set as or categorized as. When the camera cuts off, you

1 categorize it. Whatever it is categorized as or labeled as at  
2 that point for retention. But if none of that is done, no.

3 Q. Okay. So in 2016 there was somebody at the  
4 Sheriff's Office that could have changed the categorization of  
5 the video in this incident?

6 A. No.

7 Q. There was nobody there that had that ability?

8 A. The categorization is done by the officer at that  
9 time. The person who has the ability to handle the camera  
10 system would be the supervisor or a major or a captain that  
11 would set the retention period. That's the only thing that  
12 can be changed.

13 Q. Okay. So the categorization has nothing to do with  
14 how long it's retained for, it depends on who set the  
15 retention period, correct?

16 A. Each categorization, so if I say I stop somebody for  
17 a traffic violation, write them a warning, that has a less  
18 retention period of say 90 days, just giving you a number. If  
19 I stop you and write you a citation, it would be saved for 120  
20 days. If I stop and arrest you, then that would be set for  
21 120 days retention and then placed into an archive status  
22 which means it will be downloaded into our server and retain  
23 it on a disk. It's not on the server. It's on a disk and it  
24 clears the room back off of our disk.

25 Q. Okay. So if there's an arrest made, it's backed up

1 to a disk?

2 A. Now it is.

3 Q. Okay. In 2016 we're talking about.

4 A. I do not know. I was not over it at that time. I  
5 could not tell you what the retention was at that time.

6 Q. Okay. Did they have the ability to back up disk, or  
7 create a disk of videos in 2016?

8 A. I was not over it. I do not know. I could not give  
9 you a yes or no definitely answer.

10 Q. Okay. Do you know if they have the ability to  
11 export the video to anything else in 2016?

12 A. No, sir. Not in 2016.

13 Q. Okay. Have you ever seen a body camera from 2016  
14 that was not on your server?

15 A. Can you ask that one more time? I'm sorry.

16 Q. Okay. I imagine you've seen body cameras,  
17 correct?

18 A. Yes, sir.

19 Q. Have you seen a body camera from, and I imagine you  
20 have seen body cameras from the old server, correct? Or the  
21 old system, right?

22 A. Like the actual camera itself?

23 Q. The video. You've seen videos from the old --

24 A. From the old time. Yes, sir.

25 Q. Okay. So there are cases that the video got

1       preserved in the old system, right?

2           A.    You mean pulled from the server?

3           Q.    Yeah.

4           A.    Yes, sir.

5           Q.    Okay.  So there obviously was an ability to pull it  
6       from the server if you've seen them pulled from the server  
7       from that time period, right?

8           A.    Yes, sir.

9           Q.    Okay.  But this video didn't get pulled from the  
10      server, correct?

11          A.    To my knowledge, no, sir.

12          Q.    Okay.  Tell the jury what a Use of Force Form is?

13          A.    A Use of Force Form?

14          Q.    Yeah.

15          A.    It's a form filled out by officers and once they do  
16      a use of force or have some form of use of force on a  
17      individual, they fill that form out and document exactly what  
18      happened.

19          Q.    Okay.  And so they should have like detailed  
20      explanations of what happened, right?

21          A.    It's pretty much the same as their narrative that  
22      they put in their incident report.  The use of force is pretty  
23      much the same narrative because it entails - we teach them  
24      when they write their initial report, to be just as detailed  
25      as they would in their use of force.  The use of force is just

1 categorizing exactly what was used. What type of force  
2 whether it be a baton, OC or hands on.

3 Q. And that's required every time there's a use of  
4 force, correct?

5 A. Yes, sir. Should be.

6 Q. And those are retained, correct?

7 A. Yes, sir. That's on a log track system which is a  
8 different system. That's our reporting system.

9 Q. Okay. Are they reviewed by anybody?

10 A. Yes, sir. Supposed to be reviewed by the  
11 supervisor.

12 Q. Okay. And then the supervisor has access to look  
13 into whether the use of force is justified, correct?

14 A. If we feel there's a need. Yes, sir.

15 Q. Okay. And the supervisor, what's the time frame  
16 from when the supervisor reviews those Use of Force Forms?

17 A. We try to do it the day or the afternoon that it  
18 happened or the evening that it happened. Sometimes it might  
19 be a day or two later, but we try to review it, you know, the  
20 best we can.

21 Q. Okay. But less than 90 days, correct?

22 A. Yes, sir.

23 Q. And if that form was created, someone would have the  
24 ability to go back and actually look at the body camera even  
25 under the old system, correct?

1 A. Yes, sir.

2 Q. Okay. So a supervisor who reviewed the Use of Force  
3 Form would have that ability, correct?

4 A. Yes, sir.

5 Q. And the Use of Force Form should be detailed,  
6 correct?

7 A. It should match the report, yes, sir.

8 Q. It should be as detailed as the report, correct?

9 A. It should be detailed enough to elaborate what  
10 happened on that scene, yes, sir.

11 Q. Okay. Do you happen to know who reviewed the Use of  
12 Force Form in this case?

13 A. No, sir. I don't.

14 Q. Okay. But at this time it's fair to say that there  
15 is no body camera footage of what happened?

16 A. No, sir.

17 Q. Is it fair to say that there's no in car camera  
18 footage?

19 A. No, sir. There's not.

20 Q. Okay. What's the difference between the in car  
21 camera system and the body camera system?

22 A. The body camera system is like what I showed you  
23 that's on my chest. That is what shows a firsthand view of  
24 what we have, of what we see. The in car camera system is a  
25 camera system that is installed in our vehicles and in our

1 front windshields there's a small camera and shoots from  
2 outside from our vehicle. The vehicle has a wide view of what  
3 goes on and we wear what's called a body mic which is this  
4 small mic here (indicating.) This records the audio from us  
5 just straight to the camera, but it doesn't give a firsthand  
6 perspective as if we walked into a residence. It would just  
7 show us walking in there and you get audio. This would give  
8 us a view of everything that's going on the entire time that  
9 we're on the scene of a call.

10 Q. Do you know if Officer Jackson had a body camera? I  
11 mean had a in car camera?

12 A. I would have to look at his car but I'm not  
13 positive.

14 Q. Okay. Because some of the cars don't have it and  
15 some do, correct?

16 A. That's correct.

17 Q. Okay. And is it fair to say that there's no dash  
18 camera from this day?

19 A. No, sir. I have looked through the whole system for  
20 dash cam, body cam from both officers on scene and there's  
21 nothing there on any of the servers that I've watched.

22 Q. Okay. So there were two officers on the scene, two  
23 cars on the scene and there's no video camera?

24 A. It happened on the same date in 2017 - or 2016,  
25 excuse me, and it's all the same thing. If the retention

1 period is not set at the same time, there's not gonna be any  
2 video from anybody on the same day.

3 Q. Okay. But someone could have preserved it at the  
4 time, correct?

5 A. If they felt a need to do so, yes, sir, they could  
6 have preserved it if they saw there was gonna be an issue.

7 MR. SHAFFER: Okay. No further questions.

8 REDIRECT EXAMINATION

9 BY MS. PIERCE:

10 Q. Whose responsibility was it to pull video in 2016 on  
11 patrol cases such as this?

12 A. It would have went up to I believe our patrol  
13 captain if I'm not mistaken. Like I said, after we had a  
14 change from Sheriff's Office, we had a captain over patrol,  
15 then we went to two lieutenants over patrol which is when I  
16 got promoted to one lieutenant over patrol and the officer I  
17 spoke of before would be First Sergeant Hickman that was  
18 there. He was the other lieutenant over patrol and then we  
19 started working our way into the camera system, but before  
20 that we had a major, I think, who was, who is a major now, was  
21 a captain over patrol.

22 Q. What about the evidence custodian?

23 A. We had a change of evidence custodian when we had  
24 change of Sheriff. We lost 26 people between the Sheriff's  
25 Office transition and one of them was our evidence custodian.

1 We brought in a new evidence custodian who now controls all of  
2 our videos at all times so she does have control of every  
3 video since then.

4 Q. We keep mentioning First Sergeant Hickman.

5 A. Yes, ma'am.

6 Q. Where is he today?

7 A. He passed away about a year ago.

8 Q. Thank you.

9 A. Yes, ma'am.

10 Q. Thinking about how the camera system worked and the  
11 retention and how that whole process worked, could Sergeant  
12 Jackson or First Sergeant Hickman go in and delete it?

13 A. No, ma'am. You cannot delete anything off of our  
14 server. It is done, it is uploaded to a server which is  
15 basically a big computer, and nobody, I cannot even go in and  
16 change anything on a video. There's nothing that can be  
17 deleted. There's nothing to be taken care of. It's all run  
18 by a third party who has guys that do just computer work that  
19 takes over all that stuff, but it's always on the server.  
20 There's nothing that can be deleted.

21 Q. In 2016 and all the way through today, do you --  
22 Well, I know today we actually have the backup. In 2016 did  
23 you go and burn, so to speak, or record every single incident  
24 with the police? Every breach of peace charge or a traffic  
25 violation or anything like that?

1           A.    No, ma'am.  It was whatever that retention period  
2   was set by the administrator of the server at that time,  
3   that's how long it was kept for.  So it could have one stop  
4   that kept it there for whatever the retention was and whatever  
5   it was classified as by that officer.

6           Q.    But I'm talking about actually burning the physical  
7   disks that you have it in your case file.  Did you do that on  
8   every single case?

9           A.    No, ma'am.  We did not burn that.

10          Q.    Would you say that it's fair that a murder is very  
11   much different than a breach of peace?

12          A.    Yes, ma'am.  We would definitely make sure we burn  
13   all the videos down and everything from a murder case.  We  
14   would have it all documented for that.

15          Q.    But there's no way that you know of that Sergeant  
16   Jackson or anyone else could have went in and deleted that on  
17   purpose?

18          A.    No, ma'am.  It's impossible for them to do that.

19                MS. PIERCE:  Thank you.

20                MR. SHAFFER:  A few on recross?

21                THE COURT:  Okay.  Technically, you know, under the  
22   rules you're not supposed to, but go ahead.

23                MR. SHAFFER:  Thank you, Your Honor.

24                                REXCROSS EXAMINATION

25   BY MR. SHAFFER:

1           Q.   Now, you said that the other officer had passed  
2 away?

3           A.   Yes, sir.

4           Q.   Mr. Hickman?

5           A.   He was Lieutenant Hickman when he passed, yes,  
6 sir.

7           Q.   Okay. He was a lieutenant?

8           A.   Yes, sir. He was my boss.

9           Q.   Okay. Now, would he have had the access, since he  
10 was a lieutenant, would he have been high enough to actually  
11 go and pull the disk off of the server?

12          A.   No, sir. At that point in time he was a first  
13 sergeant and the only person that pulled the disk at that time  
14 was the captain of the Sheriff's Office. Anybody under that  
15 did not pull a disk except for investigations. As far as  
16 patrol went the first sergeant could view them and review  
17 everything, but if we needed a disk burned, we sent that to  
18 the captain and had him burn it at that time.

19          Q.   Okay. And the State had asked you, the prosecutor  
20 had asked you about the fact that you had a big turnover,  
21 correct?

22          A.   Mm-hmm.

23          Q.   And you lost your evidence custodian, correct?

24          A.   Yes, sir.

25          Q.   Are you saying that y'all lost evidence during that

1 time period?

2 A. No, sir. I'm not saying that at all. We retained  
3 all of our evidence. I'm saying the way it was retained is  
4 different.

5 Q. Okay.

6 A. We have a different filing system for evidence  
7 custodian now. She has everything in one spot so we  
8 know where everything is at.

9 Q. Okay. So the turnover shouldn't have affected the  
10 fact that disks were lost, right?

11 A. The turnover, once it was changed, what we do is  
12 call in SLED. SLED comes and does a full audit to ensure that  
13 all of our evidence is in the custody and control of the  
14 Sheriff's Office and everything that is on our evidence sheet,  
15 every person who's been charged, all of the evidence is still  
16 in our evidence custodian's hands. So once it is passed from  
17 one evidence custodian to another, SLED does a thorough  
18 investigation that takes days if not weeks to make sure they  
19 place hands on every piece of evidence to make sure we have  
20 everything correctly documented as to who has what, and it is  
21 therefore passed over to our new evidence custodian.

22 Q. Okay. So despite the turnover, the new  
23 administration and all of that stuff, if the evidence had been  
24 preserved in the first place, it should be here now, right?

25 A. Yes, sir. That's correct.

1 Q. Okay. And I know that it can't be deleted by  
2 Officer Jackson, correct?

3 A. No, sir. It cannot be deleted at all.

4 Q. But it can be lost, right?

5 A. No, sir. It cannot be lost. It's on computer  
6 system that's on a server.

7 Q. Okay. But the computer system, if you don't save  
8 it, it loses itself? The computer system deletes it, right?

9 A. Yes, sir. That's not lost. Lost is if we cannot  
10 find it. Deleted is different because it's past the retention  
11 period and once it's past that retention period, it's taken  
12 away from the server just to put more space on there,  
13 therefore it's not needed.

14 Q. Okay. So we don't have video because it was  
15 deleted, correct?

16 A. That is correct.

17 Q. Can't be deleted by the officer, correct?

18 A. No, sir. It cannot.

19 Q. Can be pulled by somebody at the Sheriff's Office,  
20 correct?

21 A. If they decided to pull it before the retention  
22 period is up, yes, sir.

23 Q. Okay. So it can be pulled off of the server, y'all  
24 just chose not to, correct?

25 A. We had no reason to at the time to pull it off and I

1 was not involved in the server and downloading at that time.

2 Q. But there was a Use of Force Form filed in this  
3 case, right?

4 A. To my knowledge there should have been. I can't say  
5 a hundred percent.

6 Q. You all preserve the Use of Force Form, right?

7 MS. PIERCE: Your Honor, I would object. He's  
8 exceeding the scope of my questions.

9 THE COURT: Sustain the objection.

10 BY MR. SHAFFER:

11 Q. But we can all agree that had somebody at the  
12 Sheriff's Office actually pulled the video, we would have it  
13 here today?

14 A. If they would have had a reason to, yes, sir. If  
15 somebody would have pulled it and placed it in there, they  
16 could have.

17 Q. And we would have had it here today, right?

18 A. Yes, sir. If they had pulled it within that  
19 retention period, it would have been here today.

20 MR. SHAFFER: All right. No further questions.

21 THE COURT: Since I let him go again, do you have  
22 any more?

23 MS. PIERCE: No, Your Honor. I don't.

24 THE COURT: Okay. Thank you, sir. You may step  
25 down.

1 MS. PIERCE: Your Honor, with the Court's permission  
2 could we excuse Lieutenant Stone to go to work?

3 THE COURT: Any objection?

4 MR. SHAFFER: No objection.

5 THE COURT: Yes. Thank you, sir.

6 MS. PIERCE: Thank you. At this time I would call  
7 Sergeant Joshua Jackson to the stand.

8 Thereupon,

9 JOSHUA JACKSON

10 after having been first duly sworn, testified as follows,

11 DIRECT EXAMINATION

12 BY MS. PIERCE:

13 Q. Sergeant Jackson, what is your occupation?

14 A. Clarendon County Sheriff's Department.

15 Q. And how long have you been there?

16 A. Six years.

17 Q. And how long have you been an officer?

18 A. About almost 10 years.

19 Q. In your career as a law enforcement officer have you  
20 ever had any disciplinary infractions?

21 A. No, ma'am. I haven't.

22 Q. Have you ever had any complaints of excessive use of  
23 force?

24 MR. SHAFFER: Objection, Your Honor.

25 BY THE WITNESS:

1 A. No. I haven't.

2 THE COURT: Okay. What's the objection?

3 MR. SHAFFER: Your Honor, it's probably not proper,  
4 but as long as I can go into it on cross I will actually  
5 withdraw the objection.

6 THE COURT: Okay. You may proceed.

7 MS. PIERCE: Thank you.

8 BY MS. PIERCE:

9 Q. Were you working on November 19th, 2016?

10 A. Yes, ma'am. I was.

11 Q. What was your rank at that time?

12 A. At the time I was a corporal.

13 Q. What were you wearing that day?

14 A. Clarendon County Sheriff's Office uniform.

15 MS. PIERCE: Your Honor, with the Court's permission  
16 can he stand up so they can see?

17 THE COURT: Yes.

18 BY MS. PIERCE:

19 Q. Would you step down so they can see?

20 A. (Witness complies.)

21 Q. Would you explain the similarities to what it would  
22 have looked like in 2016?

23 A. In 2016 it basically looks the same. Since the new  
24 administration we went to outer vests. We went to outer  
25 vests. This is a vest I've got on, but it looks like a shirt.

1 Back in 2016 we just had a shirt and a vest underneath the  
2 shirt, but everything on the front was the same, name, badge,  
3 everything else.

4 Q. Thank you. You may be seated.

5 A. (Witness complies.)

6 Q. What did your vehicle look like that you had in  
7 2016?

8 A. I had a fully marked white Dodge Charger.

9 Q. So it had Clarendon County Sheriff's Office on the  
10 side?

11 A. Clarendon County Sheriff's Office on the side. Yes,  
12 ma'am.

13 Q. Lights, blue lights?

14 A. Yes.

15 Q. Did you have an occasion to encounter Ms. Lucretia  
16 Conyers in November 2016?

17 A. Yes.

18 Q. Can you tell us about that?

19 A. On that day we got a call about a break in, possible  
20 break in at a location on Brown Road. There was a white van  
21 at a house and the person was deceased and they was taking  
22 items out of the house. Myself and the late at the time First  
23 Sergeant Hickman went to Brown Road. We saw a white van at  
24 the location. We stopped by that location, made contact with  
25 a guy there, asked for his ID just to ensure that he lived at

1 the location. He showed us his ID. Have a nice day. We  
2 left.

3 Q. What was his demeanor?

4 A. He was calm. You know, he came to the door, you  
5 know. Asked what we wanted.

6 Q. How long were you at his residence?

7 A. Less than a minute.

8 Q. And you mentioned Brown Road. What county is that  
9 in?

10 A. That's in Clarendon County.

11 Q. So once you left this man's residence with the white  
12 van, what did you do next?

13 A. Me and First Sergeant Hickman proceeded to drive  
14 down Brown Road. At that point we saw another white van at  
15 another location. We then stopped at that location, made  
16 contact with a Ms. Sherry McFaddin. She was still sitting  
17 inside the van. I approached her and began to explain the  
18 reason why I was there. At that point in time Ms. Lucretia  
19 came out on the porch. She was yelling and cursing and stated  
20 that she didn't like the police and to get off her property.

21 Q. Okay. Let's back up a little bit. So you're riding  
22 down Brown Road and you see a second white van?

23 A. Yes.

24 Q. And that van was stationary in a yard?

25 A. Yes. It was.

1 Q. About how far was the van from the home?

2 A. Maybe 10 or 15 feet.

3 Q. You said that Ms. McFaddin, the driver of the van,  
4 was still in the driver's seat?

5 A. Yes.

6 Q. And what was Ms. McFaddin's demeanor that day?

7 A. Ma'am?

8 Q. What was her demeanor?

9 A. She was calm. She was cooperative as I was trying  
10 to gather information from her.

11 Q. And you said that Ms. Conyers came out of the  
12 residence?

13 A. Yes.

14 Q. Is Ms. Conyers in the courtroom today?

15 A. She is.

16 Q. Could you please point her out for the jury?

17 A. (Indicating.)

18 MS. PIERCE: Your Honor, let the record reflect that  
19 he pointed to the defendant.

20 THE COURT: Okay. The record will show he so  
21 indicated.

22 BY MS. PIERCE:

23 Q. Okay. So you were trying to talk to Ms. McFaddin?

24 A. Yes.

25 Q. And what happened?

1           A.    At that point Ms. Conyers came outside. She was  
2    cussing and carrying on and saying that she hates the police,  
3    to get off her property. At that point I tried to explain to  
4    Ms. Conyers the reason why I was on her property was to  
5    identify, you know, talk to Ms. Sherry because we had a  
6    possible break in in the area and we just wanted to make sure  
7    it wasn't the van that we were looking for.

