

2012-213382

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Horry County

William H. Seals, Jr., Circuit Court Judge

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

THOMAS SMART,

PETITIONER.

Appellate Case No. 2010-168966

APPENDIX

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1

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Thomas Smart,

Appellant.

Appeal From Horry County
William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-371
Submitted June 1, 2012 – Filed June 20, 2012

AFFIRMED

Appellate Defender Tristan M. Shaffer, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior
Assistant Deputy Attorney General Salley W. Elliot,
and Assistant Attorney General Christina J. Catoe, all

of Columbia; and Solicitor J. Gregory Hembree, of Conway, for Respondent.

PER CURIAM: Thomas Smart was convicted of throwing bodily fluids on a law enforcement officer, failure to stop for a blue light, threatening a public official, and resisting arrest. On appeal, Smart argues the trial court erred in denying his motion for a directed verdict on his charge of throwing bodily fluids in violation of section 24-13-470 of the South Carolina Code (Supp. 2011), arguing his act of spitting blood on an arresting officer did not constitute throwing bodily fluids under the statute. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 623 (2011) (explaining that, although penal statutes are strictly construed in favor of the defendant, the court must interpret the statute according to its literal meaning); State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002) (stating if a statutory term is unclear, the court must interpret the term using its customary meaning within the context of the statute).

AFFIRMED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

THOMAS SMART,

APPELLANT

Appeal from Horry County

William H. Seals, Jr., Circuit Court Judge

Opinion No. 2012-UP-371

Appellate Case No. 2010-168966

PETITION FOR REHEARING

Relying on State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011) and State v. Morgan, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002), this Court affirmed the trial court's denial of directed verdict in Appellant's favor. This Court held that spitting constitutes "throwing" as that term is used in S.C. Code § 24-13-470.

Appellant respectfully contends that this Court's ruling is not supported by a plain reading of the statute; nor is it supported by rules of statutory construction. The plain and ordinary meaning of the word "throw" is to propel with use of a hand. Even if propel by use of the hand is not the exclusive definition of the word "throw," the ambiguity in definitions should

be resolved in favor of Appellant. See State v. Blackmon, 304 S.C. 270, 274, 403 S.E.2d 660, 662 (1991). Assuming that the plain and ordinary meaning of the word throw is not to propel by use of the hand, Appellant agrees with the State that there are "many, many" definitions of the word throw. BOR 8. Pursuant to the rule of lenity, this Court should resolve any ambiguity in favor of the Appellant.

Appellant respectfully requests this Court reconsider its opinion and issue a new opinion finding the trial court erred in failing to direct a verdict in his favor.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

Susan B. Hackett for

Tristan M. Shaffer

This 28th day of June, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS SMART,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, on this 28th day of June, 2012.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 28th day
of June, 2012.

_____ (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

The South Carolina Court of Appeals

The State, Respondent,

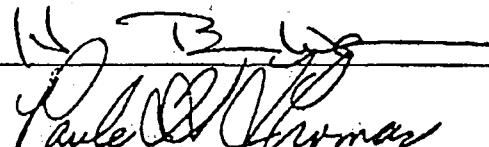
v.

Thomas Smart, Appellant

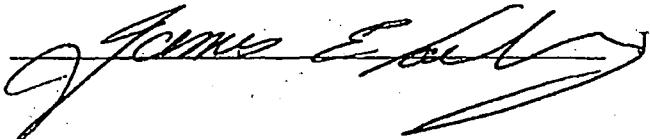
Appellate Case No. 2010-168966

ORDER

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



Paul D. Thomas J



James E. Elliott J

Columbia, South Carolina

cc:

Christina J. Catoe
Salley W. Elliott
Tristan M. Shaffer
John W. McIntosh

Alan M. Wilson
John Gregory Hembree

FILED

September 20, 2012

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS SMART,

APPELLANT

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..... ON BEHALF OF THE DEFENDANT

1 Either the State would stipulate
2 that -- uh -- jeopardy is attached and/or -- uh -- we can
3 bring the jury out and swear them and send them back, one
4 of the two.

5 I just want jeopardy to attach.

6 THE COURT:

7 Right.

8 MR. VON HERRMANN:

9 And normally, I think the
10 prosecutor's fine with that.

11 THE COURT:

12 Any problems, Mr. Bo?

13 MR. VON HERRMANN:

14 I mean, I don't want to make a
15 bunch of motions, you rule, and he not like your ruling;
16 and then all of a sudden, he takes it to a different
17 judge.

18 MR. BRYAN:

19 As long as we're clear that it's
20 a -- uh -- post trial and not a pretrial motion, I'm fine
21 with it.

22 MR. VON HERRMANN:

23 How could it be a post trial
24 motion and not have the trial?

25 MR. BRYAN:

1 I'm just saying as long as we're
2 clear that it's not a pretrial motion or a motion -- uh
3 -- that must be made prior to swearing the jury, I'm fine
4 with it.

5 THE COURT:

6 You want me to bring out the
7 jury and let's swear them in --

8 MR. BRYAN:

9 That'd be fine with me.

10 THE COURT:

11 -- and appoint a foreperson and
12 send them out and do motions?

13 MR. VON HERRMANN:

14 I mean, I hate to do it that
15 way.

16
17 THE COURT:

18 I don't mind.

19 MR. VON HERRMANN:

20 But it's certainly -- I mean, I
21 hate -- you know -- running juries in and out. But if
22 that makes the prosecutor feel comfortable?

23 THE COURT:

24 All right.

25 MR. VON HERRMANN:

1 And -- And -- And Judge, I'm --

2 I'm --

3 THE COURT:

4 Where's your client.

5 MR. VON HERRMANN:

6 -- you know -- I was talking to
7 the officer.

8 Uh -- You know, we might have
9 this case resolved. And -- uh --

10 THE COURT:

11 All right.

12 MR. VON HERRMANN:

13 -- you know -- we might not.