8           Ms. Conyers proceeded to basically forcibly move me  
9    out of the way. I was right here at the mirror of her van,  
10   Ms. Sherry was still sitting inside of the van. Ms. Conyers  
11   came and wedged herself in between us two to basically move me  
12   out of the way. At that time I tried to explain to Ms.  
13   Conyers, look, I'll be glad to get off your property. Just  
14   let me gather this information so I can just document and make  
15   sure this ain't the person we're looking for.

16           Ms. Conyers then stated that she was there first and  
17   I was gonna have to wait. Again, I tried to talk to Ms.  
18   Conyers, you know, look, we're trying to get this information  
19   to make sure this is not the van that's breaking into houses.  
20   Ms. Conyers turned around and started cursing and carrying on.  
21   At that point I felt that she breached the tranquility of the  
22   neighbors. I placed her under arrest for breach of peace.

23           Q.    Now, there's a difference between cursing and  
24    carrying on in a voice like I'm using right now. Was she  
25    talking in this kind of voice?

1 A. Oh, no, ma'am. No. She was yelling.

2 Q. Could you describe that to the jury?

3 A. I mean, do you want me to yell?

4 Q. I mean, was she --

5 A. Sorry.

6 Q. I mean, you arrested her for breach of peace. I  
7 guess I'm saying was it just a yell here or there? Was it  
8 constant yelling?

9 A. No. It was constant. It was constant cursing and  
10 yelling and carrying on. I even asked Lieutenant Hickman to  
11 see if he could calm her down and she just wasn't having it.

12 Q. Did you identify yourself as a law enforcement  
13 officer?

14 A. I did.

15 Q. And you were also wearing your uniform?

16 A. Yes, ma'am. On every call I go to or every traffic  
17 stop, I always, at the time I was a corporal, but I always  
18 identify myself as Corporal or Sergeant Jackson from the  
19 Clarendon County Sheriff's Office.

20 Q. Let's say Ms. Conyers never came out of her  
21 residence that day and she stayed inside, how long would it  
22 have taken you to talk to Ms. McFaddin?

23 A. Less than a minute. Just enough time for me to  
24 gather information. At that point in time we couldn't say  
25 that Ms. Sherry was the one that was breaking into the

1 residence, but at least we would have her information in case  
2 an investigator has got information and came back and say,  
3 hey, we had somebody in the area that they could come and talk  
4 to.

5 Q. And why is that important? Why was it so important  
6 that you talk to her?

7 A. Because like I say, her van fit the description that  
8 was given. It was on Brown Road. I mean, there's not many  
9 white vans in the area other than the one we came across the  
10 first time and hers.

11 Q. I'm gonna ask you to give an approximate answer to  
12 this. Approximately how many times do you think you told Ms.  
13 Conyers to stand down and let you talk to Ms. McFaddin or  
14 asked her not to interfere?

15 A. Approximately four or five times.

16 Q. All right. Let's talk about the resisting arrest  
17 charge.

18 A. Okay.

19 Q. So based on the profanity, the yelling, not based on  
20 I hate the police and things like that, correct?

21 MR. SHAFFER: Objection. Leading.

22 BY THE WITNESS:

23 A. Yes, ma'am.

24 THE COURT: Don't lead.

25 MS. PIERCE: Yes, Your Honor.

1 BY MS. PIERCE:

2 Q. Based on that you arrested her for breach of  
3 peace?

4 A. Yes.

5 MR. SHAFFER: Objection. Leading.

6 THE COURT: Sustained.

7 BY MS. PIERCE:

8 Q. What led to the resisting arrest?

9 A. Uhm, the breach of peace when she, I felt she  
10 breached the tranquility of the neighbors so I placed her  
11 under arrest for breach of peace. At that point in time I  
12 asked her to put her hands behind her back so I could grab her  
13 wrists. Then when I said that, she said I was gonna have to  
14 fight her. We were taught at the academy, it's called a  
15 straight arm bar takedown technique. I attempted to do the  
16 straight arm bar technique on Ms. Conyers at that point and  
17 that's by locking her wrist, holding her wrist and locking her  
18 arm at the elbow so she can't jerk away from me. I locked her  
19 elbow and I tried to attempt the straight arm bar technique  
20 and at that point she fell off balance and fell to the  
21 ground.

22 MS. PIERCE: Your Honor, would the Court permit him  
23 to demonstrate a straight arm bar technique?

24 THE COURT: Okay.

25 BY THE WITNESS:

1           A.    I'll use this podium right here. Uhm, this is the  
2   person right here and this is their wrist. Straight arm bar  
3   takedown we're gonna take the body, lock their elbow out, grab  
4   their shoulder and roll it. That way if we roll it, we step  
5   right here, they can't snatch away and that allows us to put  
6   the cuffs on them and put their hands behind their back. At  
7   that point I rolled Ms. Lucretia's elbow, this is where I had  
8   her shoulders back, she tries to turn around, she trips over  
9   her feet or something and fell on the ground. At that point  
10   in time I couldn't get her up off the ground so I asked  
11   Lieutenant, well, First Sergeant Hickman to help me. She  
12   didn't want my help. The lieutenant managed to get handcuffs  
13   on her. The lieutenant managed to get her up. I'm sorry.  
14   The sergeant at the time managed to get her off the ground and  
15   I asked him to transport.

16           Q.    You said she did not want you to help her?

17           A.    No.

18           Q.    Can you explain that?

19           A.    She told me don't touch her. Get the F off her.

20           Q.    And you never had a chance -- Did you ever have a  
21   chance to complete the maneuver, the straight arm bar  
22   takedown?

23           A.    The full maneuver? No, ma'am.

24           Q.    When did you write your incident report?

25           A.    When?

1 Q. Mm-hmm.

2 A. 2016.

3 Q. Would it have been the same day?

4 A. Yes. The same day.

5 Q. A week later?

6 A. The same day.

7 Q. Same day?

8 A. Yes, ma'am.

9 Q. Sergeant Jackson, are you covering anything up?

10 A. I'm not. No, ma'am.

11 MS. PIERCE: Please answer any questions the defense  
12 may have.

13 THE WITNESS: Okay.

14 CROSS EXAMINATION

15 BY MR. SHAFFER:

16 Q. Sergeant Jackson, does Lucretia appear to be to you  
17 based on your observations, does she appear to be  
18 intellectually disabled?

19 MS. PIERCE: Your Honor, I would object. He is not  
20 a doctor. He's not qualified. And also speculation.

21 MR. SHAFFER: I'm asking him an opinion that's  
22 within the normal -- I mean, generally people can tell.  
23 If he can't tell, he can't tell.

24 THE COURT: He can testify to what he observed, but  
25 I don't think he can testify to his opinion about any

1 medical.

2 MR. SHAFFER: Okay.

3 BY MR. SHAFFER:

4 Q. Ms. Conyers is hard to understand, correct?

5 A. I can understand her.

6 Q. Does she speak very clearly?

7 A. That day she did.

8 Q. So she speaks clearly?

9 A. To me she did.

10 Q. Okay. And she doesn't speak with, I guess, a heavy  
11 tongue?

12 A. On that day the way she was yelling and cursing and  
13 carrying on it's hard to tell if she was speaking with a heavy  
14 tongue or not. All I know is that I understood what she was  
15 saying.

16 Q. Okay. Any other days since then -- This case went  
17 to magistrate court first, right?

18 A. Mm-hmm.

19 Q. In magistrate court you don't have a solicitor  
20 prosecuting, right?

21 A. (Witness shaking head.)

22 Q. Is that a no?

23 A. No.

24 Q. The officer prosecutes, correct?

25 A. Yes.

1 Q. And then it's lower court. It's down the street,  
2 right?

3 A. Yes.

4 Q. Like where you go for traffic tickets and some minor  
5 criminal cases, right?

6 A. Yes.

7 Q. You brought this originally, whenever you did the  
8 warrant, you sent it to magistrate court, correct?

9 A. Yes.

10 Q. And you would have had time to interact with her at  
11 some points during that, correct?

12 A. Yes.

13 Q. It was pending in magistrate court for a long period  
14 of time, correct?

15 A. Yes.

16 Q. And during those conversations, you didn't notice  
17 that she doesn't speak clearly?

18 A. Conversations with Lucretia? I haven't spoken with  
19 Lucretia about this case.

20 Q. Okay. You've never heard her speak during the  
21 magistrate court cases?

22 A. When this was brought before the magistrate court,  
23 if I can recall correctly, I was advised that it was being  
24 pushed up to General Sessions case so I didn't never speak  
25 with her. She didn't never say anything to me.

1 Q. Okay. And you were advised of that real quickly,  
2 right?

3 A. Yes.

4 Q. Soon after it went to magistrate court, right?

5 A. As soon as it got to magistrate court they said it  
6 was going up to General Sessions.

7 Q. Okay. And that would have been soon after November  
8 19th, 2016 when this event occurred, right?

9 A. I'm sure it was.

10 Q. Okay. Now, would that have been before or after  
11 November of 2018, two years after this incident that it went  
12 to General Sessions?

13 A. No, sir. As I understand -- Say that again.

14 Q. It got transferred to General Sessions soon after  
15 the arrest, right?

16 A. Yes. I think so.

17 Q. Right after the arrest in 2016?

18 A. Whatever court date I had set for Ms. Lucretia. I  
19 really can't recall the court date, but that's when I was  
20 advised that it was gonna be a continuance or it was gonna  
21 file up to General Sessions.

22 Q. Okay. And that would have been in -- That court  
23 date I think you testified was soon after the arrest, right?

24 A. Whatever court date I had, that's what court date I  
25 had. I can't remember what court date it was.

1 Q. Okay. But you did testify a second ago it was soon  
2 after the arrest, correct?

3 A. Like I say, it's been so long ago. Whatever court  
4 date I had set for Ms. Conyers' case, that's when I was  
5 advised.

6 Q. I understand your answer now. I'm asking your  
7 answer about two or three minutes ago whenever I asked you if  
8 it was soon after the arrest and you said, yeah, it would have  
9 been soon after the arrest, correct?

10 A. Well, soon after arrest could mean a month later,  
11 two months later, whatever court date I had set.

12 Q. But it wouldn't have been two or three years later,  
13 right?

14 A. I'm not sure.

15 Q. Okay. But you did testify that it was soon after  
16 the arrest a second ago, right?

17 A. I did. Yes, sir.

18 Q. Okay. Now, you were sued in this case in November  
19 of 2018, correct?

20 A. I was informed. Yes, sir.

21 Q. Okay. So there was a lawsuit pending in November  
22 2018, correct?

23 A. I guess. Yes, sir.

24 MS. PIERCE: Your Honor, I would object to  
25 relevancy.

1 MR. SHAFFER: Bias, Your Honor. I have case law. I  
2 can present it if you like. It goes to bias.

3 THE COURT: Okay. Y'all come here a minute.

4 (Side bar off the record.)

5 BY MR. SHAFFER:

6 Q. It's my understanding that you just testified that  
7 you were informed of a lawsuit that was pending against you,  
8 or that is pending against you in November of 2018, correct?

9 A. Yes. I was told that she was suing.

10 Q. Okay. For excessive use of force, right?

11 A. I think that's what it is. Yes.

12 Q. Okay. And isn't it true that it was after that  
13 lawsuit was filed that the case got changed from magistrate to  
14 General Sessions?

15 A. I'm not sure when it got changed. I'm not sure. I  
16 was informed of a lawsuit, that she was suing, but I'm not  
17 sure when it was changed or when it was transferred to General  
18 Sessions. I can't answer that question.

19 Q. Okay. It was transferred to General Sessions after  
20 the indictment. Is that fair to say?

21 A. Yep. I guess.

22 Q. So whatever the date the indictment would be would  
23 be the date that it got transferred to General Sessions. Is  
24 that fair to say?

25 A. I'm not sure. Like I say, I can't say yes or I

1 can't say no to that because I don't know.

2 Q. Okay. How long have you been an officer?

3 A. Total?

4 Q. Yes.

5 A. Almost 10 years.

6 Q. Okay. So in the 10 years I imagine that you've  
7 charged more people for resisting arrest?

8 A. I've charged quite a few people with resisting.  
9 Yes.

10 Q. And do you generally take those to magistrate  
11 court?

12 A. At the time we could write them a ticket and that's  
13 the ticket, but since things changed with the new  
14 administration they prefer it be done with a warrant.

15 Q. Okay. So it was a normal practice at the Sheriff's  
16 Office to have resisting arrest to go through magistrate  
17 court?

18 A. I can't answer that question. I don't know.

19 Q. Okay. Was it normal practice for you to have  
20 arrests go through magistrate court?

21 A. It has went through magistrate court. Yes.

22 Q. Okay.

23 A. A lot - a lot of times if you, when we charged  
24 resisting arrest, if it's on a ticket, a lot of times it goes  
25 to magistrate court first before it's sent over to General

1 Sessions.

2 Q. A few of them change their plea to guilty, right?

3 A. I don't know that - I don't know that process, but  
4 at the time we could write, we could write it on a blue  
5 copy.

6 Q. So you give them a chance to plead guilty in  
7 magistrate court, right?

8 A. I'm not sure if I understand that. I don't -- I  
9 mean, like I said, I know it's a General Sessions charge, but  
10 at the time they said we could write a blue copy.

11 Q. Okay. And it would have been the first court  
12 appearance in magistrate court that you got, uhm, that you,  
13 uhm, the very first court appearance that you showed up for  
14 for Ms. Conyers and the very first court appearance she would  
15 have had that you would have said, okay, we're sending it to  
16 General Sessions; is that correct?

17 A. Yes, sir.

18 Q. So it wouldn't have taken three years to do that; is  
19 that correct?

20 A. I'm assuming. I don't know.

21 Q. Okay. You were noticed for a jury trial in this  
22 case in October or September of 2018, correct?

23 A. Uhm, I'm not sure what the date was, but I was  
24 noticed, I was notified. Yes.

25 Q. That there was supposed to be a jury trial in

1 magistrate court for this case, correct?

2 A. I think so. If I'm not mistaken, I think so.

3 Q. Okay. And that would have been -- Would you  
4 disagree with me if I told you it was some time around  
5 September of 2018?

6 A. Could have been, but like I said, I'm not sure what  
7 the dates are.

8 Q. Okay. And it was supposed to go forward in  
9 magistrate court, correct?

10 A. It was -- I got notified of a jury trial. I mean,  
11 like I said, I don't know the process. All I know is I was  
12 notified. I came. I was notified and I acknowledged. So  
13 like I say, I don't know the process.

14 Q. And in magistrate court sometimes Lieutenant Stone  
15 represents the State, right?

16 A. On officers' cases?

17 Q. Yes.

18 A. No.

19 Q. That didn't happen in 2018?

20 A. I'm not sure. With criminal cases, yes. He can  
21 represent the State in criminal cases, but in traffic cases  
22 the officer has to be there.

23 Q. Okay. So in this case it's a criminal charge,  
24 resisting, correct?

25 A. Yes.

1 Q. Stone had the ability to represent the State in that  
2 case, right?

3 A. Yes. I think so. Yes.

4 Q. Do you recall being there when Lieutenant Stone  
5 picked a jury in magistrate court in 2018?

6 A. I was not.

7 Q. Okay. Do you recall hearing that it was canceled  
8 because of the weather, because of the hurricane coming  
9 through?

10 A. Yes. I do.

11 Q. So in 2018 the case was still in magistrate court,  
12 correct?

13 A. I'm assuming, but I don't know. All I know is I was  
14 told it was canceled because of the weather. I don't know  
15 what happened after that.

16 Q. Okay. It was canceled because of a hurricane coming  
17 through, correct?

18 A. Yes, sir.

19 Q. And we were supposed to have a jury trial,  
20 correct?

21 A. That's what I was told.

22 Q. In magistrate court, correct?

23 A. So I was told.

24 Q. Okay. And then a couple months later a lawsuit gets  
25 filed against you for excessive force, correct?

1           A.    That's what I was told.   Yes.

2           Q.    And then the case didn't get tried in the magistrate  
3 court, did it?

4           A.    Right.

5           Q.    It got sent to General Sessions, correct?

6           A.    Yes.

7           Q.    That was after the lawsuit got filed, correct?

8           A.    I guess.   Like I said, I don't know.   I'm assuming  
9 that that's what it was.

10          Q.    I think that you testified that in the time you were  
11 an officer you testified, and I apologize if you didn't, I  
12 couldn't quite hear right at the end, did you actually testify  
13 as to whether or not you ever had an excessive force claim  
14 against you?

15          A.    I've never had an excessive force claim against  
16 me.

17          Q.    No one's ever claimed that you used excessive  
18 force?

19          A.    Not to my knowledge.   No.

20          Q.    Okay.   No individual that you arrested ever said you  
21 shouldn't have did that to me?   You were wrong for that?

22          A.    I mean, a lot of people say that, but as far as a  
23 claim of excessive force, to my knowledge, no.

24          Q.    So a lot of people say that you were too rough with  
25 them, correct?

1           A.    I mean, that's what everybody -- I mean, if we put  
2   handcuffs on them, they're always, well, the handcuffs are too  
3   tight, so they think that's excessive force.

4           Q.    Okay.  So I guess whenever you were saying that you  
5   never had an excessive force claim, you've never had a lawsuit  
6   filed against you, right?

7           A.    Not to my knowledge.  No.

8           Q.    Okay.  Now, I'm gonna get you to take us through the  
9   incident.  You said Ms. Conyers came out cursing at you,  
10   correct?

11          A.    Yes.

12          Q.    She was making a scene, correct?

13          A.    Yes.

14          Q.    Yelling?

15          A.    Yes.

16          Q.    Saying get out of my yard, correct?

17          A.    Yes.

18          Q.    Saying that she hated the police, correct?

19          A.    Correct.

20          Q.    Did that make you mad?

21          A.    No.

22          Q.    Okay.  That didn't upset you?

23          A.    It didn't.

24          Q.    That's not something naturally getting, for you to  
25   actually like assault someone?  The natural consequence of

1 someone saying I hate the police to you doesn't result in you  
2 assaulting someone, right?

3 A. No. Not at all.

4 Q. You're saying you have more control than that,  
5 correct?

6 A. Yes. I do.

7 Q. Okay. And you said that she was in a neighborhood.  
8 Tell us a little bit about what that neighborhood was.

9 A. What do you mean?

10 Q. I think the State asked you a question and one of  
11 the --

12 A. As far as the neighborhood?

13 Q. Yes.

14 A. Brown Road had houses on this side, houses in the  
15 rear of her. If I'm not mistaken, there may be one or two  
16 houses across from her.

17 Q. How big approximately do you think her piece of land  
18 is?

19 A. I can't tell you that. I don't know.

20 Q. More or less than an acre?

21 A. I don't know. I'm not a surveyor. I don't know.

22 Q. Okay. About how far away from her house is the  
23 road?

24 A. 20, 25 feet.

25 Q. 25 feet from the road?

1 A. I mean, give or take. If I had to guesstimate.

2 Q. Okay. How many car lengths would it take if you  
3 were parked at the road to get to her house?

4 A. Maybe five.

5 Q. Five car lengths?

6 A. Maybe five.

7 Q. So maybe a little bit more than 25 feet, right?

8 A. Like I said, I don't know. I can't give you an  
9 answer because I'm not sure. I don't know the distance from  
10 her house to the road. I don't know.

11 Q. Okay. How far is her house from her neighbor's  
12 house approximately?

13 A. It's close. Like I said, I don't know. It's close  
14 enough for me to see the house right there. I can't tell you  
15 how many feet from the house to the road. I mean, from the  
16 house, from her house to the other house. I don't know that  
17 distance. I don't know.

18 Q. Can you estimate?

19 A. I don't -- I can't tell you that. I don't know.

20 Q. More than the length of this courtroom or less?

21 A. Well, maybe from this wall to that other, the little  
22 wall right there on the other side of that table, that little  
23 part right there, that close.

24 Q. All right. And did you talk with any of the people  
25 who were out there that day other than Ms. Conyers?

1           A.    I didn't other than Sherry.

2           Q.    Okay. Did you ask them whether or not they were  
3 being bothered by Ms. Conyers' yelling?

4           A.    No. I didn't.

5           Q.    Okay. You just made the assumption that they were  
6 gonna be bothered by her yelling?

7           A.    She breached the tranquility so I charged her.

8           Q.    And breaching the tranquility that was by her  
9 yelling, correct?

10          A.    Yelling and cursing.

11          Q.    Cursing, correct? And that was basically saying  
12 y'all get off my property. I hate the police and stuff like  
13 --

14          A.    No. No. It wasn't that. She was -- I was every  
15 curse word in the book.

16          Q.    Okay. So she was using a bunch of curse words, but  
17 she was directing them at you, correct?

18          A.    Yes.

19          Q.    And she was basically saying --

20          A.    She wasn't directing them directly to me. It was me  
21 and the other officer. She was directing it towards both of  
22 us.

23          Q.    Okay. So she was directing it toward the police,  
24 correct?

25          A.    Yes.

1           Q.   And you said that you had, you put her under arrest  
2   for what now?

3           A.   Breach of peace.

4           Q.   Breach of peace?

5           A.   Yes.

6           Q.   Okay. And you would agree that your report doesn't  
7   necessarily reflect that, right?

8           A.   Yes. It was error.

9           Q.   Okay. Your narrative says you put her under arrest  
10  for interfering with you, right?

11          A.   Yes.

12          Q.   But you're saying now that it was breach of peace?

13          A.   Yes. It was an error in the report.

14          Q.   Okay. You didn't make any arrests of anyone else  
15  that day, correct?

16          A.   I can't recall.

17          Q.   Okay.

18          A.   It's been so long.

19          Q.   You didn't make any arrest at that scene --

20          A.   I't been so long ago, I can't tell you. I don't  
21  know.

22          Q.   Okay. Did you arrest the lady in the white van?

23          A.   No.

24          Q.   Okay. Can you tell me who all was out there at that  
25  time?

1           A.    Ms. Sherry, Ms. Conyers.  There was a male subject.  
2    There was a guy out there.

3           Q.    Okay.  Anyone else you can think of?

4           A.    That's all I remember.

5           Q.    Okay.  And what time was this?

6           A.    I'm not sure when it happened.  Had to be around  
7    three or four, fourish.

8           Q.    In the afternoon?

9           A.    Yes.

10          Q.    Okay.  There's a policy where you have to fill out a  
11   Use of Force Report in every single case that you use force  
12   in, correct?

13          A.    Yes.

14          Q.    And you follow that policy, correct?

15          A.    I do.

16          Q.    And you did that in this case, correct?

17          A.    I did.

18          Q.    And the purpose of that report is basically to make  
19   sure that the supervisors are aware of any use of force,  
20   correct?

21          A.    Yes.

22          Q.    And that they have a detailed explanation of what is  
23   in the use of force or how the use of force occurred, right?

24          A.    Yes.

25          Q.    Okay.  And the use of force claim, so every time in

1 the 10 years of law enforcement that you've had when you used  
2 force, you've filled out one of these claims, correct?

3 A. Earlier in my career sometimes we do when we do a  
4 use report -- I'm sorry. Do a report and have to use use of  
5 force, you know, some officers would forget to do a use of  
6 force. Now that's one of the things that they, and we have  
7 meetings about this, they say we have to do those Use of Force  
8 Reports so at that point in time we had to do a Use of Force  
9 Report on every use of force, yes.

10 Q. Okay. So there may have been some times where you  
11 have forgotten to?

12 A. There may have been some times where myself or any  
13 other officers probably forgot to do a Use of Force Report and  
14 it may not be in there.

15 Q. Okay.

16 A. But just for the sake of they didn't know to do  
17 that.

18 Q. Okay. And that's reviewed by a supervisor, correct?

19 A. Excuse me?

20 Q. It's reviewed by the supervisor, correct?

21 A. Yes.

22 Q. And I guess the supervisor has a chance to come back  
23 and ask you questions in the case if they have questions about  
24 it, right?

25 A. Yes. That's what his duties are is to do that.

1 Yes.

2 Q. Has that ever happened to you before?

3 A. I got questioned about reports before.

4 Q. Okay. Did you get questioned about this report?

5 A. I didn't.

6 Q. Okay. And I think we talked about the fact that it  
7 had to be detailed. Now, in the Police Academy you learned  
8 about detailed writing, correct?

9 A. We do.

10 Q. And you have to write out stuff in detail and take  
11 classes in that, right?

12 A. Yeah.

13 Q. On writing reports?

14 A. Yes.

15 Q. Making sure you're detailed, correct?

16 A. Yes.

17 Q. So that people who are not, you can see what  
18 happened, correct?

19 A. Yes.

20 Q. Now, your use of force claim in this case, if you  
21 don't mind, do you have a copy up there?

22 A. I don't have anything up here.

23 MR. SHAFFER: Okay.

24 (Whereupon, Defendant's Exhibit #1 marked for  
25 identification.)

1 BY MR. SHAFFER:

2 Q. (Proffering) I'm gonna show you defendant's 1 for  
3 identification purposes. Defendant's 1 for ID appears to be  
4 your report, right?

5 A. Yes.

6 Q. Okay. So the Use of Force Report you filed in this  
7 case, correct?

8 A. Yes.

9 Q. If you can, and I didn't want to catch you off  
10 guard, can you tell us what the narrative is that you provided  
11 your supervisor about what happened in this case in that Use  
12 of Force Form?

13 A. Okay. It's just a summary of why I used use of  
14 force. It says reason for initial contact. It says reason  
15 for initial contact on here and the reason for initial contact  
16 was investigating possible burglary in the area. That's it.

17 Q. Okay. And there's a second page of the report,  
18 correct?

19 A. On this use of force?

20 Q. Yeah.

21 A. Are you talking about this (indicating)?

22 Q. Yeah.

23 A. This is the second page, I guess.

24 Q. And it says additional narrative at the top,  
25 correct?

1           A.    Yes.

2           Q.    Can you tell us what the narrative is you put in the  
3   Use of Force Form that you filed in this case for your  
4   supervisor to review?

5           A.    I didn't put the narrative in the Use of Force  
6   Report. Like I said, at that time a lot of us wasn't really  
7   sure on how to complete the use of force then. Now we do, but  
8   there's no narrative in this Use of Force Report because my  
9   report reflected what happened.

10          Q.    So on 11/19/2016 you did not know how to fill out  
11   the additional portion of the Use of Force Form?

12          A.    The only thing we would do is the reason for initial  
13   contact we put it right there. But now, yes, we know how to  
14   do that now, but then I wasn't aware of doing a narrative for  
15   a Use of Force Report.

16          Q.    So you were not aware of how to actually put in the  
17   additional narrative, in November of 2016 you did not know how  
18   to fill out the narrative portion of the Use of Force Form?

19          A.    The additional narrative on the Use of Force Form at  
20   that time we wasn't - at that time I didn't put a narrative in  
21   it because I didn't think it was - it didn't need a narrative  
22   on the Use of Force Report. We just needed a reason for the  
23   initial contact because our report reflected what happened.  
24   Since then we were told that we have to complete a narrative,  
25   just kind of summarize on the narrative, summarize on the Use

1 of Force Report on the initial report of what took place.

2 MR. SHAFFER: Your Honor, at this time I'd actually  
3 like to move Defendant's 1 into evidence.

4 THE COURT: What says the State?

5 MS. PIERCE: No objection, Your Honor.

6 THE COURT: Okay. It's in without objection.

7 BY MR. SHAFFER:

8 Q. Okay. Now, if you wouldn't mind, could you hold up  
9 for the jury the second page of that form?

10 A. (Witness complies.)

11 Q. Could you read what's on that line on the very top  
12 and the line right underneath it?

13 A. Which line are you talking about? You talking about  
14 were it says additional narrative?

15 Q. Yeah. It says use of force at the top, correct?

16 A. Yes. It says use of force at the top.

17 Q. And it says additional narrative, correct?

18 A. Additional narrative, yes.

19 Q. You would agree with me that that's blank,  
20 correct?

21 A. It is.

22 Q. Okay. So you didn't fill out the additional  
23 narrative, correct?

24 MS. PIERCE: Your Honor, I would object. Asked and  
25 answered. We've already gone down this road that he did

1 not fill this out.

2 THE COURT: Okay. He has.

3 MR. SHAFFER: Okay.

4 BY MR. SHAFFER:

5 Q. And you weren't questioned about it? You testified  
6 that nobody ever questioned you about what happened, right?

7 A. Not on this. No.

8 Q. Okay. And the reports now you've got to put in that  
9 additional narrative, correct?

10 A. Yes. We've got to do that.

11 Q. And then the supervisor looks at it and sees whether  
12 or not you did something right or wrong, correct?

13 A. Me as a supervisor I review all my guys reports now  
14 and to do a Use of Force Report that's what I look for.

15 Q. Okay. And you as a supervisor now, if you have any  
16 questions about it, you can go back to their body camera,  
17 correct?

18 A. Yes. I have the ability to watch my guys' body  
19 camera.

20 Q. Okay. And you can go pull that body camera,  
21 correct?

22 A. What you mean "pull"? I can't pull anything. The  
23 only thing I can do is log into it and review it.

24 Q. Okay.

25 A. I can't pull anything.

1 Q. But you can ask somebody to pull it for you,  
2 right?

3 A. I can't ask them to pull it for me.

4 Q. There's nobody at the Sheriff's Office --

5 A. I can -- I'm a sergeant. I don't have, I guess, the  
6 clearance to do that. I can go and ask the lieutenant and the  
7 lieutenant can go up the chain of command, but I cannot ask  
8 anybody to pull anything for me.

9 Q. Okay. You can't ask a lieutenant to ask somebody  
10 else?

11 A. I can. I can ask the lieutenant. I can present it  
12 to the lieutenant and the lieutenant can. If there's  
13 something that needs to be pulled for court or anything like  
14 that, the lieutenant can ask whoever does that to see if they  
15 can have it pulled. Yes.

16 Q. Okay.

17 A. But me, I can't do that.

18 Q. Okay. I understand that you can't physically go to  
19 the computer and pull it.

20 A. Right.

21 Q. But you can make it happen, right?

22 A. I can't make that happen.

23 Q. You can't make that happen as a sheriff sergeant?

24 A. I can't. I cannot make that happen as a sergeant  
25 over patrol. No.

1           Q.    Okay.  If you came back and said, hey, one of my  
2   patrol deputies put absolutely nothing in the additional  
3   narrative, you could go back and look at the video, correct?

4           A.    Yes.  I can look at the video.

5           Q.    Okay.  And you can also ask them about it,  
6   correct?

7           A.    Yes.

8           Q.    Nobody ever asked you about this, correct?

9           A.    No.  Not to my knowledge I wasn't questioned about  
10  this.

11          Q.    And the video obviously isn't here, correct?

12          A.    Obviously.

13          Q.    And you're testifying that basically Lucretia  
14  whenever you put your hands on her essentially you tried to do  
15  the arm bar and then she fell on her own?

16          A.    She jerked away from me.  That's when I tried to  
17  perform an arm bar, a straight arm bar.

18          Q.    Okay.  So when you put your hands on her, she jerked  
19  away?

20          A.    When I put my hands on her -- I said, I told her she  
21  was under arrest for breach of peace.  I put my hands on her,  
22  she jerked away.

23          Q.    And then you immediately did the arm bar, correct?

24          A.    When I grabbed onto her wrist, she jerked away, my  
25  hands were still on her wrist.  She jerked away.  She pulled

1 her arm close to her body.

2 Q. Okay. And then you immediately performed an arm  
3 bar?

4 A. I performed an arm bar takedown.

5 Q. And then at that point she actually fell on the  
6 ground, correct?

7 A. Yes.

8 Q. And you're saying she fell on her own power,  
9 correct?

10 A. Yes.

11 Q. That she lost her balance or either tripped?

12 A. She either lost her balance or tripped.

13 Q. You can't say for sure, correct?

14 A. I can't say for sure.

15 Q. And when you picked her up off the ground, did you  
16 pick her up - how did you pick her up? How did she get up?

17 A. I'm not sure. Like I say, when I tried to pick her  
18 up off the ground, she didn't want me touching her. When she  
19 fell to the ground, she also brought me down to the ground  
20 with her. I stood up and I tried to pick her up. I tried to  
21 put the handcuffs on her. She did not want me touching her so  
22 I asked the lieutenant to see if he could get her up off the  
23 ground.

24 Q. Okay. So the lieutenant got her off the ground, not  
25 you?

1           A.    The sergeant tried first.

2           Q.    I'm sorry.  The sergeant got her off the ground?

3           A.    I tried to assist her off the ground.  She didn't  
4   want me touching her.  I got Sergeant Hickman at the time to  
5   help her.  She stated, don't touch me.  Don't help me.  I  
6   stopped touching her.

7           Q.    Okay.  So you didn't pick her up by the handcuffs in  
8   the back, correct?

9           A.    No.  I didn't pick her up by the handcuffs.  I  
10   didn't.

11          Q.    You didn't pick her up at all?

12          A.    A tried to pick her up.  She didn't want me touching  
13   her.  I asked lieutenant, well, lieutenant, I'm sorry, I say  
14   lieutenant, he's a lieutenant now before he died, Sergeant  
15   Hickman came to assist in picking her up off the ground.  She  
16   didn't want me touching her so I got off her.

17          Q.    Okay.

18          A.    I did not grab her by the cuffs and pick her up.  
19   No.  I would have not been able to do that.

20          Q.    So just to make sure I'm clear, did you actually  
21   show up at the jury selection in magistrate court in this  
22   case?

23          A.    I don't think I did.  I don't remember showing up at  
24   a jury selection.

25          Q.    Okay.  But you do know that it was set for jury

1 trial in magistrate court, right?

2 A. Yeah. I think so.

3 Q. Okay.

4 A. If I ain't mistaken I want to say yes. I think  
5 so.

6 Q. And you don't know if that was before or after it  
7 got indicted and sent up?

8 A. That I don't know. I'm not sure. I can't give a  
9 definite answer on that because I don't know.

10 Q. Okay. Would Lieutenant Stone know?

11 A. Maybe. Like I say, maybe he would.

12 Q. Okay. Would he have handled the jury selection for  
13 you at that time in magistrate court?

14 A. Probably would.

15 MR. SHAFFER: Okay. No further questions.

16 REDIRECT EXAMINATION

17 BY MS. PIERCE:

18 Q. Sergeant Jackson, do you have any control over the  
19 process of a warrant or ticket being issued and going from  
20 magistrate court to General Sessions court?

21 A. I don't.

22 Q. Do you have any control over the indictment  
23 process?

24 A. I don't.

25 Q. Do you have any control over what cases are called

1 here in General Sessions?

2 A. I don't.

3 Q. And if I understood correctly, you openly admit you  
4 did not complete the Use of Force Form?

5 A. I did not. The narrative part I did not complete it  
6 but everything else.

7 Q. I'm gonna call your attention to the Use of Force  
8 Report. If you look at the top right corner on both pages 1  
9 and 2, do you see where it says a case number?

10 A. Yes, ma'am.

11 Q. What does that case number mean?

12 A. That's a case number where you log in and type in  
13 the report up.

14 Q. And what does that case number link to?

15 A. What do you mean?

16 Q. Would that be linked to your incident report?

17 A. Yes.

18 Q. Would this Use of Force Report go in the same case  
19 file as your incident report?

20 A. Yes. When you complete a Use of Force Report, you  
21 have to put the case number in the use of force to attach  
22 it.

23 Q. So they're linked together in your system?

24 A. Yes, ma'am.

25 Q. You said that you could not lift Ms. Conyers up by

1 the handcuffs. Why not?

2 A. Ms. Conyers is a rather big woman. I mean, she's  
3 tall. She's big. So if I tried to lift her up with the  
4 handcuffs, I couldn't pick her up off the ground. No.

5 Q. Did you weigh about the same in 2016 as you do  
6 today?

7 A. In 2016 I was about -- Right now I'm sitting here  
8 about 240. 2016 I was around 210, 215.

9 Q. Did you notice any injuries on Ms. Conyers?

10 A. No, ma'am.

11 Q. Did you call EMS?

12 A. I did.

13 Q. When you completed your incident report, did you  
14 include everything in that incident report in the narrative?

15 A. I did.

16 Q. Did you leave anything out?

17 A. I didn't.

18 Q. And would you remind the jury why you were on Brown  
19 Road that day?

20 A. Like I said, we was searching for a possible  
21 break-in, looking for a white van. We made contact with the  
22 first van, cleared him, made contact with the second van. I  
23 felt like it was investigation to an incident that I make  
24 contact with who was driving that van to just make sure that  
25 that wasn't the person we was looking for and I also wanted to

1 get a name in case it came back that there was a break-in we  
2 would have someone to at least contact to speak with about it.  
3 So that's the reason why I was on that property.

4 MS. PIERCE: No further questions, Your Honor.

5 MR. SHAFFER: No further questions, Your Honor.

6 THE COURT: Okay. Thank you, sir. You can step  
7 down.

8 MS. PIERCE: Your Honor, at this time the State  
9 rests.

10 THE COURT: Okay. Ladies and gentlemen, we're gonna  
11 take a break so I'm gonna send you to the jury room. I  
12 remind you don't discuss this case. I'll get you back  
13 out in a few minutes, okay?

14 (Whereupon, the jury entered the jury room at 11:25  
15 a.m.)

16 MR. SHAFFER: Your Honor, I move for a directed  
17 verdict. A couple of things. Obviously the State has to  
18 prove there was a lawful arrest. The comments that she  
19 made under our free speech, I mean, the officer said they  
20 were directed at him, they were not likely to cause him  
21 to actually act in violence, therefore, they were not  
22 fighting words by the officer's own admission. Under the  
23 case law for officers, you look at reasonable person for  
24 most of the time for whether or not something is a breach  
25 of peace and then for an officer you have to look at, you

1 know, there's a heightened standard there because  
2 officers are expected to be able to deal with more.

3 Your Honor, they can't prove that the underlying  
4 arrest is lawful, therefore, it is not. I don't think  
5 that they can actually prove resisting arrest if they  
6 have an unlawful underlying arrest. I would cite to you  
7 Jeremiah W. is one of the cases. I can cite several  
8 other ones. The Jeremiah W. opinion I would ask the  
9 Court to review if you are not familiar with it, I'm  
10 assuming you are, but if you wouldn't mind reviewing both  
11 the Court of Appeals' opinion and the Supreme Court's  
12 opinion.

13 The Court of Appeals' opinion -- I mean the Supreme  
14 Court's opinion actually reverses in part, but affirms in  
15 part and the part that I'm talking about in the opinion  
16 is relevant to this inquiry about whether or not, you  
17 know, you can actually have a breach of peace whenever  
18 what you're doing is complaining about officers. You  
19 can't do that. It's First Amendment Constitutional  
20 protected speech whenever you complain about an officer,  
21 therefore, you can't have a breach of peace related to  
22 that. As a result they can't have an arrest because you  
23 have an unlawful arrest to begin with. You can't have a  
24 resisting arrest for an unlawful arrest. Thank you.

25 THE COURT: Okay. Thank you. Yes, ma'am.

1           MS. PIERCE: Your Honor, the State feels like it was  
2 a lawful arrest. You've heard the testimony. She came  
3 out. It's wasn't really what she said. It was the  
4 volume. She came out yelling and carrying on. There  
5 were people around. There were houses nearby. We feel  
6 like she was breaching the peace for the people around in  
7 that neighborhood, Your Honor. He testified that she was  
8 yelling and it was loud.

9           MR. SHAFFER: Your Honor, I'll also point out the  
10 fact that no one has ever testified that anyone was  
11 actually home in those houses. No one said anything  
12 about that other than it seemed like it was bothering the  
13 neighbors even though he said that, he never mentioned  
14 any of the neighbors were there. I specifically asked  
15 who was there, and he didn't mention any of the neighbors  
16 because he doesn't know if anyone was actually bothered  
17 by it.