14 THE COURT:

15 Mr. Moore?

16 DEPUTY:

17 Yes sir.

18 THE COURT:

19 When they come out, would you
20 make sure that Mr. Jernigan sits in the Foreman's seat.

21 DEPUTY:

22 Jernigan?

23 THE COURT:

24 Jernigan. Just whenever they
25 come out.

1 DEPUTY:

2 Okay.

3 THE COURT:

4 All right. Y'all ready to
5 bring out the jury and swear them in?

6 MR. BRYAN:

7 Yes sir. We can bring the
8 lights up if you want to.

9 MR. VON HERRMANN:

10 Your Honor, as soon as they cut
11 this off, I'm ready.

12 THE COURT:

13 How do you turn the lights on.

14 CLERK:

15 I think you have to cut them all
16 the way off and then back on, Bobby.

17 THE COURT:

18 All right. You can go ahead
19 and bring the jury out.

20 DEPUTY:

21 Okay.

22 (WHEREUPON: The jury empanelled
23 in the case was escorted back into the courtroom at 10:33
24 AM, July 20th, 2010; and was in fact present during the
25 following proceedings.)

1 THE COURT:

2 Good morning

3 JUROR JERNIGAN:

4 Good morning, sir.

5 THE COURT:

6 All right. Ms. Clerk, would you
7 swear the jury in?

8 CLERK:

9 Yes sir.

10 WHEREUPON: The jury was sworn in
11 this case at 10:34 AM, July 20th, 2010.

12 THE COURT:

13 Thank you, Heather.

14 Mr. Jernigan, I'm going to appoint
15 you the Foreperson of the Jury. You will be the
16 spokesperson for the jury.

17 FOREPERSON:

18 Yes sir.

19 THE COURT:

20 All right. Members of the jury, I
21 had to bring you out, just for a minute, to swear you in
22 so that we could officially begin this case.

23 But -- and you can leave
24 everything in your seats -- But I'm going to have to ask
25 send you out for just a few minutes while we take up

1 motions, now that the case has officially begun.

2 So if you don't mind, just step
3 out for a few minutes and we'll bring you back.

4 And again, do not discuss the
5 case.

6 (WHEREUPON: The jury empanelled
7 in the case withdrew from the courtroom at 10:35 AM, July
8 20th, 2010; and was no longer present during the
9 following proceedings.)

10 THE COURT:

11 All right, Mr. Von Herrmann, be
12 glad to hear from you.

13 MR. VON HERRMANN:

14 Thank Your Honor.

15 -- Uh -- Your Honor, we have a
16 number of pretrial motions.

17 Uh -- First of all, there's -- uh
18 -- our -- we have a motion in limine to eliminate any
19 mention of any blood bourn pathogens or diseases that the
20 client might have.

21 There's no indication there's
22 going to be anybody here to testify as to whether he does
23 or does not have them.

24 And we would -- uh -- specifically
25 request that all the witnesses -- uh -- not mention any

1 information that they might because it would be hearsay.

2 THE COURT:

3 Mr. Bryan --

4 MR. BRYAN:

5 No --

6 THE COURT:

7 -- any objections?

8 MR. BRYAN:

9 No sir. We don't intend to
10 introduce that. And I'll make sure if we get into --

11 THE COURT:

12 Then make sure they all understand
13 that.

14 MR. BRYAN:

15 I will make sure with Officer
16 Brantly that there's no mention of that.

17 MR. BRANTLY:

18 That's fine.

19 THE COURT:

20 All right. We'll grant that one.
21 Second one?

22 MR. VON HERRMANN:

23 Your Honor, the second motion is
24 absolutely no mentioning of any exact speed of what the
25 Defendant was doing.

1 At the time, it was just a matter
2 of -- you know -- certainty they can mention whatever
3 speed they were going if they were driving.

4 But there's no indication or
5 report or anywhere else that there's a radar and how fast
6 he was going.

7 We just would want to move to
8 exclude that.

9 THE COURT:

10 Mr. Bryan?

11 MR. BRYAN:

12 Uh -- Let me make sure that don't
13 intend to testify that way (trails off to inaudible).

14 COURT REPORTER:

15 I'm sorry. I'm losing you. Would
16 you turn that mike toward him?

17 DEPUTY:

18 Turn it on?

19 THE COURT:

20 Turn it toward him.

21 MR. BRYAN:

22 That's -- uh -- That's fine, Your
23 Honor.

24 I think what the -- uh --
25 testimony will be, will be how fast the officers were

1 going --

2 THE COURT:

3 That's fine.

4 MR. BRYAN:

5 -- and whether they were gaining
6 or not on the Defendant.

7 THE COURT:

8 That's fine.

9 All right?

10 MR. VON HERRMANN:

11 Uh -- The third one, Your Honor,
12 is no mention of spitting towards the staff of the
13 hospital, or any conduct at the hospital with regards to
14 any kind of attempted violation of any of their rights.

15 As he's not charged with that,
16 that would be irrelevant, and it would not certainly be
17 relevant and -- uh -- applicable in this case.

18 MR. BRYAN:

19 Well, I don't think we intend to
20 testify to that, Your Honor.

21 THE COURT:

22 All right. I'll grant the
23 motions.

24 MR. VON HERRMANN:

25 No mentioning of threatening the

1 hospital staff in any way, or any other public official
2 other than Mr. Brantly, who was the only one who is
3 mentioned within the indictment.

4 THE COURT:

5 Mr. Bryan?

6 MR. BRYAN:

7 And I don't agree with that, Your
8 Honor. It's res gestae. It's a part of what we're going
9 to have to prove.

10 And basically the threats were:

11 He was threatening everybody at
12 the scene.

13 We'll have a video where -- just
14 so you kind of understand what is going to happen.

15 The threatened officer is the
16 first one in pursuit.

17 His video didn't work.

18 The other officer shows up behind
19 him.

20 There's going to be a video That's
21 going to be slightly off-camera. And while it's -- of
22 what's going on with the arrest and all that -- And while
23 that's going on -- uh -- he was threatening everybody.

24 He comes back in. And Brantly's
25 got him. And you can actually see on the video where

1 he's trying to pull away from Brantley to go -- uh -- I
2 would assume -- jump on somebody else.

3 So he was making all kind of
4 threats about shooting this one, that one, and the other
5 one.

6 And -- uh -- even though it's not
7 charged conduct, I would say it would be impossible to
8 separate.

9 It's actually happening at the --

10 THE COURT:

11 Right.

12 MR. BRYAN:

13 -- scene while he's threatening
14 Brantly.