18           Regardless, it's constitutionally protected under  
19 Jeremiah W. The officer -- I mean, the guy yells FU,  
20 cop, I'm not coming over to you, and they say that's not  
21 a breach of peace. That's Constitutionally protected  
22 speech. You can't sit there and have an arrest based off  
23 of that.

24           MS. PIERCE: Again, Your Honor, it's not what she  
25 said. It was the volume and the carrying on that came

1 with it that led to the arrest.

2 THE COURT: Okay. Anything else from the defense?

3 MR. SHAFFER: Nothing, Your Honor. I just ask that  
4 you review that if you're not familiar with the cases.

5 THE COURT: Okay. I'll go review that case again  
6 and come back and let you know, but assuming that if you  
7 lose the motion, how many witnesses are you planning on  
8 calling? I'm just trying to figure out time frame.

9 MR. SHAFFER: Your Honor, I'm actually going to try  
10 to recall Stone at this point to impeach the officer  
11 about the time frame. I wasn't planning on doing that.  
12 I didn't plan on calling Stone, but at one point Jackson  
13 testified that this was with the General Sessions right  
14 after the arrest. Yeah, he backed out of that opinion a  
15 little bit, but the thing is, is that this didn't go to  
16 General Sessions until after it was a, after a lawsuit  
17 was filed.

18 MS. PIERCE: Your Honor, that would call for  
19 speculation on that. I wasn't here, but there's no  
20 evidence that retaliation is the reason why this charge  
21 is here and the officers do not have control coming from  
22 magistrate court to us. It goes from magistrate court to  
23 the Clerk of Court to us.

24 MR. SHAFFER: They had no jurisdiction to hear it in  
25 the first place and we were about to have a jury trial

1           with it. I mean, I wasn't gonna sit there and stomp my  
2           feet whenever my client, you know, potentially increasing  
3           the penalty for my client by doing it, but they had no  
4           jurisdiction to actually do it in magistrate court. We  
5           picked the jury here. We had a date set for trial. We  
6           were supposed to come back and a hurricane came through  
7           and they canceled it and I unfortunately had filed the  
8           lawsuit before the jury trial was actually heard in  
9           magistrate court, and once I did, they said, oh, well,  
10          we're kicking it up. We made a mistake. We were wrong.  
11          Yeah. We didn't have jurisdiction here. We're kicking  
12          it up to General Sessions.

13                MS. PIERCE: Your Honor, by his own admission they  
14                did not have jurisdiction in magistrate court. It was a  
15                mistake for it to be here so they sent it up here.  
16                That's not evidence of retaliation. That's evidence of  
17                correcting a mistake.

18                MR. SHAFFER: Your Honor, he testified that he  
19                routinely sends it through magistrate court. By  
20                implication by that, or my argument related to that is  
21                that he had a right - or he gives them a chance to plead  
22                guilty to this charge in magistrate court before sending  
23                it up because he's trying to cover his own behind from  
24                excessive force claims and that's basically what I think  
25                actually occurred here is that, you know, they give him a

1 chance. If they want to -- They essentially charged  
2 excessive force because of the fact -- I mean, they  
3 charge resisting arrest every time there's use of force  
4 because of the fact that, you know, someone gets, uhm,  
5 someone basically gets injured.

6 I think it limits my ability to present a full and  
7 complete defense if you're limiting me from being able to  
8 recall him as a witness. We've already gone pretty deep  
9 into the time frame of when this happened, into the time  
10 frame of when this happened. The officer testified that  
11 it happened immediately thereafter, tried to change his  
12 story later. He never gave a clear answer as to when it  
13 happened. I just want to establish a time from through  
14 Stone which would be a good salvage time frame because he  
15 knew that it went through magistrate court because he was  
16 there picking the jury with me.

17 THE COURT: Okay. Outside of Stone, are you  
18 planning on calling any other witnesses?

19 MR. SHAFFER: One, Your Honor.

20 THE COURT: Is the defendant gonna testify?

21 MR. SHAFFER: I don't believe so.

22 THE COURT: All right. Ms. Conyers, how about  
23 standing up please, ma'am. Let me talk to you a minute.

24 Thereupon,

25 LUCRETIA CONYERS

1 after having been first duly sworn, testified as follows,

2 EXAMINATION

3 THE COURT: You understand that we've reached a  
4 point in the trial that you have an opportunity to  
5 testify. You have a Constitutional right not to testify  
6 and if you choose not to testify, I will instruct the  
7 jury that they cannot consider that in any way against  
8 you. However, if you choose to testify, you'll be  
9 treated like any other witness. You'll be subject to  
10 cross examination. Do you understand that?

11 MS. CONYERS: Yes, sir.

12 THE COURT: And whether you testify or not to  
13 testify is your decision. You can listen to your lawyer,  
14 you can listen to his advice, but it's only your  
15 decision. Do you understand that?

16 MS. CONYERS: Yes, sir.

17 THE COURT: Okay. Thank you, ma'am. All right.  
18 We're gonna take a recess. I'll be back in 15, 20  
19 minutes.

20 (Short break.)

21 BAILIFF: All rise.

22 THE COURT: Thank you. Please be seated. We're  
23 back on the record. Okay. I have reviewed the  
24 definition of breach of peace on the State versus Perry  
25 as well as Jeremiah W. In the Jeremiah W. case, that was

1 directed at a police officer and basically the police  
2 officer told them to come there, you know, he used  
3 certain words directed at the police officer.

4 This case I think is different from that in that at  
5 least the facts that are introduced into evidence is that  
6 the defendant started screaming at the police from the  
7 time they pulled up into her yard and based on breach of  
8 peace, peace means the peace which is enjoyed by the  
9 citizens of the community. Whether certain conduct  
10 constitutes breach of peace depends on the time, place  
11 and nearness of other persons.

12 The officer testified about closeness to the house.  
13 He said there was another male that he saw in the yard as  
14 well as the lady that was driving the van, so I think  
15 this is a question of fact for this jury to determine  
16 whether, in fact, the violation described would be breach  
17 of peace, so I'm gonna deny your motion for directed  
18 verdict.

19 MR. SHAFFER: Thank you, Your Honor. I had emailed  
20 you some jury charges. I would like the First Amendment  
21 law charged to the jury related to her right to basically  
22 criticize officers. I also would like the sentence and  
23 language, and I'll make it a court's exhibit once I  
24 actually get it printed, I emailed it to you, Your honor,  
25 but I also requested the language about essentially

1       saying that you have the right to resist a unlawful  
2       arrest.

3               THE COURT: And I have that in my charge. I have  
4       resisting arrest charge and then I have the right to  
5       resist an unlawful arrest charge. That man in that back  
6       corner back there, that portrait of the Chief Justice of  
7       the Supreme Court in 1954, he used to be right here. He  
8       had a famous case that basically says you have a right to  
9       resist an unlawful arrest to the point of taking the life  
10      of an officer. I dealt with that. I used to stand right  
11      there and look at his picture all the time and had to  
12      deal with that. So I understand that, but I'll be glad  
13      for you to review this charge if you want to.

14             MR. SHAFFER: Okay. Thank you, Your Honor. I would  
15      like the First Amendment language charge as well related  
16      to the right to criticize officers because that's the  
17      basis of saying, I think it's necessary because it's the  
18      basis of saying that the breach of peace is unlawful.  
19      It's for me to argue that she had a right to, she had a  
20      First Amendment right to complain about that, to complain  
21      about officers, and unless she is using by definition  
22      fighting words, you know, I think the Federal case law is  
23      clear that you basically can say essentially anything to  
24      an officer and not get arrested for it as long as it's  
25      not naturally tending to cause that officer to attack

1           you. And the officer testified that this language that's  
2           not actually in the policies caused him to attack her.  
3           He wasn't angry at her he testified so we would ask for  
4           that charge be given. I can present some language and  
5           present a court charge on that point.

6           THE COURT: Okay.

7           MS. PIERCE: Your Honor, to respond to what he just  
8           said, actually it's in evidence through Sergeant Jackson  
9           that Ms. Conyers told him after he said I'm placing you  
10          under arrest for breach of peace, she said you will have  
11          to fight me.

12          MR. SHAFFER: And I think that's a question of fact  
13          for a jury, Your Honor.

14          THE COURT: Okay. All right. So now it's five  
15          minutes after 12. Do you have any witnesses?

16          MR. SHAFFER: Yes, Your Honor.

17          THE COURT: All right. Who?

18          MR. SHAFFER: I think Detective Stone just showed  
19          up. I'll probably recall Detective Stone briefly.

20          MS. PIERCE: Your Honor, we object. We feel like  
21          that's irrelevant, the timing and how the magistrate  
22          charge got to General Sessions.

23          THE COURT: And how is that relevant?

24          MR. SHAFFER: Your Honor, they didn't bother to do  
25          that, you know, until after she filed a lawsuit. I think

1           it's relevant to show bias as to what their motivation is  
2           in actually charging resisting arrest because they didn't  
3           --

4           MS. PIERCE: Your Honor, that's --

5           THE COURT: Well, they charged resisting arrest from  
6           the beginning. The magistrate never had jurisdiction for  
7           resisting arrest. In fact, it's not their call. The  
8           magistrate should have immediately sent it to General  
9           Sessions.

10          MR. SHAFFER: And, Your Honor, nobody bothered to do  
11          it. They brought it initially to magistrate court before  
12          a lawsuit was filed, then afterwards they said, okay,  
13          well, we're gonna charge it again in General Sessions.  
14          You know, the State brought the indictment later.  
15          Officer Stone was the one who was prosecuting the case in  
16          magistrate court to bring a resisting in magistrate  
17          court. He was actually the one prosecuting it and we  
18          actually went through and picked a jury and everything.

19          MS. PIERCE: Your Honor, that calls for speculation.  
20          There's no evidence that that is why. What he's saying  
21          is because of the lawsuit this charge is in General  
22          Sessions. There is absolutely no evidence of that.

23          MR. SHAFFER: I am not, by the way, saying that  
24          Officer Stone will be able to testify as to why he went  
25          there. I think that I can establish the fact that the

1 State of South Carolina was ready, willing and able to  
2 try this in magistrate court until a lawsuit got filed,  
3 then all of a sudden you have the General Sessions case  
4 at that point. I mean, there were three or four court  
5 appearances in magistrate court before this became a  
6 General Sessions issue and, you know, at that point and  
7 the timing of it is at least probative of what their  
8 motivation is. Even if that is not -- Even if Officer  
9 Stone can't testify as to why it went to General  
10 Sessions, I certainly think that I can lay a foundation  
11 for the timing of it which is probative as to why the  
12 State would have done it and then there's argument to be  
13 made at closing and obviously --

14 THE COURT: But it came to the grand jury October  
15 the 29th, 2020.

16 MR. SHAFFER: Yes, Your Honor. That would have been  
17 -- They didn't take it to the grand jury until after the  
18 lawsuit got filed. We were able and willing to try it in  
19 2018 in magistrate.

20 THE COURT: And when did the lawsuit get filed?

21 MR. SHAFFER: In November of 2018 about two months  
22 after we were supposed to try it.

23 MS. PIERCE: And, Your Honor, I'm showing that we  
24 received the ticket from the Clerk of Court's Office  
25 March 24th, 2020. So it's not 2018. Apparently it fell

1 through the cracks, and I'm speculating, but there was  
2 still two years after 2018 before it hit our office and  
3 then it was indicted in 2020 and then I picked the case  
4 up.

5 THE COURT: All right.

6 MR. SHAFFER: Your Honor, I'm not saying that it's  
7 definitive proof of anything, but it's certainly  
8 probative of what the motivation of the State is in  
9 charging resisting arrest.

10 THE COURT: And she has the right to show that it  
11 only got to the Clerk's Office in 2020.

12 MR. SHAFFER: And I would have no problem with her  
13 doing that, Your Honor.

14 MS. PIERCE: Your Honor, I would object to all of  
15 this coming in because even he just said Lieutenant Stone  
16 can't answer as to why it took so long or when it was  
17 submitted.

18 MR. SHAFFER: He can testify that we picked a jury  
19 in August of 2018 and Officer Jackson testified that the  
20 lawsuit was served on him in, or that he was notified of  
21 it in November.

22 THE COURT: So you're telling me Officer Stone was  
23 present when the jury was selected?

24 MR. SHAFFER: Yeah. He picked the jury in  
25 magistrate court.

1 MS. PIERCE: And, Your Honor, this is the first I've  
2 heard of all of this. He just walked in and he's telling  
3 me no, he did not.

4 THE COURT: Is that not correct?

5 OFFICER STONE: No, sir.

6 MR. SHAFFER: There's recollection. There's emails,  
7 Your Honor.

8 OFFICER STONE: If I can, Your Honor, we went to  
9 general - I mean to magistrate court. We had a couple of  
10 appearances there. We had discussed an agreement but  
11 did not come to an agreement. He said he wanted to go to  
12 trial. From that time when he said we were gonna go to  
13 trial at no point in time do I remember selecting a jury  
14 for this trial for this case.

15 MR. SHAFFER: Your Honor, there's emails.

16 OFFICER STONE: There's emails were we transferred  
17 motions, yes, sir, but there's nothing discussing the  
18 jury or a selection of that jury or who would select that  
19 jury.

20 MR. SHAFFER: Your Honor, I can go across the street  
21 at lunch, grab the magistrate file, come back over here  
22 and impeach the officer if he wants to testify that way.  
23 And, Your Honor, this is -- He was there. We picked a  
24 jury. We got a notification that the hurricane was  
25 coming through and it canceled. Even Officer Jackson

1 testified that he remembered, the recollection is we were  
2 supposed to go to a jury trial in 2018 and a hurricane  
3 came through and the case got canceled. I can go impeach  
4 him with that if the Court would like.

5 OFFICER STONE: I don't remember picking a jury.

6 MR. SHAFFER: I can refresh his recollection with  
7 the magistrate court file, Your Honor.

8 THE COURT: I understand that, but how is any, how  
9 is this relevant to her guilt or innocence? Because this  
10 charge came long before this issue with the magistrate  
11 court? How is it relevant?

12 MR. SHAFFER: Your Honor --

13 THE COURT: It may be relevant in a civil case, but  
14 how is it relevant in this case?

15 MR. SHAFFER: Your Honor, they have - it is my  
16 argument in my opening that their motivation in charging  
17 resisting is to cover up an excessive force claim.  
18 That's what I argued in my opening, Your Honor. This  
19 case was brought in magistrate court. We absolutely did  
20 have a jury selection in the case. One of the lawyers in  
21 town got seated on the jury. I forgot which one. I can  
22 probably figure it out. But, heck, I believe I can get  
23 witnesses from the Public Defender's Office who recall me  
24 going down there to magistrate court and picking a jury.

25 THE COURT: Okay. But assuming all that's true,

1           that you did pick a jury, how is it relevant to guilt or  
2           innocence?

3           MR. SHAFFER: Your Honor, it goes to their  
4           motivation to create a story, the motivation of the State  
5           to create a story to cover their civil action.

6           THE COURT: I understand, but if they had charged  
7           her with a crime that was tried in magistrate court and  
8           then you filed a lawsuit or somebody filed a lawsuit and  
9           they changed the charges and upgraded the charges to a  
10          general offense, I mean a General Sessions offense but,  
11          you know, they didn't change the charges. The charges  
12          were just brought in the wrong court because they haven't  
13          changed the charge of resisting arrest from day one, have  
14          they? How is that relevant to her guilt or innocence?

15          MR. SHAFFER: Your Honor, I think that they gave her  
16          an option to get out with the least amount of, where the  
17          least amount of people would view it, they gave her an  
18          option of getting out of this where they were covered for  
19          their civil case, their civil liability and they get  
20          their qualified immunity is she pleads to that.

21          Now, presumably, maybe they get qualified immunity  
22          if she pleads to resisting, but they're in a better  
23          position arguing that they did not use excessive force if  
24          she pleads guilty to resisting. They gave her that  
25          option there in magistrate court, but the Court did not

1 have the jurisdiction, and in order to brush this under  
2 the rug which is basically what I've argued in my opening  
3 is that they'e trying to brush this under the rug.

4 MS. PIERCE: That is a civil argument. It has  
5 nothing to do with a General Sessions charge of resisting  
6 arrest.

7 MR. SHAFFER: It's motivation to lie, Your Honor.  
8 Their motivation to lie about the charges. Their  
9 credibility. The officer's credibility is the only thing  
10 that the State is relying on in this case. There's the  
11 motivation for the officer to lie about it. I think that  
12 we're entitled to discover it. We have a right under due  
13 process of right to present a complete defense, right to  
14 cross examine witnesses. I think that all of that plays  
15 into us being able to present a theory which is that  
16 they're doing this to cover up the fact that --

17 THE COURT: I understand that, but you've already  
18 brought out to this jury that it came up in magistrate  
19 court first. The officer testified that he brought it in  
20 magistrate court, and you've already got it in front of  
21 this jury that a jury was selected and a lawsuit filed  
22 and then it got bumped up here.

23 MR. SHAFFER: Yes. Yes, Your Honor. I just wanted  
24 to -- Officer Jackson would not - I don't think he gave  
25 me a straight answer as to exactly when the case went up

1 to, uhm --

2 THE COURT: Well, the case, we can put it in  
3 evidence when the ticket went to the Clerk's Office if  
4 you want to.

5 MR. SHAFFER: And I'm more than happy to do that. I  
6 can do that instead of calling Sergeant Stone.

7 THE COURT: Okay.

8 MR. SHAFFER: Your Honor, I don't know the people  
9 who took the ticket to the Clerk's Office.

10 THE COURT: That would have been from -- Do you have  
11 any objection to putting the ticket in?

12 MS. PIERCE: No, Your Honor.

13 THE COURT: So you can put the ticket in and the  
14 transmittal form when it came to the Clerk's Office.

15 MR. SHAFFER: Your Honor, for the sake of, and I'm  
16 happy to call the officer to put the ticket in, can we  
17 just stipulate the ticket is in?

18 THE COURT: That's what I'm trying to do right now.

19 MR. SHAFFER: That's fine.

20 THE COURT: She said she stipulates the ticket is in  
21 and the transmittal form.

22 MR. SHAFFER: Okay. That would be fine.

23 THE COURT: Okay. So, having said that --

24 MR. SHAFFER: We won't need to call Stone.

25 THE COURT: All right.

1           MR. SHAFFER: Officer Stone, Your honor. I didn't  
2 mean to call him Stone, Your honor.

3           THE COURT: Okay. So are you gonna call anybody?

4           MR. SHAFFER: I'm gonna call one witness, Mr.  
5 McDuffy.

6           THE COURT: Okay.

7           MS. PIERCE: And, Your Honor, I'm trying to get his  
8 rap sheet, however, I just got a text that the system is  
9 down and they're trying to fix it. They're having  
10 trouble with the system.

11          THE COURT: All right. So you've got one witness to  
12 call. You think we can be through with that witness in  
13 45 minutes?

14          MR. SHAFFER: I would say that I would be through  
15 with him in 45 minutes. I'm not sure how long the  
16 State's gonna take.

17          THE COURT: Okay. We'll see. I'm going to lunch by  
18 one or 1:15 because I've found out if you go any later  
19 than that, nobody gets anything to eat. And then I will  
20 come back because I've been -- You know, most restaurants  
21 start shutting down at two so everybody so -- Okay. I'm  
22 bringing the jury in. We'll call that one witness. At  
23 between one and 1:15 I'm stopping you no matter where you  
24 are.

25          MS. PIERCE: But, Your Honor, I don't have his rap

1 sheet.

2 THE COURT: I can't help that.

3 MR. SHAFFER: And, Your Honor, I can go ahead, my  
4 witness, Mr. McDuffy has indicated that he has several  
5 magistrate court level driving type offenses. He also  
6 has either a check or a forgery or something like that  
7 and was put on probation around 2010. He got off  
8 probation.

9 MS. PIERCE: And he was convicted of a crime of  
10 dishonesty.

11 MR. SHAFFER: I believe they were forgery and bad  
12 checks, one or the other. Yes. I'm not sure which it  
13 was because he said it was forgery, but it sounded like  
14 bad checks to me, but I don't know which one it was.