15 THE COURT:

16 I agree.

17 MR. VON HERRMANN:

18 However, Your Honor, it's
19 mentioned in the indictment specifically where they could
20 have listed any and all people, or any and all
21 enforcement, they specifically mention John Brantly as
22 being the one that's threatened.

23 And therefore, they have elected
24 to choose that element of the crime, which they must
25 prove.

1 THE COURT:

2 Right.

3 MR. VON HERRMANN:

4 And therefore, anything else is
5 irrelevant as to whether or not he threatened anybody
6 else.

7 They -- They optioned for that
8 element.

9 They optioned to put his name in
10 the indictment.

11 They ought to be held to -- to
12 make sure that that is the person that he threatened.

13 THE COURT:

14 Your response?

15 MR. VON HERRMANN:

16 We intend to prove that, Your
17 Honor. That's what we intend to prove. And that's the
18 element that we've charged.

19 We also think that we should be
20 allowed to testify under res gestae to what actually
21 happened at the event.

22 I don't think it's unfairly
23 prejudicial to give the jury the full picture of what was
24 going on at the scene.

25 We've agreed not to mention

1 anything that happened afterwards.

2 But I think that would be unfairly
3 prejudicial and not before the -- the jury.

4 But what's actually happening at
5 the time he's being threatened, I think is important for
6 the jury to understand what happened in --

7 THE COURT:

8 I'm going to overrule that motion.

9 MR. VON HERRMANN:

10 I was going to say, Your Honor, if
11 I could, just -- you know -- with regards to testimony is
12 all I'm concerned about there.

13 They are going to put their entire
14 video in. I'm not --

15 THE COURT:

16 Okay. I got you. Well, that's
17 fine. I mean --

18 MR. VON HERRMANN:

19 I mean, I don't care about --

20 THE COURT:

21 The video will show what happened.

22 MR. VON HERRMANN:

23 I just don't want either one of
24 these officers standing up there saying:

25 Well, he threatened me too.

1 Because it's clearly prejudicial
2 way beyond -- I mean -- you know -- more prejudicial than
3 probative if he -- if they start saying:

4 Well, he threatened this officer,
5 this officer, this officer, this officer.

6 The video stands alone.

7 I have no objection to the video.

8 But they have -- they have listed
9 John -- John Brantly.

10 And quite frankly -- uh -- the
11 video actually cuts off in the audio to where we don't
12 really know what he's saying.

13 Uh -- And -- you know -- if we
14 need to -- uh -- proffer the -- the video, that's fine.

15 THE COURT:

16 Well, who's going to testify, John
17 Brantly?

18 MR. BRYAN:

19 To be fair, Your Honor, John --

20 THE COURT:

21 He can --

22 MR. BRYAN:

23 John Brantly, and Crews -- and
24 just to be fair -- so that we flesh it all out.

25 THE COURT:

1 Right.

2 MR. BRYAN:

3 I just spoke to Officer Crews, who
4 will say that:

5 Although he didn't threaten me
6 directly -- So no one's going to come in and say -- other
7 than Brantly -- that:

8 He threatened me directly.

9 They will probably both say:

10 He was threatening to kill us all.

11 Because he did say that.

12 He was basically saying:

13 I'm going to shoot everybody.

14 Something to that effect. So --

15 THE COURT:

16 And that's on the video?

17 MR. VON HERRMANN:

18 -- he didn't say:

19 I'm going to shoot you.

20 Well, the problem is with the
21 audio.

22 You can hear -- I'm able to pick
23 up, one time, where he says something -- uh -- about
24 shooting.

25 Uh --

1 MR. VON HERRMANN:

2 Your Honor --

3 THE COURT:

4 Well, they're both on the video --

5 MR. BRYAN:

6 The issue is that -- that

7 basically -- you know -- the Defendant's not miked up.

8 Uh -- Crews is.

9 And the guy getting threatened is
10 not Crews.

11 So he's not necessarily the
12 closest on to him.

13 So you can hear some stuff. And
14 what some people can hear, I'm not going to presume to
15 say.

16 I'm going to say what I can hear,
17 and -- and ask them to listen to it.

18 MR. VON HERRMANN:

19 Your Honor, if I can?

20 If we -- We can watch the video if
21 we need to.

22 The -- The problem with the video
23 -- or the audio -- is not the fact that you can't hear
24 it.

25 The problem with the audio is:

1 The last word you hear before he
2 remotely cuts it off is the F-word.

3 And he doesn't want to have
4 anybody else hear the rest of the conversation. And he
5 cuts it off.

6 So it's not a matter, or an issue,
7 of whether or not you can hear it. It's a matter of:

8 They intentionally caused it not
9 to be heard.

10 THE COURT:

11 Right.

12 MR. VON HERRMANN:

13 And again, can Your Honor, we --
14 we will not object to the video coming in at all with
15 whatever audio and video there is.

16 THE COURT:

17 Mr. Bryan?

18 MR. BRYAN:

19 I'm sorry, Your Honor.

20 What was the -- the -- I mean --
21 uh -- I think that that's -- uh -- argument before the
22 jury.

23 I -- I don't think there's --

24 THE COURT:

25 Yeah.

1 MR. BRYAN:

2 -- like -- If none of it was on
3 video --

4 THE COURT:

5 And you have --

6 MR. BRYAN:

7 -- it wouldn't be precluded.

8 THE COURT:

9 -- two public officials that were
10 at the scene.

11 They saw what happened. And
12 they're going to testify as to what happened.

13 MR. BRYAN:

14 Yes, sir, Your Honor.

15 THE COURT:

16 He's charged with resisting arrest
17 and threatening a public official. They're both public
18 officials.

19 I'm going to allow those two to
20 testify.

21 MR. BRYAN:

22 The officer who's this video is
23 will testify. He can be cross examined about it. The
24 argument can be made.

25 Obviously, if we didn't have any

1 video, we wouldn't be precluded from going forward.