15 THE COURT: What county was it in?

16 MR. McDUFFY: For the charges of forgery it was in  
17 Richland County, Columbia.

18 THE COURT: Okay.

19 MR. SHAFFER: Your Honor, I can pull the public  
20 index.

21 THE COURT: So you were convicted of forgery. We  
22 don't need it if he admits to it.

23 MR. McDUFFY: Sir?

24 THE COURT: You were convicted of a forgery?

25 MR. McDUFFY: I had a forgery back in 20 --

1 THE COURT: Do you have a conviction? Were you  
2 convicted? Were you on probation for it?

3 MR. McDUFFY: Yes, sir. I was on probation.

4 THE COURT: Okay. All right. You ready to bring  
5 the jury in?

6 MR. SHAFFER: Yes, sir.

7 THE COURT: Bring me the jury.

8 (Whereupon, the jury entered the courtroom at 12:20  
9 p.m.)

10 THE COURT: Okay.

11 MR. SHAFFER: Your Honor, the defense calls Sean  
12 McDuffy.

13 THE COURT: Okay. Mr. McDuffy, come around here and  
14 place your left hand on the Bible and raise your right  
15 hand, sir.

16 Thereupon,

17 SEAN McDUFFY

18 after having been first duly sworn, testified as follows,

19 DIRECT EXAMINATION

20 BY MR. SHAFFER:

21 Q. Mr. McDuffy, you're friends with Ms. Conyers,  
22 correct?

23 A. Correct.

24 Q. Tell us about the day Ms. Conyers got hurt.

25 A. Uhm, on that day, it was a regular day. She was my

1 lady at that point. We used to live together and we was in  
2 the home and a van had approached and came in the yard. I  
3 came to the door. Seen the van. I didn't recognize the van  
4 as any friends or family so I went in there and told her she  
5 had company outside. By the time before she could get  
6 outside, I looked, I seen the police coming in the yard so I  
7 was like, Lucretia, you got the police out here, too. She  
8 came outside. She came outside, she was like, the police  
9 don't supposed to be in my yard.

10 The officers got out and Lucretia asked them several  
11 times to leave the yard. She did say that, you know, that she  
12 didn't like the police in her yard. The situation with the  
13 van, it stopped there. I don't know what it was stopping  
14 there for, but when she kept telling them to leave the yard,  
15 they didn't leave. Uhm, it was two officers on the scene,  
16 uhm, which was that officer and the other officer. The other  
17 officer is deceased. He's not here. Uhm, they told her to  
18 lower her voice. Now, one thing about Lucretia, I dealt with  
19 her close to 10 years, she always talk loud. She talking --  
20 right now she would talk loud. She's a very high pitched  
21 person.

22 Q. Let me interrupt you real quick. So you said that  
23 she always talks loud and you've known her for 10 years or so,  
24 right?

25 A. Correct.

1 Q. Okay. Does she have sort of a slurred speech?

2 A. Definitely she do and if she could speak and say  
3 anything in this courtroom, anyone in here could pick up on  
4 that.

5 Q. Okay. And Lucretia has some intellectual disability  
6 issues, correct?

7 MS. PIERCE: Objection, Your Honor. Leading.

8 BY MR. SHAFFER:

9 Q. I'm sorry. Does Lucretia have any intellectual  
10 disability issues?

11 MS. PIERCE: Objection, Your Honor. That calls for  
12 speculation and hearsay.

13 MR. SHAFFER: I think that he would know.

14 THE COURT: He can testify as to what he knows, what  
15 he's learned being around her.

16 BY THE WITNESS:

17 A. I mean, from what I know, I think so, but to a  
18 hundred percent I'm not sure.

19 BY MR. SHAFFER:

20 Q. Okay. You've never gone to the doctor with her,  
21 right?

22 A. I have.

23 Q. Okay. Well, have you ever -- I'll actually move on  
24 because I don't want to get into anything the doctor said.  
25 But from what you know, yeah, she has some intellectual

1 disability?

2 A. Issues. Yes, sir.

3 Q. Okay. So she's out there and she's yelling a little  
4 bit, right?

5 A. Yes, sir.

6 Q. Was she yelling at anybody but the officers?

7 A. Basically that's all she was yelling at was the  
8 officers, yes, sir.

9 Q. And she was just telling them to get out of her  
10 yard?

11 A. Correct.

12 Q. She was using some cuss words though?

13 A. She was.

14 Q. Okay. So she's out there yelling. Go on with  
15 telling us what happened from that point.

16 A. Uhm, she's yelling and the officer was like, calm  
17 down, and when he said calm down so many times, he said if she  
18 didn't calm down, he was gonna arrest her. And, no. She did  
19 not calm down. She kept saying leave. As far as swinging or  
20 any kind of thing like that, no, she didn't do that, but as  
21 far as speaking to the officers telling them to leave, she did  
22 do that, you know, and when, uh, they approached her to arrest  
23 her, you know, she snatched away, you know, like a normal  
24 person do, I guess. When she snatched away, uh, they  
25 continued to try to arrest her. And when I say they, it

1       wasn't both. It was just one.

2           Q.    Okay. Explain, if you don't mind, demonstrate what  
3       you mean by snatched away. If you don't mind stepping down  
4       quick.

5           A.    (Witness complies.)

6           Q.    I'll grab your hand and you show me what you mean by  
7       that.

8           A.    Like automatic reaction (indicating.)

9           Q.    Okay.

10          A.    Like that (indicating.) Automatic reaction. Like  
11       get your hands off me, or I'm not going to jail. (Witness  
12       resumes witness stand.) But as far as anything, running,  
13       putting force towards the police, that wasn't done. Uhm, when  
14       the police actually did grab, they grabbed her arm.

15          Q.    So just so we're clear, she pulled away first and  
16       then they grabbed her?

17          A.    Right. They grabbed her to put the cuffs on her.

18          Q.    Okay. So what happened after she pulled away the  
19       first time? They went to grab her again?

20          A.    To arrest her, yes, to put the cuffs on her.

21          Q.    Okay. So what happened at that point?

22          A.    At that moment, uhm, I guess it was just all  
23       flipping another way. I mean, I don't even know what to --  
24       Lucretia was actually slammed on the ground, on the mat. You  
25       know, I have --

1 Q. Say that again.

2 A. When I say slammed as far as like wrestling like  
3 slammed on the ground by force to put the handcuffs on her.  
4 You know what I'm saying? So when she was slammed on the  
5 ground --

6 Q. By the officers or by somebody else?

7 A. By the officer. Not officers. It was just one.

8 Q. Okay.

9 A. So when she was slammed on the ground, she was  
10 handcuffed and when she was handcuffed, uhm, as far as trying  
11 to get away she couldn't because I don't know if they  
12 mentioned it but she has a bad leg. If she would stand up  
13 now, she has a bad leg so she couldn't get up. Uhm, when she  
14 was slammed on the ground, I heard earlier the officer said  
15 that he fell on the ground with her. Yes. He fell on the  
16 ground with her because he slammed her. They both went down  
17 together, uhm, and after that she - he was going to pick her  
18 up and he was correct. She said she didn't want him to touch  
19 her. So the other officer did continue with the process of  
20 getting her up off the ground and arresting her and that was  
21 the situation.

22 Q. When you say that, we're talking about Officer  
23 Jackson, when you say he slammed her on the ground, how do you  
24 mean he slammed her on the ground?

25 A. It was more like, uhm, what can I say? Holding her.

1 It was like her arm - her back was facing him. You know, like  
2 if I was holding someone like this right here (indicating.)

3 Q. Yeah.

4 A. And when he was holding her, it was like, you know,  
5 like if I wrestle one of my home boys or something, it's like  
6 we both fall at the same time, you know, and that's the way it  
7 was. Because what I seen with the whole process I was  
8 basically saying to myself like, yeah, Lucretia, just calm  
9 down. When after I seen that happen, I was like, whoa, you  
10 know, this is not right, you know, and the process they went  
11 through and she was arrested.

12 Q. Okay.

13 A. You know.

14 Q. Is it possible that she just tripped?

15 A. I don't think she tripped.

16 Q. Okay.

17 A. I take that back. She didn't trip.

18 Q. Okay.

19 A. She didn't trip.

20 Q. Okay. She didn't just lose her balance, did she?

21 A. No. And she do have a bad leg, but I don't think  
22 she lost her balance.

23 Q. From your perspective it looked like the officer  
24 just took her to the ground?

25 A. It was force. Correct.

1 Q. Okay. Now, you said Lucretia was loud. Did it seem  
2 like she was loud toward anybody other than the officers?

3 A. No, sir. Just to the officers. Everything was  
4 directed to the officers.

5 Q. And this is about four in the afternoon?

6 A. It was.

7 Q. In your perspective did it seem like it was gonna  
8 disturb the neighbors?

9 A. Uhm, it couldn't. Actually where we stay at there's  
10 only one neighbor. We have other neighbors but it's far  
11 distance like down the dirt road. We have another dirt road  
12 that runs beside us. As far as a close neighbor, it was the  
13 house beside us. That's where the lady stay at and from our  
14 porch to their porch if I had to just predict, not exactly,  
15 uhm, it could have been about 30 yards, you know, to where the  
16 house was and she couldn't be disturbing them because the lady  
17 that stay there was on scene also.

18 Q. Okay. Did she seem like she was getting disturbed  
19 by Lucretia?

20 A. No. Everybody was more like why is this happening,  
21 you know? The woman wasn't disturbed by Lucretia. There  
22 wasn't no neighbors. You know, I've done been on scenes where  
23 things have happened and when things happen, people run out of  
24 the door, out of their homes or out of cars or come to the  
25 scene. There wasn't no one coming to the scene. It was just

1 the people who lived in the home which was myself and Lucretia  
2 and her cousin that stay farther down the road and the  
3 neighbor lady that was there that's now deceased and the  
4 officers.

5 Q. Okay. And then the neighbor is deceased then?

6 A. And the lady that was in the van.

7 Q. And from your perspective the lady that's deceased  
8 who was the neighbor didn't seem disturbed?

9 A. No. She wasn't.

10 Q. Now, I'm gonna ask you a question. You have a  
11 charge from several years ago in Richland for forgery; is that  
12 right?

13 A. Correct.

14 Q. Around when was that?

15 A. Uhm, my charge was in, it's been so long, I might be  
16 off, I believe it was like in 2007, 2008 and I stayed in  
17 county for eight months, uhm, went to court, they give me five  
18 years probation, uhm, because I had to pay restitution. I  
19 paid my restitution off. I went back to court in two years,  
20 they canceled and terminated everything and I was off  
21 probation.

22 Q. Okay. That was for, what did you forge?

23 A. It was dealing with checks, uhm, working with  
24 a company. It was more than just me. It was other people  
25 too. Uhm, for some reason the checks that came back that we

1 was working for was bad checks. I cashed many of them and I  
2 got mixed up in it and that's what happened.

3 Q. Okay. Even though you have that on your record, are  
4 you lying here today about what happened?

5 A. No, sir. I have no reason to lie for what happened.  
6 I mean, it was just something that happened all of a sudden  
7 and I was asked to come testify and tell the truth. I already  
8 got here from work.

9 Q. You work out of town?

10 A. Yes. I travel with my company, travel throughout  
11 the United States.

12 Q. And since this happened obviously you've still been  
13 friends with Lucretia; is that right?

14 A. I am still friends with Lucretia.

15 Q. Okay. And during that time period you were aware  
16 that she got injured in this, right?

17 A. I know a lot about the injuries.

18 Q. Okay. And I won't ask you any details about them.  
19 I'm just asking are you aware of it?

20 A. Yes.

21 MR. SHAFFER: That's all the question I have.

22 Please answer the questions the State has.

23 CROSS EXAMINATION

24 BY MS. PIERCE:

25 Q. Mr. McDuffy, how long were you romantically involved

1 with Ms. Conyers?

2 A. Well, I've been dealing with Ms. Conyers for about  
3 10 or 11 years.

4 Q. Romantically?

5 A. Uh, yes, ma'am.

6 Q. Were you together at the time of this incident?

7 A. Correct.

8 Q. And you testified just now that you saw a white van  
9 pull into your yard, but you didn't recognize it, correct?

10 A. Correct.

11 Q. And Ms. Conyers said the police don't supposed to be  
12 in my yard?

13 A. Correct.

14 Q. You also testified that you yourself asked her to  
15 calm down several times?

16 A. I had.

17 Q. Now, one thing you said that I would like to explore  
18 a little bit. You were talking about the volume level of her  
19 yelling and profanity and how you didn't think it could bother  
20 anyone because you had been on scenes before. What kind of  
21 scenes have you been on?

22 A. I mean, as far as just coming up in life, you know,  
23 uhm, when I would see some people get in fights or neighbors  
24 arguing, stuff like that, those kind of scenes. Just part of  
25 life scenarios.

1 Q. Scenes where law enforcement has been called?

2 A. I have seen law enforcement called.

3 Q. You also said that Sergeant Jackson approached Ms.  
4 Conyers. How far away were they?

5 A. You mean how close was they?

6 Q. Mm-hmm.

7 A. Uhm, they was average of two adults, you know,  
8 discussing, talking to each other.

9 Q. I don't understand.

10 A. When I say close, I mean like, uhm, like if that's a  
11 human being, you know, they were close to each other like if I  
12 was discussing something with you.

13 Q. Maybe a foot, two feet?

14 A. About two feet. Yes.

15 Q. You said with your forgery arrest you stayed in the  
16 detention center for eight months?

17 A. Correct.

18 MS. PIERCE: No further questions, Your Honor.

19 THE COURT: Okay.

20 REDIRECT EXAMINATION

21 BY MR. SHAFFER:

22 Q. You were close enough to see what happened, right?

23 A. Yes. I was.

24 Q. If the neighbors were disturbed, visibly disturbed  
25 by this, you would have seen that, right, or the neighbor?

1           A.    I definitely would have.

2           MR. SHAFFER:  No further questions.

3           THE COURT:  Thank you, sir.  You may step down.

4           THE WITNESS:  Thank you.

5           THE COURT:  Yes, sir.

6           MR. SHAFFER:  Your Honor, I think we agreed to  
7 stipulate to the ticket and the transmittal sheet coming  
8 into evidence; is that correct?

9           MS. PIERCE:  That's correct, your honor.

10          THE COURT:  Okay.  We'll mark it and it will go to  
11 the jury.

12          MR. SHAFFER:  Thank you, Your Honor, and we'll rest  
13 at this point.

14          THE COURT:  Okay.  Any reply testimony?

15          MS. PIERCE:  No, Your Honor.

16          THE COURT:  Okay.  Ladies and gentlemen, you've  
17 heard all the evidence that you will hear in this case,  
18 but we're going to lunch now so I remind you don't  
19 discuss this case or allow anyone to discuss it with you.  
20 I need you to be back at 2:00.  That ought to give you  
21 enough time to have lunch.  If you have an emergency,  
22 please call us.  I expect all 13 of you back at two and  
23 don't discuss this case.  Don't do any research.  I'll  
24 see you back at 2:00.  Thank you.

25               (Whereupon, the jury was released for lunch at 12:35

1 p.m.)

2 THE COURT: Okay. Anything before we break for  
3 lunch?

4 MS. PIERCE: Nothing from the State, Your honor.

5 MR. SHAFFER: No, Your Honor.

6 THE COURT: All right. I'll see y'all at 2:00.  
7 I'll be here a little before. If you've got any charges  
8 you want me to consider, you need to get them to me.

9 MR. SHAFFER: Yes, sir. I emailed several of them.  
10 I don't have the ability to print here.

11 MS. PIERCE: I'll be happy to pass it up, Your  
12 Honor.

13 THE COURT: All right. I think I've got it here.  
14 You got a hard copy of his --

15 MS. PIERCE: Yes.

16 THE COURT: -- or yours? Okay.

17 MR. SHAFFER: I may get a copy of it just so I can  
18 get it to you.

19 THE COURT: Okay. Do you have any objection to his  
20 charges?

21 MS. PIERCE: No, Your Honor. We would ask for the  
22 charge that's in your typical charge for breach of  
23 peace.

24 THE COURT: Okay. All right. I'll see --

25 MR. SHAFFER: Your Honor.

1 THE COURT: Yes, sir.

2 MR. SHAFFER: Before we go, I just wanted to make  
3 sure that I have renewed my motion for directed verdict.

4 THE COURT: Okay. And it is on the record. I so  
5 note. But I'll deny your motion because I think it's a  
6 question of fact for the jury.

7 MS. PIERCE: Thank you, Your Honor.

8 THE COURT: All right. See y'all in a little bit.

9 (Lunch break.)

10 BAILIFF: All rise.

11 THE COURT: Thank you. Please be seated. State  
12 ready?

13 MS. PIERCE: Yes, Your Honor.

14 THE COURT: Defendant ready?

15 MR. SHAFFER: Your Honor, I have to print something.  
16 The one I emailed you left off two different charges that  
17 I requested. I just realized that. But one of them the  
18 subject matter is in that email that I sent to you.

19 THE COURT: Okay.

20 MR. SHAFFER: I'm getting the email right now.

21 THE COURT: State have any objections as to charges?

22 MS. PIERCE: Your honor, we object to charge number  
23 6. We feel like the second paragraph specifically is a  
24 commentary on the facts.

25 THE COURT: All right. That's the spoliation

1 THE COURT: Okay.

2 MS. PIERCE: Thank you, Your Honor.

3 Ladies and gentlemen, this case is going to come  
4 down to who do you believe and the Judge is going to  
5 charge you on your job as a juror and it's your  
6 determination to determine the evidence and determine  
7 whether or not that the State has met their burden of  
8 proof. You also need to determine the credibility of the  
9 witnesses that you hear from whether or not you believe  
10 them and that is something that you are free to use and  
11 deliberate in the jury room. I ask that you ask yourself  
12 for all of these witnesses are they telling the truth, is  
13 their testimony believable and then what benefit could  
14 they gain by lying to you.

15 You're also going to hear the Judge talk to you  
16 about beyond a reasonable doubt. He's gonna give you the  
17 law on that. I'm not gonna go into that. I'll just  
18 remind you that it is beyond a reasonable doubt.  
19 Reasonable. I ask that you use that in the jury room.  
20 Is this reasonable? Is this believable? But that does  
21 not equal absolutely no doubt. We do not have to prove  
22 that one hundred percent certainty it's beyond a  
23 reasonable doubt. Please keep that in mind as you  
24 deliberate.

25 Another thing that I want to point out real quick.

1       You've heard the word disabled thrown about. That's not  
2       a legal defense. You've heard testimony from her own  
3       witness that she heard that the police were in her yard  
4       so she ran outside to confront them so she had the state  
5       of mind the police are in my yard, I'm going out there  
6       and I'm gonna confront them. You also heard about a  
7       speech impediment. Both witnesses that were on scene  
8       that day testified they could understand what she was  
9       saying. She hated the police. She was using curse words  
10      and profanity. Get out of my yard. Get out my yard.  
11      Leave. There is no evidence in the testimony of anything  
12      being unclear that she said. So don't let that distract  
13      you please as you deliberate.

14             Let's talk about the breach of peace arrest.  
15      Whether or not an act itself constitutes breach of peace  
16      depends on the time, the place and the nearness of other  
17      persons. So the time, we're in the afternoon hours,  
18      three, 4:00ish, pretty normal that people are out and  
19      about at that time. It talks about the place. You've  
20      heard testimony from the officer and from Mr. McDuffy  
21      that there were houses around. This is a little  
22      neighborhood, little grouping of houses there. There's a  
23      disagreement on how far, but a grouping of houses there  
24      on Brown Street. And then you also, also the neighbors,  
25      the possibility that someone could hear. It's not

1           necessary for the public peace to be broken. Again, it  
2           depends just on the time and the place and the nearness  
3           of others.