2 THE COURT:

3 Right.

4 MR. BRYAN:

5 The fact that we've got some,
6 shouldn't preclude us.

7 THE COURT:

8 Right. Right. I'm going to
9 overrule that one.

10 MR. VON HERRMANN:

11 Thank Your Honor.

12 And, of course, please note my
13 exception.

14 THE COURT:

15 Right. Anything further?

16 MR. VON HERRMANN:

17 Yes, sir, Your Honor.

18 There's a firearm that was
19 allegedly found in the truck later on by somebody. I am
20 not even sure who it is.

21 We would -- uh -- mention that
22 that be precluded from testimony, as there is no firearm
23 here. There's no testimony that -- There's nobody that
24 found it.

25 These officers didn't find it.

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1 MR. BRYAN:

2 Don't intend to -- uh -- elicit
3 that testimony.

4 THE COURT:

5 All right. We'll do that one.

6 MR. VON HERRMANN:

7 Motion to sequester the witnesses,
8 Your Honor.

9 THE COURT:

10 No problem there. Any problem for
11 you, Mr. Bryan?

12 MR. BRYAN:

13 We just ask you allow us, from the
14 statute, that -- uh -- Officer Brantly, the lead officer,
15 be allowed to stay.

16 THE COURT:

17 That'll be fine. All right.

18 MR. VON HERRMANN:

19 And no -- No objection from the
20 State -- from the Defense.

21 MR. BRYAN:

22 Get use to it over there.

23 MR. VON HERRMANN:

24 I'm telling you. I'm having --
25 struggling.

1 That's the only motions I have,
2 Your Honor.

3 THE COURT:

4 All right.
5 Anything from the State?

6 MR. BRYAN:

7 Uh -- Your Honor, I just want to
8 clarify one thing.

9 On the -- uh -- indictment, there
10 is -- uh -- let me get that indictment.

11 Indictment 2010-GS-26-682 is for
12 threatening the life of a public official. And there is
13 a scribner's error on it.

14 Uh -- What happened is, it says --
15 Do you have a copy of the indictment? You got that --

16 THE COURT:

17 682 is throwing bodily fluids.

18 MR. BRYAN:

19 That's the one I'm referring to.
20 I'm sorry, Your Honor.

21 THE COURT:

22 Okay.

23 MR. BRYAN:

24 Throwing bodily fluids on a
25 correctional facility employee or a local law enforcement

1 officer.

2 Uh -- In the body of the
3 indictment, it contains all the elements of the offense.

4 It names -- uh -- John Brantly as
5 the officer.

6 But then, it incorrectly
7 identifies him as a local correctional facility employee
8 as supposed to local law-enforcement officer, which he
9 obviously is.

10 Uh -- And I would just -- uh -- to
11 that end, just make the quick argument:

12 Uh -- The indictment has it -- or
13 excuse me -- The warrant has it correctly in the -- uh --
14 body of it.

15 The police report, which he's got,
16 lists him as the one who was spit upon.

17 Uh -- We came here to try the case
18 last time. He's the only officer here.

19 Everybody knows -- Mr. Von
20 Herrmann and this Defendant -- everybody knows he's an
21 Horry County Officer.

22 And I would just cite -- uh --
23 State versus -- which I have a copy of -- State versus
24 Wilkins, which states -- It's very similar Your Honor,
25 but -- uh -- where they actually, I think, named the

1 wrong victim.

2 Here you've got the right victim.

3 Uh -- And we're just asking you to
4 take the -- all the surrounding circumstances into
5 account -- uh -- to make an accurate determination of
6 whether he was prejudiced by a lack of notice and
7 insufficient indictment.

8 And I would also note:

9 It should probably be -- the word
10 is "sufficient -- uh -- indictment."

11 Uh -- Case law requires that the
12 motion be made prior to swearing of the jury by the
13 Defendant.

14 So -- uh -- basically Mund (?
15 phonetic) says that:

16 You have to pick a choice.

17 Either you make your motion based
18 on the insufficiency of the indictment, or you take the
19 choice, cancel the jury.

20 And State v Means (? phonetic),
21 says:

22 All surrounding circumstances must
23 be weighed to make an accurate determination of whether
24 the Defendant was prejudiced by lack of notice.

25 While The Court should focus

1 primarily on the charging language in the body of the
2 indictment, a caption or title which is consistent with
3 the language in the body may be considered a conjunction.

4 And you'll note just from -- uh --
5 looking right on the indictment, it says:

6 Or local law-enforcement officer
7 -- uh -- one inch above the body of the indictment.

8 THE COURT:

9 All right. Any objections, Mr.
10 Von Herrmann?

11 MR. VON HERRMANN:

12 Yes, Your Honor, I have an
13 objection; in that:

14 That we prepared for this case
15 based on the fact that there was a election by the
16 prosecutor to send this case to the grand jury with that
17 information as a correctional employee.

18 We knew that not to be -- uh --
19 you know -- obviously, the -- the truth -- uh -- or at
20 least we believed it not to be the truth.

21 I mean, a lot of times, they move
22 from jail to -- you know -- Sheriff's Department to the
23 Police Department and things like that.

24 However, Your Honor, that is
25 highly prejudicial.

1 The Solicitor had the opportunity
2 to have presented the correct indictment. He made an
3 option to select, out of an entire statute, one
4 particular -- you know -- and named in the statute, a
5 particular position.

6 Uh -- You know, while notice might
7 be -- We're not objecting or asking to have the
8 indictment quashed. We just want the element proved.

9 He set forth the element. We want
10 him to prove it.

11 If he can prove it to the jury's
12 satisfaction --

13 THE COURT:

14 Right now, he just wants to amend
15 the indictment.

16 MR. VON HERRMANN:

17 Yes, sir, Your Honor. We would
18 object to amending the indictment, as it -- you know --
19 he is changing an element of the crime.

20 THE COURT:

21 All right. I'm going to overrule
22 that objection.

23 I'm going to -- to look at the
24 totality of the circumstances.

25 The warrant has the proper reading

1 to it.

2 The statute refers to both of
3 them.

4 It doesn't change anything as far
5 as notice goes.

6 MR. BRYAN:

7 And --

8 THE COURT:

9 And this is two different
10 employees --

11 MR. BRYAN:

12 -- uh -- Just to --

13 THE COURT:

14 -- which they are basically both
15 law enforcement.

16 MR. BRYAN:

17 -- create a -- a good -- a good
18 record for us, Your Honor, I'll -- uh -- ask to make this
19 warrant a copy and a --

20 THE COURT:

21 Right.

22 MR. BRYAN:

23 -- Court's Exhibit.