4           You will also hear I'm sure from the defense about  
5           fighting words. Well, we concede profanity, cuss words,  
6           they're not fighting words. Quite frankly Ms. Conyers  
7           saying that she hates the police and you heard him  
8           testify that didn't both him. I'm sure that's not the  
9           first time he's heard it said and won't be the last.  
10          We're not saying that she can't say that. That's not  
11          what she was arrested for. Sergeant Jackson explained to  
12          you that he placed her under arrest because he told her  
13          time and time again, ma'am, let me talk to Ms. McFaddin.  
14          Let me talk to Ms. McFaddin. And she was loud. Both  
15          witnesses that were on scene testified just how loud she  
16          was. By Mr. McDuffy's testimony they were one to two  
17          feet apart. There's no need to be that loud when talking  
18          to somebody that close. And then in terms of fighting  
19          words, so you have the nearness of people, the yelling,  
20          somebody right there in your face and then as you say I'm  
21          placing you under arrest for breach of peace, you jerk  
22          and you say, well, you're gonna have to fight me. I  
23          submit to you those are fighting words.

24          Then let's talk about the First Amendment. I've  
25          touched on that. Let me touch on it one more time.

1 Sergeant Jackson told you he did not care. It did not  
2 phase him to hear I hate the police. I'm not saying that  
3 she does not have the Constitutional right to say that.  
4 That's not why she was arrested. Loudness, yelling,  
5 right there in his face and carrying on. And then with  
6 her carrying on, Mr. McDuffy himself told you that not  
7 only did Sergeant Jackson ask her, ma'am, calm down,  
8 please calm down, Mr. McDuffy told her multiple times.  
9 He even said I believe I wrote down so many times to calm  
10 down and she continued to do so. That's why she was  
11 arrested for breach of peace. So loud. It does not,  
12 again, it's not necessary for the public peace to be  
13 broken. It just depends on the time, the place and the  
14 nearness.

15 For resisting arrest it's unlawful for a person to  
16 knowingly and willingly oppose or resist a law  
17 enforcement officer to resist arrest, that arrest being  
18 made by one that the person knows or reasonably, there's  
19 that word again, reasonably should have known that that  
20 was a law enforcement officer whether or not under  
21 process or not. Well, here you already have testimony,  
22 that we're not even to reasonably should have known. You  
23 have direct testimony that he was in uniform very similar  
24 to what he has on today, a vest instead of a shirt, he  
25 was in a marked patrol car, so was the other officer so

1           there's no doubt that Clarendon County Sheriff's Office  
2           deputies were on scene, they were on duty and they were  
3           acting in their official capacity and when he placed her  
4           under arrest for breach of peace, that she knowingly and  
5           willfully yanked back, snatched back, made it hard for  
6           the handcuffs to go on her and told him you're gonna have  
7           to fight me.

8           I've already covered Mr. McDuffy. He told you, yes,  
9           she used profanity. Yeah, she didn't have - she wasn't  
10          crazy about law enforcement. The minute she heard that  
11          they were in her yard, she went outside. He asked her to  
12          calm down, lower her voice. And then I found this  
13          interesting. He testified that they were one to two feet  
14          apart. Now, I'm not good with spatial distancing at all,  
15          but even I know that one to two feet apart is very close.  
16          Is it reasonable, that word, is it reasonable for the  
17          police in your yard and by his testimony a vehicle that  
18          they didn't recognize and the police is in your yard,  
19          you're gonna run out and get right there at that officer?  
20          But by Mr. McDuffy's testimony that is what she did.

21          And then you have to wonder about people's motives  
22          or people's personal biases. I submit to you based on  
23          the testimony there's some bias toward law enforcement,  
24          very evident. You have, you're in my yard. I hate the  
25          police, but you even have Mr. McDuffy being convicted of

1 a forgery which is a crime of dishonesty that involves  
2 lying, he even said he spent eight months in the  
3 detention center in jail and then he was on probation.  
4 And he even said he had been at scenes before where law  
5 enforcement had been called. So think about that and  
6 think about biases that could be there.

7 And finally I want you to think about what would he  
8 gained from testifying today? I want you to ask that  
9 question of all witnesses, but what did Mr. McDuffy gain  
10 by testifying today? He used to be her romantic partner.  
11 Now friends. You know, he wanted to come and set the  
12 record straight. At first, yeah, she has a bad leg. She  
13 could have fallen. No, no, no. Absolutely sure she was  
14 slammed. What could he gained?

15 Now let's talk about that lawsuit. That's not  
16 relevant to this case. You heard testimony that lawsuit  
17 was filed in 2018. This happened in 2016. What we are  
18 here today for, what you are here for, all of us in this  
19 courtroom are here for occurred in 2016 and you heard  
20 Sergeant Jackson say that he has not had any complaints.  
21 He has not had anybody go and file a formal complaint.  
22 He has not had any excessive use of force complaints.  
23 And then the defense asked, well, what about this  
24 lawsuit? Ladies and gentlemen, filing a lawsuit and  
25 having excessive use of force complaint or just a

1 complaint on an employee, they're two separate things. I  
2 wonder why it took two years with that lawsuit pending,  
3 they had two years, Sergeant Jackson didn't have any  
4 complaint. So don't let that lawsuit cloud what's going  
5 on here today. Focus on 2016.

6 He wanted to ask questions of Sergeant Jackson about  
7 the timing of the charge being sent to General Sessions  
8 and over and over and over again he told you I don't  
9 know. He told you that. Why, why was this in magistrate  
10 court and then sent up? I don't know. Did you go to  
11 magistrate court? No. I don't remember. I don't know.  
12 He said that time and time again. Then he even told you  
13 he doesn't have control. When he writes that ticket and  
14 it goes to the magistrate's office, he does not have  
15 control of where it goes.

16 You know, you wonder, well, are they, you know, is  
17 this retaliation for that lawsuit? I would say no. He  
18 didn't have control over that. Lieutenant Stone didn't  
19 have control over that. All we know is it's pending in  
20 magistrate court and then it was sent to the correct  
21 place in General Sessions in this court and somewhere  
22 along the way it got indicted.

23 Well, the indictment process is different from the  
24 ticket being transmitted here. That's a whole separate  
25 process and he does not control that. None of the

1           officers control the indictment process and he told you  
2           that. He has no control over that. Nor does he have any  
3           control over what cases are called in this courtroom. So  
4           any argument that this is based on retaliation or to get  
5           back for a 2018 lawsuit from a 2016 incident I submit to  
6           you is not valid. It's not a logical reasonable argument  
7           because he did not, Lieutenant Stone did not have control  
8           to make that happen.

9           Then there's the implication of a possible cover up.  
10          Didn't fill out the excessive Use of Force Form. No,  
11          sir. I didn't know how. I didn't do it. He looked at  
12          you and told you that. I didn't know how. I didn't do  
13          it. They asked him did anybody call you in and talk to  
14          you about it? No. Pull the video? No. He didn't fill  
15          it out. I suggest to you that it obviously wasn't a  
16          problem because it wasn't addressed in 2016, but he told  
17          you that in 2016 to 2017 when the new Sheriff came in,  
18          the rules changed and now he knows how to fill them out.  
19          He knows that it's required and that is what he does.

20          Is it reasonable that when a Sheriff, one Sheriff  
21          goes out and another Sheriff comes in, that they're gonna  
22          change the rules and policies of their organization? Is  
23          that reasonable? I submit to you it is. I submit to you  
24          that it's reasonable in any employment or any situation  
25          that when you have a regime change of leadership, the

1 rules are gonna change some. That is human. That is a  
2 daily thing we live with and it's not this conspiracy to  
3 hide something. If anything, he went from not knowing  
4 how to fill it out and not knowing that, oh, I need to do  
5 this to being required to do it and being more  
6 transparent. He thought he was being transparent. He  
7 put it in his incident report. He testified, and you'll  
8 get to take the excessive Use of Force Form in the jury  
9 room, it's very short, not much on there by his own  
10 admission, but you will see a case number. That case  
11 number he told you is linked to the incident report. The  
12 incident report is the basis for the questions and  
13 everything today. That was his narrative that the  
14 defense kept talking about. Where is your narrative? He  
15 said it's in the incident report and they are linked  
16 together. And he told you they would be in the same case  
17 file together. So we don't have this form floating out  
18 there by itself where nobody has any context to it.  
19 They're in the file together.

20 Then they talk about the straight bar arm takedown.  
21 He admitted to you that he started the process, but she  
22 tripped. Keep in mind that the defense's own witness,  
23 she had a bad leg at the time, and at first, yeah, she  
24 could have tripped, but, no, no, no, absolutely, that's  
25 the interesting word, absolutely sure he slammed her.

1 And I thought about that before we regrouped and came  
2 back in here. I thought about somebody one to two feet  
3 apart and you see the defendant, her size, you see his  
4 size, one to two feet apart, but yet if you take Mr.  
5 McDuffy's testimony that he got her, he picked her up and  
6 he was able to slam her, you need some room there because  
7 he also talked about the car being behind him or near  
8 him. You need some room. One to two feet apart.  
9 Reasonable?

10 Is it reasonable that he admits, yes, I started.  
11 She fell. Then when he tried to help her up, both sides  
12 agree to this, when he tried to help her up, don't touch  
13 me. What did he do? He backed up and asked the other  
14 officer to help her up. That to me does not sound like  
15 this cold, callous person that just slammed somebody and  
16 wants to hurt somebody.

17 Now the video. We started off, the State started  
18 off telling you the video is gone. It's not lost because  
19 lost means that it's misplaced. We don't know where it  
20 is. We know where it is. It doesn't exist anymore. So  
21 it's not lost. It wasn't destroyed in the sense that a  
22 person actually destroyed it. You heard the testimony.  
23 In 2016 they had a retention policy and that varied by  
24 the type of case that it was, but obviously, you know, a  
25 traffic incident, that's gonna be a lot different from a

1 burglary to a murder, it goes up the spectrum, but the  
2 retention policy was different in 2016. Regime change in  
3 2017. Retention policy changed as well.

4 When Lieutenant Stone was promoted, he went to go  
5 find the video and found that he could not find it. It  
6 does not exist anymore. I asked if Sergeant Jackson  
7 destroyed the video. No. Even today under how they're  
8 operating which has changed since then, even today  
9 Lieutenant Stone can watch the video, but he can't delete  
10 it. He can't make any changes. And you heard Sergeant  
11 Jackson say that if they want a copy, he has to go to  
12 Lieutenant Stone who has to go to his major and the  
13 evidence custodian. So there are steps in place to try  
14 to save the evidence. Unfortunately, in 2016 to now the  
15 retention period expired and we've lost that video.

16 So being here today, what are we here for? We're  
17 here because November 19th, 2016, Sergeant Jackson and  
18 First Sergeant Hickman went out to Brown Road because  
19 they heard that there was a possible burglary, somebody  
20 taking items out of a home of a deceased person and they  
21 were in a white van. That's why they were on Brown Road.  
22 Didn't know about Ms. Conyers or wasn't thinking anything  
23 about sitting in this courtroom today. In their mind he  
24 told you why they were trying to locate the white van and  
25 to get the information. He told you that he turned that

1 information over to investigations so if anything ever  
2 came of it, you had the documentation of who had white  
3 vans in that area.

4 He went to one house. A male came to the door. He  
5 was able to clear him he said like within a minute.  
6 Thank you. Have a nice day. He said the demeanor of the  
7 person was fine. Saw another white van sitting in Ms.  
8 Conyers' yard. He wasn't thinking about Ms. Conyers. He  
9 wasn't thinking about anything. He didn't know about  
10 where this would lead. He wanted to know who was driving  
11 the white van so he pulls up, gets behind her, he  
12 approaches Ms. McFaddin asking for her ID. He said he  
13 was gonna call it into dispatch and make a note and that  
14 was gonna be it. And in that little bit of time that he  
15 said it would be about a minute or so, in that little bit  
16 of time Ms. Conyers came out of the house.

17 And I find it interesting that Mr. McDuffy testified  
18 that they didn't recognize the vehicle. Now, is it  
19 reasonable that a white van pulls in a person's yard in  
20 the afternoon, is it reasonable to assume that most  
21 people would be appreciative of law enforcement coming in  
22 the yard to check out what's going on? That's what they  
23 were doing, is following a tip trying to make sure that  
24 this van is not the one involved and move on down the  
25 road. But no, it wasn't just, okay, law enforcement is

1 coming to make sure that I'm safe in my house because I  
2 have this unknown car in my yard. It was the police  
3 don't come in my yard. Get out of my yard. I hate the  
4 police. That was the reaction.

5 He asked her over and over again. Mr. McDuffy, her  
6 boyfriend, her partner at the time, asked her over and  
7 over to calm down. He admitted, Mr. McDuffy admitted  
8 that she was very much upset and yelling and loud. One  
9 to two minutes, all he wanted was the information from  
10 the driver of the van and he was on his way. One to two  
11 minutes. Again, a vehicle you don't recognize, a white  
12 van, it's not like a little sedan, but a van that could  
13 possibly be involved in burglary is loading items in the  
14 yard which they didn't know that about the burglary, they  
15 just did not recognize the van, in your yard and you by  
16 the defense's own testimony, their own witness, the  
17 immediate reaction, the police better get out of my yard.  
18 Come outside. Come down. He testified that not only if  
19 he's here and the driver is there, and I'm sure there was  
20 more space, not only does she come outside yelling,  
21 saying she hated the police, using profanity, she came  
22 and wedged and got between them one to two feet from  
23 them.

24 So please don't lose sight of why we're here today.  
25 We're here today because of her conduct in 2016 when all

1 the officer was trying to do by his own testimony was to  
2 make sure that white van had nothing to do with a  
3 burglary, in essence keeping her safe. Thank you.

4 MR. SHAFFER: As I was thinking about what I was  
5 gonna say today, a quote came back to me. It's a saying  
6 I haven't heard in a long time. Back when I was a kid, I  
7 heard it a lot maybe just because my dad and the way he  
8 was that I heard this, but you used to hear it a lot,  
9 that I may not agree with what you have to say, but I'll  
10 defend your right to say it. And as a society we don't  
11 hear that very much anymore. What you hear is one person  
12 saying to another person that they don't have the right  
13 to say something. And we hear one person, you know, I  
14 think we've lost the idea of free speech because I don't  
15 know if it's the cable networks or what, but whatever it  
16 is, the idea's been lost and what it has resorted to is  
17 if you agree with me, you can say whatever you want to,  
18 but if you don't agree with me, you can't say it, okay?

19 And I know that we're not gonna solve the world's  
20 problems here today, but I will say that this is a really  
21 important case. It's a really important case to me  
22 because I truly believe that we have a duty to ensure  
23 that other people get to say whatever they want, okay?

24 Ms. Conyers, you heard that she's intellectually  
25 disabled. We're talking about a speech impediment and it

1 was really just because of, and I'll honestly say that  
2 I'm surprised that the officer would ever testify that he  
3 didn't hear a speech impediment, but you heard that she  
4 was intellectually disabled. The officer wouldn't  
5 testify to that. Sometimes witnesses get in a syndrome  
6 and it's the if you agree with my side, I'm gonna help  
7 you out. If you don't, I'm just gonna disagree with  
8 everything. That's what happens with witnesses  
9 sometimes.

10 But anyway, so he didn't want to agree with me that  
11 she was intellectually disabled, but she is, okay? And  
12 maybe what's reasonable to her is not what's reasonable  
13 to me. Maybe what's reasonable to her is not what's  
14 reasonable to anyone else in this courtroom, okay? But  
15 she's in her yard. Yeah, she's running her mouth, but  
16 she's in her yard at 4:00 in the afternoon doing it,  
17 okay? And I'm bringing all this up because you're gonna  
18 hear the Judge talk a lot about the fact that resisting  
19 arrest, the charge that we're here for today, they have  
20 to prove that it's a lawful arrest. They have to prove  
21 that beyond a reasonable doubt that there was actually a  
22 lawful arrest, that that underlying arrest was actually  
23 lawful, and they can't do that here because at 4:00 in  
24 the afternoon whenever she's talking and yelling at the  
25 cops, nobody got disturbed.

1           Yeah. True. You don't have to - they don't have to  
2       prove disturbance, but did they even try, okay? No.  
3       They didn't even try because they didn't call the lady in  
4       the van. I'm assuming they had her ID because they  
5       stopped and talked to her, they didn't call the lady in  
6       the van, they didn't call anyone else, they didn't even  
7       question. I asked Officer Jackson if he questioned  
8       anybody about being disturbed and he was like, no. I  
9       didn't ask anybody any questions about that. Why?  
10      Because breach of peace was an afterthought.

11           Remember what I asked him about his report?  
12      Remember whenever he was up on the stand, I go, did you  
13      put that you were arresting her for breach of peace or  
14      did you put something else? He goes, no, I put something  
15      else, but that was a mistake. He put something else in  
16      his report for why he was arresting her, but that was a  
17      mistake. Why is the breach of peace an afterthought in  
18      this case? She was arrested because of this. The  
19      officer put his hands on her. I'm not saying he's a mean  
20      and nasty person. I'm not here to prove that here today.  
21      I'm not trying to prove anything here today. The State  
22      has to prove something. I'm not saying that he's a nasty  
23      person, but good people, even good people make mistakes.

24           And what do you do whenever you make a mistake? You  
25      start rationalizing it. You start thinking, well, maybe

1 I wasn't that wrong in that. He throws her on the ground  
2 and she says don't touch me whenever she's laying on the  
3 ground. Do you not think it was running through his mind  
4 at that moment whenever she's like don't touch me, oh,  
5 no, I probably shouldn't have done that? Do you not  
6 think that's sort of running through his mind that very  
7 second? So what does he do? He later on charges her  
8 with breach of peace. Later on writes her a ticket for  
9 that. He doesn't write it in his report. Maybe that was  
10 a little slip up.

11 The department requires him to fill out one of these  
12 (indicating.) It gets reviewed by his officer or I guess  
13 it's his superior ranking officer. They require him to  
14 fill out this. And, yeah, there's a space with a case  
15 number, but this is what actually goes in and gets  
16 reviewed. It gets reviewed to make sure as we heard from  
17 Lieutenant Stone is to make sure that your person is not  
18 doing something wrong, using force which is justified.  
19 You heard from Lieutenant Stone it's supposed to be a  
20 detailed as possible report about why you used that  
21 force.

22 Use of Force Report Additional Narrative. Okay. Do  
23 you really believe him whenever he testified that he  
24 didn't know how to write this, fill this out? Do you  
25 really believe that he's honest whenever he said that?

1           It says Use of Force Additional Narrative and it's blank.  
2           Do you think he actually didn't know how to write that  
3           report? He had been a law enforcement officer at that  
4           point for four or five years, I guess. He didn't know  
5           how to fill this out? He just left it blank. And what  
6           happens whenever he left it blank? Maybe his superior  
7           officer didn't look into it. Maybe he didn't follow up.  
8           What happens whenever the officer doesn't follow up?  
9           Evidence doesn't get preserved. They get to delete it.

10           You're gonna hear from the Judge whenever the Judge  
11           instructs you on the law that whenever someone has  
12           evidence and they fail to keep it, that you can actually  
13           infer that it would have been bad for them and that's the  
14           reason they failed to keep it. This got lost. I'm not  
15           saying that there was not a retention period where the  
16           video would have gotten like deleted automatically. I'm  
17           sure they delete a lot of videos, but you have a lady  
18           that was hurt. You have a use of force claim filed. You  
19           didn't bother actually -- or a Use of Force Report filed.  
20           You didn't bother actually going and go get the video and  
21           saving it? Well, I didn't have the power to do that.  
22           Well, you could have made it happen. No, I couldn't make  
23           it happen.

24           Ladies and gentlemen, common sense tells you that if  
25           somebody said, hey, I need that preserved for me, it

1           would have been preserved. If he would have said there's  
2           a problem, common sense tells you that somebody would  
3           have said, okay, well, maybe we should preserve the video  
4           if it's helpful to us. But they didn't preserve it. And  
5           do you know why they didn't preserve it? Because no one  
6           asked them to, okay? This is what happens whenever stuff  
7           gets swept under the rug. I'm not saying that he's out  
8           here fabricating evidence or planting evidence on people  
9           and he's some evil cop that you hear about on TV. I'm  
10          saying that what happens in real life is evidence doesn't  
11          get preserved whenever people don't bother to preserve it  
12          because of the fact that it's not good for them. If it  
13          would have been good for him, there was a problem when  
14          she was laying on the ground and he couldn't pick her up.  
15          He knew there was a problem right then and there. So  
16          what does he do? He doesn't preserve the evidence. And  
17          I will tell you if you look at some of these check marks,  
18          there's a check mark that says she wasn't even injured,  
19          okay? There's a check mark on here saying she was not  
20          injured. Ladies and gentlemen, she was injured.