24 MR. VON HERRMANN:

25 And of course, Your Honor, I've

1 asked The -- uh -- The Court to note my objection to --
2 THE COURT:

3 Sure.

4 MR. VON HERRMANN:

5 -- the fact that -- you know -- I
6 don't believe it's sufficient.

7 Thank Your Honor.

8 MR. BRYAN:

9 The warrant will be Court's 2.

10 And I've already had the police
11 report marked as Court's 1, Your Honor. And I'd ask to
12 make that a Court's Exhibit 2.

13 THE COURT:

14 The record will reflect the
15 amendment to the indictment.

16 Anything further?

17 MR. BRYAN:

18 Nothing from the State, Your
19 Honor.

20 MR. VON HERRMANN:

21 Your Honor -- uh --

22 COURT REPORTER:

23 Just a minute. Give me a chance
24 to mark this.

25 WHEREUPON: THE ARREST WARRANT WAS

1 MARKED BY THE COURT REPORTER AS COURT'S EXHIBIT NUMBER 2
2 FOR THE RECORD.

3 THE COURT:

4 Go ahead.

5 MR. VON HERRMANN:

6 Your Honor, we might be able to
7 resolve this case if we can step back and talk with The
8 Court in the -- uh -- chambers with regards to a
9 particular ruling that -- uh -- I don't want to present
10 right here, but maybe I could allow The Court to
11 understand and hear, and figure out, in -- in a -- in a
12 -- maybe it's a presump -- presumption.

13 THE COURT:

14 Why don't we do it up here with
15 the mike on?

16 MR. VON HERRMANN:

17 Uh -- It's pretty complicated,
18 Your Honor.

19 I don't know that you -- I mean
20 I'm a we can; but -- uh -- I mean -- it -- it's --

21 MR. BRYAN:

22 You and I both?

23 MR. VON HERRMANN:

24 No. I mean, it -- it's not --
25 It's just one of those things that probably -- But, I

1 mean, we can -- I'll certainly be happy to come up there
2 and --

3 THE COURT:

4 Why don't we do that.

5 MR. VON HERRMANN:

6 Your Honor, if you'd just give me
7 one second.

8 THE COURT:

9 Sure.

10 MR. VON HERRMANN:

11 I actually had it open, and shut
12 my book.

13 (WHEREUPON: Counsel for each party
14 conferred off the record with The Court at the bench at
15 10:50 AM, July 20th, 2010.)

16 THE COURT:

17 Are y'all want to put that on the
18 record?

19 MR. VON HERRMANN:

20 Your Honor, we were just doing --
21 We were just saying that there's a motion to dismiss
22 based on the fact that the statute requires "throw" or
23 "throwing."

24 And in this particular case, there
25 is no allegation of anything other than -- uh -- some

1 type of spitting.

2 Uh -- And we would say that the
3 motion -- or -- or that there would be insufficient
4 evidence at any point.

5 We'll renew that, of course, if --
6 at directed verdict motion.

7 THE COURT:

8 All right.

9 MR. VON HERRMANN:

10 But that -- That'll be the motion.

11 THE COURT:

12 Thank you. Any response,
13 Solicitor?

14 MR. BRYAN:

15 Uh -- Just briefly, Your Honor.

16 I'm looking at this -- uh -- the
17 American Heritage Dictionary. And in its language, which
18 we got from the -- uh -- from the chambers, the second
19 definition of "throw" -- which is what's required -- is
20 "to discharge into the air by any means."

21 Uh -- The third definition is "to
22 hurl with great force, as in anger."

23 Uh -- I'd say that under either of
24 those -- uh -- definitions that that's what -- the
25 conduct that's charged here.

1 But certainly, it's a jury
2 question.

3 THE COURT:

4 I agree. I'm going to overrule
5 the objection.

6 MR. VON HERRMANN:

7 Thank Your Honor.

8 THE COURT:

9 Still, it's well stated and well
10 thought out.

11 MR. VON HERRMANN:

12 Please note my objection, Your
13 Honor.

14 THE COURT:

15 So noted. Anything further?

16 MR. VON HERRMANN:

17 Uh -- Yes, Your Honor.

18 I'm not really sure what they're
19 going to play.

20 I think they're going to use in
21 their opening -- Are you --

22 MR. BRYAN:

23 No. I'm just ready to play the
24 video when we get to the testimony.

25 MR. VON HERRMANN:

1 there.

2 Also, I want to let you know that
3 what the lawyers tell you is not evidence.

4 I want you to understand their
5 role.

6 Their role is to be a spokesperson
7 for their client.

8 Their role is to be an advocate
9 for their client.

10 Evidence comes from where?

11 That witness chair right there.

12 It's very, very simple.

13 Right now, I just want you to sit
14 back. Don't take any notes. Just relax and soak it all
15 in. All right.

16 Solicitor --

17 MR. BRYAN:

18 Thank Your Honor.

19 THE COURT:

20 -- you're recognized.

21 MR. BRYAN:

22 If it please The Court

23 Good morning.

24 Uh -- I think as jurors go, you --
25 y'all might be fairly fortunate. This case is going to

1 be pretty quick. It's going to be two witnesses -- uh --
2 on behalf of the State.

3 Uh -- They may put all the
4 testimony that they would like.

5 But certainly, we'll be finished
6 today, so you'll know kind of what you looking forward
7 to.

8 But does not mean that it's not an
9 important case --

10 THE COURT:

11 Speak up, Mr. Bryan, if you would.

12 MR. BRYAN:

13 Yes sir.

14 THE COURT:

15 He's having trouble hearing you.

16 MR. BRYAN:

17 -- both for that Defendant and
18 also to the State and Officer Brantly.

19 I'm going to tell you what
20 happened. We're going to call two officers.

21 Uh -- This is John Brantly. He's
22 an Horry County officer. Raise your hand, John.

23 Uh -- He was on patrol on
24 Christmas day -- uh -- into the evening and the morning
25 of December 26 of last year.

1 The evidence will show that at 501
2 and 544 near Conway, at that intersection -- uh -- this
3 Defendant came through the red light at a kind of high
4 rate of speed and slammed on breaks, and ended up pretty
5 much in the intersection, having run the red light; and
6 then looked at the officer; took off.

7 At that point, he -- he attempted
8 to initiate a traffic -- traffic stop. Uh -- And he had
9 to chase him all the way to Myrtle Beach before the
10 Defendant ultimately wrecked his car running over -- uh
11 -- uh -- another lane of travel; and actually running
12 into the railroad tracks right there in Myrtle Beach.

13 Uh -- His video -- And he'll tell
14 you that his video actually was erased when he took the
15 Defendant to the hospital.

16 Uh -- They -- They erased the
17 video. Well, I guess he didn't know at the time. But
18 he'll testify as to what happened there.

19 Fortunately, there's another
20 officer who got in behind him, who is Jeremy Crews.
21 He'll be the other officer testifying; and you'll be able
22 to see his video at least of the chase itself -- uh --
23 where they're -- they're traveling around 90 or 100 miles
24 an hour and -- uh -- Crews never does catch up to him
25 until the Defendant turns around and shortly thereafter

1 he wrecks.

2 Uh -- So he's charged with failure
3 to stop for a blue light. Uh -- I think that's going to
4 be pretty clear on the video.

5 You're -- You're going to actually
6 get to see that.

7 Uh -- What's going to happen is:

8 Uh -- Brantly is behind the
9 Defendant heading towards Myrtle Beach. Crews is coming
10 the other direction.

11 About two minutes in, you'll see
12 them cross. You'll see the blue lights kind of in behind
13 the car, at which point, the other officer turns around
14 and you'll see the blue lights up ahead. And they'll
15 testify as to what was going on at that point.

16 Uh -- The chase ends when the
17 Defendant. As I said, he never give up till -- uh -- he
18 had a pretty -- uh -- significant collision.

19 Uh -- Then they go to arrest him.
20 And when they do, he gives them some resistance. He
21 tried to pull his arms back and -- and roll over -- and
22 they have to basically wrestle him to get him under
23 control because of the resisting arrest.

24 Uh -- And then, there's things
25 that happened off camera.

1 Because what happened:

2 As Crews pulls in. And when he
3 pulls in, he's obviously trying to go apprehend the
4 suspect. And the car's just pointing the direction it
5 is. The camera is pointing the direction it is.

6 So he's miked up. And you'll some
7 of the -- what goes on off camera.

8 But basically, all the resisting
9 arrest -- uh -- the failure to -- uh -- threatening the
10 life of a public official and the -- uh -- throwing of
11 bodily fluids upon an officer takes place off camera.

12 So, what I am asking you to do at
13 the end of the trial is:

14 To hold him accountable, not only
15 for what you can actually see from watching TV, but
16 actually what he did.

17 And to do that, what you need to
18 do is listen to the officers' testimony and whatever
19 evidence comes out, and use your common sense.

20 And I just want to point out -- uh
21 -- a couple of things that you're going to see on the
22 video; because you're going to have about 10 minutes
23 where really nothing's happening; where they're trying to
24 get him under control; and waiting for the EMS to help
25 him.

25 They're -- They're being as mild,

1 and as -- uh -- gentle as they can with him.

2 I mean, when he goes to try to
3 fight somebody else, they don't slam him to the ground.
4 They don't rough him up any.

5 They're just basically, like a --
6 like a dog that's trying to get another dog. They're
7 just kind of holding onto him. And they put him in the
8 car.

9 Uh -- At 2:18, if you listen real
10 close -- and you guys are the judge of the facts. If you
11 don't hear it, that's up to you to determine. But I
12 suggest that -- uh -- about 2:18 -- right at 2:18:00, you
13 can hear him say:

14 I promise you one day I will sit
15 up in a tree. And you just use that in con -- uh --
16 conjunction with the officer's testimony.

17 He's going to say that he's saying
18 he's going to go up in a tree and shoot him.

19 Uh -- And he threatened to kill
20 him. He -- At some point, you can hear him talking
21 about his family -- his wife and kids. He's threatening
22 to kill him; kill all the officers; kill their families;
23 et cetera.

24 And he'll testify to that. But
25 you can't hear it all; because the Defendant's not miked.

1 The other officer is miked.

2 And so you're not able to hear it.

3 You just have to listen and decide whether you're going
4 to believe the officer or not.

5 And then finally:

6 As far as the spitting on the
7 officer -- or the throwing of bodily fluids on an officer
8 -- and the officer will testify that he was bloody. He
9 had the ac -- uh -- an accident and he was bloody.

10 And -- uh -- at 2:18 and 20
11 seconds -- so all this happens between 2:17 and 2:18 and
12 20 seconds -- you'll see him actually on camera doing
13 this. (Gestures.)

14 And -- And the officer will
15 testify here. What he's saying is -- He's telling them
16 like -- uh -- like the hockey players do, pull the shirt
17 up over his head.

18 And -- And that's some evidence
19 that you can use as -- uh -- circumstantial evidence that
20 he did actually spit on him.

21 Because what -- what he's trying
22 to do is get him to put the shirt over his head --

23 MR. VON HERRMANN:

24 Objection, Your Honor.

25 MR. BRYAN:

3 MR. VON HERRMANN:

6 THE COURT:

7 | Mr. Bryan?

8 MR. BRYAN:

11 MR. VON HERRMANN:

12 That's --

13 MR. BRYAN:

16 MR. VON HERRMANN:

17 -- outside the scope.

18 THE COURT:

19 Overruled. Continue.

20 MR. BRYAN:

21 So, basically, just pay attention
22 to that. You'll see the officer making this motion. You
23 can determine what you think that might be about. And he
24 can tell you -- uh -- what actually happened.

25 But I suggest when you put that

1 together with the testimony, it's obvious that the
2 Defendant was spitting on the -- the officer.

3 So we just ask you to -- uh --
4 just give him a fair -- a fair trial.

5 Uh -- Do what is right in this
6 case. And -- And hold him accountable, not only for what
7 you can actually see, what he clearly did.