21                MS. PIERCE: Objection, Your Honor. There is  
22                absolutely nothing in the testimony to support that.

23                MR. SHAFFER: That is not true. My witness  
24                testified that she was hurt by this.

25                THE COURT: Okay. You've got to limit that

1 testimony to what he testified to. You can't go beyond  
2 that.

3 MR. SHAFFER: Okay. Mr. McDuffy said he was hurt.  
4 This report says she -- Or, sorry. Mr. McDuffy said that  
5 she was hurt by this incident and she was injured. This  
6 report says something totally different. And this isn't  
7 the civil case and I'm not here to prove how she was hurt  
8 or anything. I'm not here to prove that because that's  
9 for a different jury on a different day. What I'm here  
10 to do is to say that these officers basically just let  
11 the evidence disappear. You don't think that they know  
12 that there's a retention policy? If they had wanted that  
13 video, do you not think that they could have gotten it?  
14 No. But they didn't get it because of the fact that it  
15 wasn't favorable to them and you're gonna hear the Judge  
16 say that you can infer that.

17 Remember, they have the burden of proof here. I  
18 don't have to present any evidence. That's one of the  
19 only benefits that the government gives to criminal  
20 defense attorneys. You actually don't even have to  
21 present any evidence. You can just argue that what they  
22 say is wrong. But I did present some evidence in this  
23 case. I presented that and I presented a witness. And,  
24 yeah, the State's obviously gonna say he has motivation  
25 to lie. Well, if he was lying, you know, he could have

1       lied a heck of a lot better than he did. His story is  
2       that she was violent and she was out there laughing. He  
3       could have lied about that. He didn't. Because of the  
4       fact that he's telling the truth. He got up there and he  
5       said, yeah, she was loud. They told her to calm down.  
6       She kept telling them to leave. But he also got up there  
7       and said that the officer didn't do some, you know, some  
8       gentle move and she didn't fall on her own, that he  
9       picked her up and slammed her.

10       Now, conspiracy, they did this thing where she, I  
11       guess, used his words against him by rephrasing the tone  
12       because I don't think that that happened that way, and it  
13       can be taken a bunch of different ways. I certainly  
14       think that what he said was I don't think that it  
15       happened that way, like you're crazy that you think that.  
16       And then he clarified it and said, no. That didn't  
17       happen that way. And he clarified it without me even  
18       asking him. I mean, he just went up there and clarified  
19       it.

20       Now, one thing that we talked about a lot and I'll  
21       change gears, when we talked about this, and you're gonna  
22       get this certificate of transmittal. This exhibit is  
23       gonna be placed in evidence and you can do with it what  
24       you want. And it's a little hard to read, but it says  
25       arrest date, 11/19/2016, okay? Transmittal date, 3/12 of

1           2020. Also there's this nice little caption up here that  
2           y'all might want to read that says basically that that  
3           should have been transmitted to the Clerk's Office within  
4           15 days. What did they do instead? They tried to push  
5           it through the magistrate. You've heard we almost had a  
6           trial in magistrate court, but it got canceled due to the  
7           weather and then a lawsuit got filed and now we're here.

8           I point that out to say this, okay, and I know that  
9           you can't say that you know the inner workings of what  
10          happens and decision making, the decisions that are made  
11          by the Sheriff. I point that out because of that fact  
12          that this is the thing. Officer Jackson wanted this to  
13          go unnoticed, magistrate court, under the radar until  
14          there was about to be a trial and until there was a  
15          lawsuit. He said it was the first time -- The first time  
16          he testified and what he initially said was, yeah, as  
17          soon as I got it there, I found out that she wanted a  
18          trial and it immediately went over to General Sessions  
19          Court. He said that and then he tried to back out of it  
20          because he knew that I could prove that is was a lie. He  
21          got up here on the stand and lied to you about that the  
22          first time he said it.

23          Then it was, oh, I don't know. I don't know. I  
24          don't recall what days we did what. But at first he said  
25          to you, yeah, as soon as it went to magistrate court the

1 first time that we appeared it went to General Sessions.  
2 He lied. That's just factually not correct. It didn't  
3 go to General Sessions until three and a half years after  
4 the date of arrest.

5 You know, a lot was said about the motivation to lie  
6 and things like that. Who has the motivation to lie.  
7 And I think that Ms. Pierce is trying to say that Mr.  
8 McDuffy must have had some motivation to lie. Well,  
9 whenever you make a mistake, you also have a motivation  
10 to lie and he lied to you about that day. He got up here  
11 and lied to you about that day. He had the motivation to  
12 lie. He's saying, well, I've never had a complaint filed  
13 against me. And I said no one's ever said you've been  
14 too rough? He goes, well, everyone. That happens all  
15 the time, but that's not a complaint. They're trying to  
16 portray him as some officer that's never done anything  
17 wrong and is perfectly, you know, perfectly great. But  
18 it happens all the time that people think that he's too  
19 rough with them?

20 Now, I ask that you listen to the jury instructions  
21 in this case. This case is at least a step or two steps  
22 removed from what most cases are because most cases are  
23 whether or not you did the offense. This case is more  
24 like, well, did you do the underlying offense, and if so,  
25 do you have the right to resist because they were using

1 excessive force or did they just not have the right to do  
2 that. This is really about the breach of peace and about  
3 whether or not you think that at 4:00 in the afternoon  
4 she can sit there and talk to her - or yell at the cops  
5 in her driveway.

6 Remember, they did not present a single witness to  
7 say that they were disturbed by this. They did not talk  
8 to a single witness to say that they were disturbed by  
9 this. They needed an excuse to arrest her. And you know  
10 what, you're gonna hear the jury instruction on breach of  
11 peace and, heck, it's pretty broad and you can say a lot  
12 of stuff that's breach of peace. But what you're also  
13 gonna hear is this: That you have a right to - that you  
14 can't be found guilty of breach of peace just because of  
15 the fact that you are saying, that you are criticizing an  
16 officer. You have the Constitutional right to criticize  
17 an officer, okay? You can say all you want to and you  
18 can't be found guilty of breach of peace for that unless  
19 you use fighting words, okay?

20 And I think the Court will probably tell you what  
21 fighting words are. What they're not is cuss words.  
22 They're not. Cuss words are not fighting words.  
23 Fighting words are things that would make someone attack  
24 you, make an officer attack you, okay? Sitting there  
25 cussing and making a big stink about the officers being

1 in my yard even though you're cussing are not fighting  
2 words and you have a right to do that, okay?

3 I'm about to sit down and that's always hard because  
4 the State's gonna have a chance to get back up here and  
5 say some other stuff, okay? I imagine that there's gonna  
6 be a lot of I submit to you in there. I use I submit to  
7 you all the time. I submit to you is basically like,  
8 hey, I'm filling in the gaps for my evidence. Lawyers  
9 like to use that term. But that being said, I want to  
10 impress upon you that you have a duty. Each and every  
11 one of you have a duty individually and as a whole to  
12 follow the law and to come to a decision and hold the  
13 State to that high burden of beyond a reasonable doubt.  
14 Yeah, it's not beyond any doubt, but if it's a doubt that  
15 makes a reasonable person to hesitate to act, then that's  
16 a reasonable doubt. And if not each and every one of you  
17 are satisfied with the evidence presented by the State,  
18 if any of y'all have questions in your mind about it, it  
19 is your obligation to find the defendant not guilty.  
20 Thank you.

21 MS. PIERCE: In his opening and then in his closing  
22 the defense attorney told you that every single person,  
23 that people will convince themselves that they're right.  
24 They rationalize it. I submit to you that's not true. I  
25 submit to you that people will admit to their mistakes,

1           that not everybody in this world needs to sit and  
2           rationalize their behavior and convince themselves that  
3           this scenario takes the place of a lie and they believe  
4           the lie. I don't believe that about people. I think  
5           there are people in society that do that, but not  
6           everyone and I don't think that's what we have here  
7           today. We don't have somebody rationalizing their  
8           behavior and then convincing themselves they're in the  
9           right.

10                 Sergeant Jackson admitted that he made mistakes. He  
11           admitted on cross examination that, yes, his incident  
12           report did reference hindering an investigation, but he  
13           made a mistake and arrested for breach of peace. He  
14           testified that he told her she was under arrest for  
15           breach of peace. He owned his mistake. He looked right  
16           at you and owned that mistake. He didn't rationalize it.  
17           He didn't hide it and convince himself that the hindering  
18           happened. He told you he made a mistake by putting  
19           breach of peace. He also told you that he wrote his  
20           report that same day and if you notice on the Excessive  
21           Use of Force Form it's dated that same day.

22                 You also heard testimony that Ms. Conyers was on the  
23           ground. First Sergeant Hickman picked her up and he  
24           transported her. That's the testimony you heard from  
25           Sergeant Jackson as well as Mr. McDuffy. No evidence

1 other than the words of Mr. McDuffy saying, yes, she was  
2 injured, no evidence that EMS was called and she was  
3 immediately transported to the detention center. On that  
4 form while it is short and there's not a lot of detail,  
5 we admit that, it is on there EMS was not called. Take  
6 your time and look at that and think about that and think  
7 about the testimony.

8 Again, the implication is there that the video is  
9 gone because it's not good for the State. Ladies and  
10 gentlemen, they told you there was a retention policy.  
11 I'm gonna back to the word reasonable. Is it reasonable,  
12 think about this, of all the cases any law enforcement  
13 agency makes, especially here in Clarendon County because  
14 that's where we are, is it reasonable to not have a  
15 retention policy where things get deleted after a period  
16 of time? Is it reasonable to keep and preserve the  
17 evidence of every single case from the citation, the  
18 warrant, all the way up to the completion of a case?  
19 That's a mighty big cloud. That's a mighty big universe  
20 you would have to have. They had a retention policy. It  
21 got deleted. It was not lost. It was not hidden. It  
22 was not intentionally destroyed.

23 The incident occurred in 2016. The case was  
24 pending. He told you that. I think that if it was that  
25 big of a deal in terms of a big deal to him and to the

1       defendant, yes, but not in the broad sense of the word.  
2       He told you that. So he had no reason to go back and  
3       pull that one particular case. Because again, is it  
4       reasonable to pull it from every single case?

5               Sergeant Jackson told you that, yeah, people will  
6       claim that it hurts when you handcuff them and stuff. Is  
7       that reasonable? Could you reasonably see that happen?  
8       Somebody is under arrest and they're being handcuffed  
9       that they might claim that it's too tight. That hurts.  
10      But he also testified to you that he has no incidents in  
11      his record of employment of a complaint of excessive use  
12      of force.

13             So we have, he told her she was under arrest for  
14      breach of peace. Breach of peace by his own admission is  
15      broad. Anything can be breach of peace is what he said.  
16      I submit that her screaming and yelling is breach of  
17      peace and it doesn't matter if we bring in witnesses to  
18      say that their peace was breached. We don't have to do  
19      that. Screaming and yelling is enough. Again, don't get  
20      hung up on, well, it was the words. He told you he  
21      didn't care. He didn't care that she hated the police.  
22      He didn't care about the profanity. Don't get hung up on  
23      that. Don't get hung up on the First Amendment and  
24      fighting words. Profanity is not fighting words. We're  
25      not saying that they are. We're saying that you're gonna

1 have to fight me would be fighting words.

2 So finally, beyond a reasonable doubt, because that  
3 is our burden and I submit to you that we've met that.  
4 When you look at the fact that the police came into her  
5 yard investigating a possible burglary, no connection to  
6 her at all, they were tracking down that van which is  
7 what he should be doing as a law enforcement officer, she  
8 finds out that the police are in her yard and she  
9 immediately says, police are not supposed to be in my  
10 yard, and she comes outside. She is yelling. By both  
11 testimonies you heard that. They told her to calm down,  
12 calm down, calm down, calm down. Finally, ma'am, you're  
13 under arrest for breach of peace, and then that's when  
14 she said you're gonna have to fight me. So she started  
15 resisting by pulling away and trying to make it hard so  
16 they couldn't arrest you. I submit that that is  
17 resisting arrest.

18 That is our case, ladies and gentlemen. I ask you  
19 to go back into the jury room and ask yourself like I  
20 said over and over again is it reasonable? Is it  
21 believable? And I think that after you ask yourself that  
22 and you look at all the evidence and you examine the  
23 evidence that's there and keep in mind he also testified  
24 that he has no control over the transmittal process at  
25 all, I ask that you come back with a verdict of guilty on

1           resisting arrest. Thank you.

2           THE COURT: Okay. Ladies and gentlemen, we're gonna  
3           take a quick break. While you're back in the jury room,  
4           I need you to do something for me. I need you to select  
5           a foreperson. You've been sitting here all day so one of  
6           the original 12 needs to be the foreperson of the jury.  
7           They won't have any greater vote than anyone else.  
8           They'll simply fill out the verdict form. So if y'all  
9           will do that. When you decide who you want to be the  
10          foreperson, just knock on the door and let the bailiff  
11          know and I'll bring you back out and I will charge you on  
12          the law. It will take about 20 minutes and then I'll  
13          give you this case to decide, okay?

14                 (Whereupon, the jury entered the jury room at 3:10  
15          p.m.)

16          THE COURT: Okay. We'll be in a short recess.

17                 (Short break.)

18          BAILIFF: All rise.

19          THE COURT: Thank you. Please be seated. Joseph  
20          Williams is our foreperson. Bring me my jury.

21                 (Whereupon, the jury entered the courtroom at 3:25  
22          p.m.)

23          THE COURT: Okay. You're back in the same seats.  
24          All right. Now that you've heard all of the evidence in  
25          this case as well as the arguments from both the State

1           and the defendant, I'm going to explain to you the law  
2           that applies in this case. And I've told you earlier  
3           under our Constitution and code of laws only the jury can  
4           make a finding of fact in this case. I am not permitted  
5           to indicate to you how I feel about the facts so if I've  
6           said anything or done anything throughout this trial that  
7           you think I have an opinion about a fact, you disregard  
8           that because you must independently weigh the evidence  
9           presented in this trial and render a verdict based solely  
10          on that evidence.

11                 Now, the same Constitution and the same code of laws  
12          that makes you the exclusive Judge of the facts makes me  
13          the exclusive Judge of the law so if you have an idea of  
14          what you think the law is and what the law ought to be  
15          and it differs from what I'm now telling you the law is,  
16          you must disregard your idea and take the law exactly as  
17          I give it to you.

18                 The fact that this defendant was arrested, charged,  
19          and indicted in this case is not evidence in this case  
20          and cannot be considered by you as evidence of guilt in  
21          this case, nor does it create any presumption or  
22          inference of guilt. The indictment is simply a formal  
23          written instrument which contains the charge or charges  
24          made against this defendant. It serves as a formal  
25          document by which the case is processed through the court

1           system. To this indictment this defendant has entered a  
2           plea of not guilty. That plea casts a burden upon the  
3           State to prove each and every element of this indictment  
4           beyond a reasonable doubt.

5           A person charged with committing a criminal offense  
6           in South Carolina is never required to prove himself or  
7           herself innocent and I instruct you and emphasize  
8           with you the fact that the defendant did not testify in  
9           this case is not a factor to be considered by you in any  
10          way in your deliberations and in your consideration on  
11          the question of guilt or innocence. It must not be  
12          considered by you in any manner whatsoever.

13          The defendant has a Constitutional right to remain  
14          silent and exercising that right cannot be considered in  
15          any way. The fact that the defendant did not testify  
16          cannot even be discussed in the jury room. The State has  
17          the burden of proof and the defendant is not required to  
18          prove himself or herself innocent. That burden of proof  
19          remains with the State throughout this trial.

20          It is an important rule of law in this country that  
21          a defendant in a criminal case will always be presumed  
22          innocent of a crime for which she is charged and indicted  
23          unless and until that guilt has been proven by evidence  
24          that satisfies you of that guilt beyond a reasonable  
25          doubt.

1           The presumption of innocence is not a mere legal  
2           theory. It is not just a legal phrase. It is a  
3           substantial Constitutional right to which every defendant  
4           is entitled. This presumption of innocence accompanies  
5           the defendant from the time she's charged and throughout  
6           the trial until you reach a verdict of guilt based upon  
7           evidence that satisfies you of that guilt beyond a  
8           reasonable doubt.

9           A reasonable doubt is a doubt which makes an honest,  
10          sincere, conscientious juror in search of the truth to  
11          hesitate to act. Proof beyond a reasonable doubt must  
12          therefore be proof of such a convincing character that a  
13          reasonable person would not hesitate to rely and act upon  
14          it in the most important of his or her own affairs.  
15          Proof beyond a reasonable doubt can also be described as  
16          proof that leaves you firmly convinced of the defendant's  
17          guilt.

18          Now, there are very few things in this word that we  
19          know with absolute certainty. In a criminal case the law  
20          does not require proof that overcomes every possible  
21          doubt. If based on your consideration of the evidence  
22          you are firmly convinced that the defendant is guilty of  
23          the crime charged, you must find her guilty. If on the  
24          other hand you think there's a real possibility she's not  
25          guilty, you must give her the benefit of that doubt and

1 find her not guilty.

2 In determining what facts there are in a case, you  
3 must necessarily pass upon the credibility which simply  
4 means the believability of the witness and evaluate the  
5 weight to be given to their testimony. You alone must  
6 ascribe the force and effect of the truth of that  
7 testimony. In making these decisions there are many  
8 things that you may and should take into consideration  
9 such as the appearance or manner of the witness on the  
10 stand, sometimes referred to as the demeanor of the  
11 witness. Was the witness forthright or hesitant. Was  
12 the witness' testimony consistent or did it contain  
13 discrepancies. What was the ability of the witness to  
14 know the facts about which he or she testified. Did the  
15 witness have cause or reason to be bias or prejudice in  
16 favor of the testimony that he or she gave. Was the  
17 testimony of the witness corroborated or made stronger by  
18 other evidence and testimony or was it made weaker or  
19 impeached by such other evidence or testimony.

20 As jurors you have the right to believe a small  
21 portion of a witness' testimony and disregard the larger,  
22 or vice versa. You may believe all of the witness'  
23 testimony or none of it. You may believe the testimony  
24 of a single witness against that of many or the other way  
25 around.

1           Now, criminal intent is a necessary element of each  
2           crime and it must be proven by the State beyond a  
3           reasonable doubt. Criminal intent is always a matter  
4           that must be determined by the jury from the  
5           circumstances surrounding the situation. There is no way  
6           to prove intent to a mathematical certainty. There is no  
7           way medical science can dissect a person's brain and  
8           determine what he or she had in mind. So the law states  
9           criminal intent may be inferred from the circumstances  
10          shown to have existed both before and after the fact.  
11          This is how you, the jury, make a determination as to  
12          whether or not the element that requires intent was  
13          present.

14               Criminal intent is a state of mind that operates  
15               jointly with an act or omission in the commission of a  
16               crime. Criminal intent is a mental state of conscious  
17               wrongdoing so it is up to you, the jury, to determine  
18               what the defendant intended based on the circumstances  
19               shown to have existed and I tell you the State must prove  
20               criminal intent beyond a reasonable doubt just as the  
21               State must prove every element beyond a reasonable doubt.

22               There are two types of evidence which are generally  
23               presented during a trial, direct evidence and  
24               circumstantial evidence. Direct evidence directly proves  
25               the existence of a fact and does not require deduction.