8 Thank you.

9 THE COURT:

10 Mr. Von Herrmann?

11 MR. VON HERRMANN:

12 Thank you, Your Honor.

13 You know, I don't know why we're
14 here.

15 Now he just told you everything
16 that they think they're going to prove.

17 The problem with that is, is --
18 unless they start off with the most offensive thing --
19 is:

20 He wants you to interpret this
21 (gestures) as saying:

22 Cover him up because he's
23 spitting.

24 The truth of the matter is:

25 When you see the video, you going

1 to see that there is no crime; and that the guy doing
2 this (gestures), actually has a full-head toboggan on.

3 And, if that's what he was trying
4 to do, he could've simply taken that toboggan off and
5 covered the face of the Defendant.

6 What they want you to believe is:

7 Everything that was not on video,
8 not on audio.

9 And you're going to find out that
10 the audio was cut-off by the police officer right after
11 he dropped F-bomb. Because he didn't want everybody to
12 hear his discussion.

13 My client, Mr. Smart, was
14 absolutely in a horrible accident.

15 He is going to be found guilty of
16 failure to stop for a blue light. I am confident of
17 that.

18 Everything that occurred after
19 that -- and the Judge is ultimately going to charge you
20 that:

21 He has to have a criminal intent;
22 the intent to commit these crimes.

23 What you're going to find out is:

24 There's not two officers there.

25 There's more like 15 to 20

1 officers there.

2 And every one of them drove their
3 own car.

4 And every one of them had a video
5 camera.

6 And we don't have any of those
7 videos.

8 Then they called EMS; because my
9 client, Mr. Smart, had actually suffered a concussion.

10 And it took them 30 seconds to cut
11 the siren off of the car. It took them two and a half
12 minutes to get my client to where he could actually talk,
13 or focus, or do anything else.

14 He wasn't even -- They -- They're
15 poking at him, Your Honor:

16 Hey sport, wake up. Come on
17 Sport.

18 They called EMS.

19 Instead of what they typically do
20 in protocol in -- with every wreck -- Instead of taking
21 him and putting him on a backboard, putting him down,
22 putting the neck brace, the collar; everything that we
23 normally see in a -- the car accident, they don't do any
24 of that.

25 They take him. They poke at him.

1 You can see the officers in the background laughing at
2 him.

3 He's not threatening John Brantly.

4 But if you take a bear, and you
5 poke him hard enough, he's going to start saying
6 something back, I promise you.

7 That doesn't mean he had the
8 criminal intent to do it, or carry it out, or anything
9 else.

10 What it means is:

11 Law enforcement, in this case,
12 conducted themselves unprofessionally. And it's because
13 they had 10 or 15 people milling around.

14 You'll see five or six Highway
15 Patrolmen. You'll see a half dozen Myrtle Beach. You'll
16 see a half dozen or so Horry County Police Officers.

17 That's not excusing what he did.

18 I don't offer an excuse.

19 He's willing to accept
20 responsibility for failure to stop for a blue light.

21 But when you're unconscious for
22 almost two minutes -- and you're going to see the
23 videotape.

24 When you're unconscious and you're
25 woken up -- And obviously it wasn't a big threat to them

1 at the time because one officer leaves. One officer's
2 there with him trying to handcuff him.

3 And then, when he comes out, you
4 can see all the officers ganging around and poking at
5 him. And you see five or six of them grouped-up,
6 laughing.

7 That doesn't excuse the failure to
8 stop a blue light.

9 That doesn't excuse the fact that
10 he was drinking that night and he made bad decisions.

11 And he's going to go to jail for
12 that. And we all know that.

13 But that's what he needs to go to
14 jail for; not for everything else that they piled on
15 afterwards that they helped cause.

16 You can't participate. You can't
17 start trying to poke at people, and prod at people, and
18 antagonize them; and then turn around and blame them for
19 getting upset; especially when you know -- and you do
20 know -- that they've been drinking; that they have had a
21 concussion.

22 And their first and foremost
23 responsibility is to -- No matter how bad that guy is --
24 and unfortunately -- you know -- the way it is, is:

25 If he was a murderer -- which he

1 certainly wasn't -- certainly isn't -- is to make sure
2 that that man is taking care of medically, and let the
3 court system take care of the rest.

4 They didn't do it.

5 EMS was called.

6 EMS was sent away.

7 And they drag him out.

8 Now I know that, I don't think you
9 heard from the prosecutor. He just neglected to mention
10 it.

11 They neglected to mention the
12 microphone and the siren. The siren's cut off at one
13 point.

14 But when the officer starts
15 talking to his buddies, and starts palling around and
16 joking around about it, and dropped the F-bomb, he cuts
17 it off of on his belt.

18 So if you think about it this way:

19 If you've got 15 police officers
20 out there. You've got two cars. One of them magically
21 erased the videotape -- the best videotape you would have
22 -- the best evidence y'all would have to -- to convict
23 him or to find him not guilty.

24 But it's magically gone.

25 But you've still got 11 or 12

1 other ones..

2 And he's got 15 -- 16 -- hem
3 however many witnesses. You'll watch the video. You'll
4 get the chance to look at it and see.

5 Why aren't those people here?

6 If all this blood is running
7 everywhere, and it was -- you know -- or spitting it
8 everywhere and all that.

9 And I'll submit to you:

10 The statute doesn't even apply
11 here.

12 The statute says that:

13 You have to throw blood, or -- you
14 know -- some bodily fluid.

15 Well, first of all:

16 The only thing my -- my client was
17 doing was trying to get -- do something that they
18 should've done themselves; and that is:

19 Get the blood out his mouth so he
20 could breathe.

21 But instead of letting EMS do it,
22 and handle it -- because it was a medical condition --
23 they chose to handle it themselves.

24 My client didn't spit blood on
25 anybody for any purposes other than to clear fact that he

1 was not being manhandled, and the fact that he was --
2 quite frankly, had too much to drink -- and was trying to
3 get his airway cleared out.

4 He wasn't trying to spit on
5 anybody.

6 And this whole thing could have
7 been cured if they had even remotely believed it, by
8 taking that toboggan off and sticking it over him.

9 But they didn't do it.

10 Everybody was too busy out there
11 grab-fannyng around, laughing at it, because my client
12 hit a -- a -- a -- uh -- railroad so hard that they -- he
13 broke it.

14 It was a bad accident, folks. And
15 nobody here is going to deny that. And if they do, then
16 I think the video will show something different.