1       Circumstantial evidence is proof of a chain of facts and  
2       circumstances indicating the existence of a fact. Crimes  
3       may be proven by circumstantial evidence and the law  
4       makes no distinction between the weight or value to be  
5       given either to direct or circumstantial evidence.  
6       However, to the extent that the State relies on  
7       circumstantial evidence, all those circumstances must be  
8       consistent with each other and when taken together point  
9       conclusively to the guilt of the accused beyond a  
10      reasonable doubt. If these circumstances merely portray  
11      the defendant's behavior as suspicious, the proof has  
12      failed. The State must prove, has the burden of proving  
13      the defendant guilty beyond a reasonable doubt. This  
14      burden rests with the State regardless of whether the  
15      State relies on direct evidence, circumstantial evidence,  
16      or a combination of the two.

17             In this case there are allegations of spoliation or  
18      destruction of evidence. The State not only has the  
19      burden of proof of guilt beyond a reasonable doubt, the  
20      State has the burden of producing evidence which will  
21      establish the innocence of a defendant. When the  
22      evidence is lost or destroyed by a party, you may infer  
23      that the evidence which was lost or destroyed by the  
24      party would have been adverse to the party. If you find  
25      first that the evidence was spoiled or destroyed and if

1       you further find that the evidence would have helped to  
2       establish the innocence of the defendant, you may  
3       consider those facts in determining whether or not the  
4       State has met that burden of proof.

5               Now, the defendant is charged with resisting arrest.  
6       The State must prove beyond a reasonable doubt that the  
7       defendant resisted a lawful arrest being made by a person  
8       the defendant knew or reasonably should have known was a  
9       law enforcement officer. Resist means to oppose, strive  
10      against, or obstruct. Obstruct means to impede, hinder,  
11      or interfere with. Even peaceful and non violent  
12      indirect obstruction of an arrest or the service or  
13      execution of process is considered resisting arrest. If  
14      the means used are sufficient to prevent the officer from  
15      making the arrest, the defendant is guilty of resisting  
16      arrest.

17             When a person is the subject of a lawful arrest,  
18      they have the duty to peacefully allow the arrest.  
19      However, a person has a right to resist an unlawful  
20      arrest or an illegal arrest and may use as much force as  
21      reasonably necessary to prevent the unlawful arrest. In  
22      order to determine whether the defendant was entitled to  
23      resist the arrest, you must determine whether the arrest  
24      in this case was lawful.

25             A law enforcement officer may arrest a person

1 without a warrant when the crime is committed in the  
2 officer's presence. A law enforcement officer may also  
3 arrest for a misdemeanor without a warrant when the facts  
4 or circumstances observed by the officer provide probable  
5 cause to believe that a misdemeanor has been freshly  
6 committed.

7 Probable cause is a good faith basis to believe that  
8 the defendant committed a crime. This means that at the  
9 moment the arrest was made, the officer had reasonable  
10 trustworthy information which would cause a reasonable  
11 person to believe that the defendant committed the crime.

12 If you determine that the defendant had the right to  
13 resist the arrest in this case, you must then decide  
14 whether the force used by the defendant was reasonable  
15 and necessary to prevent an unlawful arrest. Detention  
16 or interference with the defendant's person only that  
17 force which is reasonably necessary under the  
18 circumstances to resist an unlawful arrest may be used.

19 Now, the defendant in this case is charged with  
20 breach of peace. Breach of peace is a violation of the  
21 public order or disturbance of the public peace or any  
22 act or conduct enticing violence. This includes any  
23 violation of any law enacted to preserve peace and good  
24 order.

25 Peace means the peace which is enjoyed by the

1 citizens of a community. Whether certain conduct  
2 constitutes a breach of peace depends on the time, the  
3 place and the nearness of other persons. Although a  
4 breach of peace includes acts which are likely to produce  
5 violence, the State is not required to prove that actual  
6 violence took place or that the peace was actually broken  
7 before. If it was done and was unjustifiable and  
8 unlawful intending with sufficient directness to break  
9 the peace, no more is required.

10 Another way to state it, a person cannot be  
11 convicted of breach of peace from voicing their objection  
12 to a Sheriff's officer where the record indicates no use  
13 of fighting words. Freedom of an individual to verbally  
14 oppose or to challenge police action without thereby  
15 risking arrest is one of the principle characteristics of  
16 which we distinguish a free nation from a police state.  
17 Fighting words must be inherently likely to induce the  
18 officer to react violently. The fact that the words are  
19 vulgar or offensive is not alone sufficient to classify  
20 them as fighting words thereby removing them from the  
21 protection and the freedoms of the First Amendment.

22 A person arrested by virtue of the process or taken  
23 into custody by an officer in this state has a right to  
24 know from the officer who arrested or claimed to detain  
25 them the true grounds on which the arrest was made.

1           South Carolina does recognize a person's right to  
2           use reasonable force to defend against the use of  
3           excessive force by a police officer incident to a lawful  
4           arrest. Even so, if you find that the arrest was lawful,  
5           you may consider the force used by the officer in  
6           determining whether the defendant was resisting arrest or  
7           defending or, in fact, defending herself against  
8           excessive force.

9           Now, ladies and gentlemen, you are not an opponent  
10          or an advocate for the State of South Carolina for this  
11          defendant. You do not serve as jurors to award your  
12          friends or punish your enemies. That system of justice  
13          simply would not be tolerated. You have been selected by  
14          both the State and this defendant to be fair and  
15          impartial jurors. It is your duty then by your joint  
16          deliberation to determine the facts in this case. You  
17          give the defendant the benefit of every reasonable doubt  
18          on each and every issue to the facts as you determine  
19          them to be true and then to apply the law which I have  
20          given you and arrive at a verdict in this case. When you  
21          have accomplished this, you would have accomplished your  
22          responsibility and satisfied your duty to this Court.

23          Now, Mr. Foreman, I've had my law clerk draw up a  
24          verdict form in this case, and it's simply the caption of  
25          the case. It says The State of South Carolina versus

1       Lucretia Conyers, and it's a relatively simple form. As  
2       to the charge of resisting arrest we, the jury,  
3       unanimously find the defendant guilty or not guilty. And  
4       the order that he's put them in you are to draw no  
5       conclusions from whatsoever. We had to put them in some  
6       order. This verdict must be unanimous which means it's  
7       the verdict of all 12 of you. All of you must agree on  
8       this verdict before you check the appropriate box and  
9       sign your name to it and date it.

10       When you have reached a verdict in this case, you  
11       will knock on the door and let the bailiff know that you  
12       have reached a verdict and we will bring you out and  
13       receive the verdict. Understand it's got to be all 12 of  
14       you. All 12 of you got to agree on this verdict before  
15       we receive it.

16       If you have a question of law, you can write it down  
17       on a piece of paper, hand it to the bailiff, and I will  
18       bring you out and answer it. If you have a question of  
19       fact, I can't answer that. I can only answer a question  
20       of law and I can re-charge you on the law or answer a  
21       question you have on the law. I can't re-open this case  
22       and put in any more evidence so I can't answer any  
23       questions about that. I can answer a question of law if  
24       you have one. If you do have one, write it down. I will  
25       discuss that question with the attorneys and I will bring

1           you back out and answer it if I can, or I will bring you  
2           back out and tell you that I can't answer it, okay?

3           So if you'll retire to the jury room.

4           Mr. Alternate, if you'll stay with me because it looks  
5           like everybody is gonna make it, so you don't need to go  
6           back there. The other 12 will go back there and when I  
7           send this verdict form -- I've got to talk to the lawyers  
8           and be sure I haven't left anything out. If I've left  
9           something out of the charge, I will bring you back out  
10          and charge you on whatever I left out. If I've covered  
11          everything, I will send you this verdict form along with  
12          the evidence. When you get this form, that will be your  
13          indication to begin your deliberation.

14          Now, if something happens while you're deliberating,  
15          one of you need to go to the restroom, you got to stop  
16          talking about the case until they come back because you  
17          can only talk about it when all 12 of you are present,  
18          okay? If you will go to the jury room, I'll either bring  
19          you back out in a second or I'll send this in so you can  
20          start your deliberation. Thank you.

21          (Whereupon, the jury entered the jury room at 3:45  
22          p.m.)

23          THE COURT: Okay. You can sit down. Any additions  
24          or deletions from the State?

25          MS. PIERCE: No, Your Honor.

1 THE COURT: From the defense?

2 MR. SHAFFER: Nothing, Your Honor.

3 THE COURT: Okay, if y'all will get the evidence  
4 together and it's only two documents, right?

5 MR. SHAFFER: Yes, sir.

6 THE COURT: And the verdict form. Bailiff, if you  
7 will give the evidence and this form to the foreman and  
8 tell them to begin their deliberations and to knock on  
9 the door when they're finished.

10 (Whereupon, jury deliberations started at 3:50 p.m.)

11 THE COURT: All right. I'm sorry you had to sit  
12 here and didn't get to decide it, but I just only needed  
13 you in case somebody got sick. It's my understanding  
14 we're not gonna try any more cases this week so you're  
15 free to go for the week. Beulah's gonna mail you a big  
16 check. You might get a happy meal with it but that's  
17 about it. Good luck and thank you, sir. Okay. We'll be  
18 at ease unless you've got something to do.

19 (Side bar off the record.)

20 MR. SHAFFER: I'm not objecting to whoever is in  
21 there.

22 THE COURT: I understand your motion. I understand.  
23 We always sit them in that chair there.

24 MS. PIERCE: We're good.

25 THE COURT: We'll put it on the record and deal with

1 it.

2 (Short break.)

3 THE CLERK: All rise. Court will come to order.

4 THE COURT: Thank you. You can be seated. All  
5 right. I understand we've got a verdict?

6 BAILIFF: Yes, Your Honor.

7 THE COURT: All right. Bring me the jury.

8 (Whereupon, the jury entered the courtroom at 4:37  
9 p.m.)

10 THE CLERK: Mr. Foreman, have you reached a verdict?

11 FOREPERSON: Yes, ma'am.

12 THE CLERK: Unanimous?

13 FOREPERSON: Yes, ma'am.

14 THE CLERK: Okay.

15 THE COURT: You may publish the verdict.

16 THE CLERK: On indictment number 2020-GS-14-263, The  
17 State of South Carolina versus Lucretia Conyers, as to  
18 the charge of resisting arrest, we, the jury, unanimously  
19 find the defendant guilty. Signed Joseph K. Williams,  
20 foreperson, June 2nd, 2021.

21 THE COURT: Anything from the State?

22 MS. PIERCE: No, Your Honor.

23 THE COURT: Anything from the defense?

24 MR. SHAFFER: No, Your Honor.

25 THE COURT: Okay. Ladies and gentlemen, I want to

1           thank you for your service. This is the last case we're  
2           gonna try this week. You don't have to do this again for  
3           three years. I've been telling you you can't talk about  
4           this case, but now you can talk about it with anybody you  
5           want to. I don't know that you want to. Be sure to go  
6           tell your family what you've been doing today. But I  
7           appreciate your service. Ms. Beulah's gonna send you a  
8           huge check for your service this week. I thank you. And  
9           if we needed the rain, it rained here at least overnight.  
10          You won't get too wet going to your car. Have a great  
11          rest of your week. Thank you so much.

12                 (Whereupon, the jury was released from further jury  
13          duty at 4:40 p.m.)

14                 MR. SHAFFER: Your Honor, we would like to renew all  
15          our previous motions. I probably want to file a separate  
16          directed verdict for trial, but I would like to be heard  
17          on sentencing.

18                 THE COURT: I'm sorry. Say that again.

19                 MR. SHAFFER: I would like to get heard on  
20          sentencing, Your Honor.

21                 THE COURT: Okay. Y'all got a sentencing sheet?

22                 MS. PIERCE: Your Honor, Mr. Little is printing it  
23          right now. I felt like it would be bad karma if I did it  
24          ahead of time. Beg the Court's indulgence. He'll be  
25          right up.

1 THE COURT: Okay.

2 (Short break.)

3 THE COURT: Okay. Anything from the State about  
4 prior record? Anything else you want me to know before I  
5 pass sentence?

6 MS. PIERCE: Yes, Your Honor. She does have a prior  
7 record. She has a forgery from 1991. She has two  
8 forgeries from 2005 as well as three Federal charges,  
9 financial institution crime convictions from 2005,  
10 financial transaction card fraud from 2005, fraudulent  
11 check 2005, two more forgeries in 2007, unlawful use of a  
12 telephone in 2009. She does have a prior resisting  
13 arrest conviction where she received 90 days in 2009.  
14 Those are the extent of her convictions.

15 Your Honor, the State would ask for jail time. She  
16 served 90 days on the last resisting arrest. While it  
17 wasn't in evidence, Your Honor, the State takes a  
18 position that we ask for jail time because this is not a  
19 one off event with Ms. Conyers. This is actually an  
20 ongoing issue any time she encounters the police whether  
21 it be in her yard, out in public or at a safety check  
22 point.

23 THE COURT: Okay. Thank you. Yes, sir.

24 MR. SHAFFER: Your Honor, Ms. Conyers, I think that  
25 to say she's intellectually disabled is definitely true.

1 I think that pretty much anyone that's dealt with Ms.  
2 Conyers knows that. I think that that probably weighs to  
3 some degree on culpability in a resisting arrest  
4 conviction.

5 Your Honor, she is -- What happened here, they  
6 offered time served prior to, at magistrate they offered  
7 time served prior to going to this trial. We're asking  
8 that you also convict her of time served. She's gonna  
9 get punished to some degree because of the fact that the  
10 conviction does not bode well for her civil case so there  
11 is some inherent punishment coming along with having a  
12 conviction in this situation.

13 But, Your Honor, this is not the crime of the  
14 century. You know, I think that I have never gone up and  
15 asked for a straight time served after a guilty  
16 conviction here in General Sessions Court, in any General  
17 Sessions Court, but in this situation I think it's  
18 justified. I understand that generally people for lack  
19 of acceptance of responsibility, the trial facts, or  
20 whatever, whatever it's called, end up getting more time  
21 after a trial. I understand that's the way it works. I  
22 don't think that it's justified here, Your Honor.

23 I mean, realistically she's in her yard and the  
24 extent of what happened here is she was annoying the  
25 officer and even in the officer's - in - in the

1 officer's, in the best case scenario realistically no one  
2 was hurt except her. No one was hurt by her conduct  
3 except her. I don't think that punishing her is gonna --  
4 Certainly I don't think that there's any benefit to  
5 dissuade anybody. I mean, I don't think that there's any  
6 defendants here. Uhm, if you're trying to convince Ms.  
7 Conyers not to, uhm, have the same conduct as before, I  
8 think that that's gonna be an uphill battle. I really  
9 don't think that jail time is gonna really change that  
10 fact.

11 You know, if you asked the police about her, I don't  
12 think they're gonna be able to change it. You know,  
13 given her mental state I don't think it's gonna change  
14 anything. You can give her -- You can send her to prison  
15 for a year. I seriously doubt anything is gonna change.  
16 Uhm, she is being punished to some extent like I said.  
17 We would ask that you consider a time served sentence,  
18 consider a probationary sentence. I think time served is  
19 probably more appropriate given Ms. Conyers' limitations.

20 If the Court is inclined to, uhm, to give an active  
21 time sentence, we would ask for an appeal bond, a PR  
22 appeal bond. I mean, she's always shown up. I would  
23 have no problem with getting her to show up again. So  
24 we're asking the Court not give her active time, but  
25 if you are giving her active time, consider giving her a

1 PR bond for the appeal.

2 Obviously this is a case that had some merit. This  
3 wasn't a waste of time. I mean, Jeremiah put this as a  
4 very close call as to whether or not a directed verdict  
5 should be given. I'm speaking close call, the best case  
6 scenario for the State. This is not a waste of  
7 everyone's time. There was a legitimate reason for us  
8 moving forward today. So we would ask that the Court  
9 consider giving her a non active sentence, and if you are  
10 gonna give her active, consider a PR bond for appeal.

11 THE COURT: How much time did she serve?

12 MR. SHAFFER: Your Honor, I'd have to double check  
13 that.

14 MS. CONYERS: I ain't spend none on that resisting  
15 arrest. I think when I had that case, I mean, uhm, uhm,  
16 that old, the other old thing, Detwiler, I think Detwiler  
17 had that case, that old man, that I think Detwiler had  
18 that. Detwiler.

19 THE COURT: Detwiler hasn't been in a long time.

20 MS. CONYERS: Yeah. I mean, those two had, I think  
21 Detwiler had that case.

22 MR. SHAFFER: I think she only did one night, but  
23 I'm not a hundred percent sure of that, Your Honor.

24 MR. ROBINSON: Judge, if she went to jail, it wasn't  
25 my case I can assure you.

1           MS. CONYERS: It was Detwiler. Is that who it was?  
2           Who that was? Wasn't that when here under this arrest  
3           was? Whatever. Detwiler.

4           THE COURT: All right. The problem is she should  
5           have not come outside and jumped the police. They were  
6           simply doing their job. They weren't coming to her  
7           house. They were checking on a van in her front yard.  
8           She's got to be able to conform her behavior. Anyway, I  
9           have taken into consideration the facts in this case.  
10          The sentence of the Court is she's committed to the  
11          County Detention Center for 45 days and I'll give her  
12          credit for whatever time she served. She said she didn't  
13          serve any.

14          MR. SHAFFER: Your honor, would you consider giving  
15          her a bond for the appeal? I'll have an appeal filed  
16          tomorrow because, I mean, like I said, I think it's  
17          probably a close legal call issue, and I'm not arguing  
18          with your decision. I'm just saying that from the  
19          State's, from even the State's perspective I think that  
20          the State would have to say that it's a close legal call  
21          so I would ask --

22          THE COURT: I didn't think it was a close legal  
23          call.

24          MR. SHAFFER: Okay. I may be wrong then.

25          THE COURT: You may convince five people in Columbia

1 of that.

2 MR. SHAFFER: I may be wrong, Your Honor. It's  
3 happened plenty of times in the past. I'm just asking  
4 for an appeal bond. She'll - she'll exhaust her sentence  
5 if - before an appeal is even close to getting resolved.

6 THE COURT: We're gonna kick this can down the road  
7 for 45 days?

8 MR. SHAFFER: I would ask --

9 THE COURT: She won't have to do half of that.

10 MR. SHAFFER: And, Your Honor, there's - there's a  
11 lot of reasons to appeal that go outside the 45 days.

12 THE COURT: I understand you want to appeal it  
13 because you want to get it reversed so you can sue him.

14 MS. PIERCE: Your Honor, I would ask we wait until  
15 the appeal is filed and have a hearing.

16 MR. SHAFFER: I can have it filed tomorrow, Your  
17 Honor. I'll have it filed in an hour actually. I can  
18 sit here on my computer and file it. They allow eFiling  
19 right now.

20 THE COURT: I'm not going to give her a PR bond.  
21 I'll give her a five thousand surety bond on appeal if  
22 that's what she wants.

23 MS. CONYERS: Yeah. I'll take that.

24 THE COURT: All right.

25 MR. SHAFFER: Thank you, Your Honor.

1           THE COURT: I'd rather spend the 45 days if I was  
2 her. All right. You argue with the police anymore, next  
3 time you come before me, I'm gonna max you. Okay.

4           MS. PIERCE: Thank you, Your Honor.

5           WHEREUPON, THE TRIAL WAS CONCLUDED.

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## 1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON )

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5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,  
6 and Official Circuit Court Reporter for the Eleventh Judicial  
7 Circuit in and for the State of South Carolina, do hereby  
8 certify that I reported the proceedings in the before  
9 captioned case in the Court of General Sessions in and for the  
10 State of South Carolina on the 1st and 2nd day of June, 2021.

11 I FURTHER CERTIFY that the forgoing 177 pages  
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel  
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at  
16 Lexington County, this 28th day of January, 2022.

17

18

By:s/Steven E. LeBlanc

19

20

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Steven E. LeBlanc, Sr., R.P.R.  
Eleventh Circuit Court Reporter  
State of South Carolina.

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Placeholder for Defendant's  
Exhibit 1 which was delivered  
to the Court on 9/9/2022

**RECEIVED**

**Mar 07 2023**

**SC Court of Appeals**

Certificate of Counsel

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 7, 2023



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