17 Folks, he is guilty of failure to
18 stop a blue light. I'm convinced you will -- you will
19 find him guilty of that.

20 But what happened after that, you
21 can't hold him responsible, because you have -- he has to
22 have the criminal intent to do that.

23 And if he doesn't have the
24 criminal intent, your duty -- your sworn oath -- is to
25 find him not guilty; not because he power-point you like

1 -- It's not saying you like what he did. It's not that
2 the -- that there was anything else that -- uh -- you
3 know -- was good about the situation. It was all bad.

4 But it should have been held
5 differently and handled differently by law-enforcement
6 and EMS.

7 He should've been strapped to a
8 board like everybody that's ever been in a fender-bender
9 in their life; taken in; make sure his airway was clear;
10 make sure he was safe; and then arrest him and take him
11 in for the failure to stop for a blue light.

12 If they had done that, we wouldn't
13 be here today.

14 If you listen the prosecutor, and
15 you listen to what he says all this evidence is, and you
16 don't listen to the evidence he left out, like:

17 Oh -- you know -- the -- the -- uh
18 -- officer was miked up.

19 Yeah, he was miked up. He just
20 chose to cut it off.

21 Well, if you listen to that, we
22 all might as well go home.

23 We'll just let the prosecutor go
24 ahead and figure out what his sentence is; and we'll go
25 down the road.

1 But that's not the way it is.

2 That's not the way our system of justice works.

3 There has to be criminal intent.

4 He has to prove beyond a
5 reasonable doubt.

6 And if not, our constitution does
7 not provide the safety or the dignity for our country and
8 our citizens. And that's not fair.

9 You are sworn to do your duty.

10 I believe you will.

11 We chose y'all all, and you were
12 aware, as independent and fair witnesses.

13 Look at this video close.

14 Listen, not only to what he says;
15 because he's talking out of his mind.

16 I mean, what person in their right
17 mind would threaten a public official by saying:

18 I'm going to climb up a tree
19 stand.

20 That's ludicrous.

21 Now I understand that these guys
22 have a tough job to do. And I don't want to take away
23 from that.

24 But they also have to do it with
25 professionalism, with reasonability, and with the ability

1 to understand what is real and what is perceived.

2 And what we have in this situation
3 is a total misconception; a total lack of
4 professionalism, not just -- I'm not saying this officer;
5 but all the officers.

6 They obviously weren't concerned
7 about the safety of this guy. And they were obviously
8 not concerned about the safety of any -- or -- or the --
9 the threats. Because they're all out there joking and
10 laughing.

11 Watch the video.

12 The video will tell the story.

13 And I'm going to tell you this:

14 This video; we're going to point
15 out specific things. Obviously, both sides are going to
16 do that.

17 But the bottom line is:

18 Watch the video from the first
19 time that you will for all the things I mentioned; and
20 all the things that really are important.

21 Because if he didn't have a
22 criminal intent to commit those crimes, you're going to
23 find them not guilty.

24 And I'm telling you right now,
25 folks:

1 The overwhelming evidence is going
2 to be that:

3 Not only did he not have the
4 criminal intent, he was so messed up, he couldn't have
5 formed a criminal intent.

6 If you have a concussion, you
7 don't know what you're doing. If you're talking out of
8 your mind, then that's the way it is. You can't help
9 that.

10 I'm not saying what he did was
11 right.

12 I'm not defending the failure to
13 stop for a blue light.

14 I've explained that to him. And
15 he is willing, ready, and able, to accept your guilty
16 verdict for a failure to stop for a blue light.

17 Unfortunately for our system,
18 there are sometimes in life where you can't stand before
19 a judge and accept responsibility for part of what you're
20 accused of, and then go forward on everything else.

21 That's just the way life is.

22 That's the way the system works.

23 Don't hold that against him. Don't hold it against him.

24 Don't hold it against him --
25 because the law is very clear -- that he's not going to

1 testify. My decision. I'm his lawyer. I've advised him
2 not to.

3 What good -- What is it he can
4 tell you that would make things better for him?

5 He ran from the police. No
6 question about it.

7 He was intoxicated.

8 He had a concussion.

9 And after that, what else can he
10 tell you?

11 Because, if you can't remember it,
12 you can't tell it.

13 So you can't hold that -- not only
14 legally -- against him. You just really can't hold it
15 against the guy.

16 It ain't that he ain't going to
17 jail. He knows that.

18 But what I'm telling you ladies
19 and gentlemen, is:

20 I am confident that at the end of
21 this trial you will find guilty of failure to stop for a
22 blue light, and you'll find him not guilty of every other
23 charge.

24 Thank you.

25 THE COURT:

1 Thank you.

2 Mr. Bryan?

3 MR. BRYAN:

4 Thank Your Honor.

5 The State calls Officer John Brant

6 -- Brantly.

7 WHEREUPON: OFFICER JOHN M.

8 BRANTLY, JR., WAS DULY SWORN AND TESTIFIED UNDER OATH AS

9 FOLLOWS:

10 CLERK:

11 Thank you. Please be seated.

12 State your full name; and spell

13 your last name.

14 WITNESS:

15 All right. John M. Brantly, Jr.;

16 B-r-a-n-t-l-y.

17 DIRECT EXAMINATION BY MR. BRYAN:

18 Q. Who are you employed by?

19 A. Horry County Police Department

20 Q. And -- uh -- how long have you worked for Horry
21 County?

22 A. Uh -- This month will be three years.

23 Q. And -- uh -- were you on patrol Christmas day of
24 last year?

25 A. I was.

1 Q. Uh -- Did you have -- Well tell the jury first -- uh
2 -- what do you -- What are your general duties and
3 responsibilities? What do you do?

4 A. Generally --

5 Q. What kind of officer are you?

6 A. I'm a -- I'm a road patrol officer. I respond to
7 household calls -- uh -- any calls that are called in by
8 any resident of Horry County -- uh -- as well as any
9 proactive patrolling of neighborhoods, businesses -- uh
10 -- as well as conducting -- uh -- traffic enforcement.

11 Q. Okay. Do you do a lot of -- Do you write a lot of
12 spitting tickets?

13 A. I wouldn't say a lot.

14 Q. Okay. (Laughs.) But you sometimes write speeding
15 tickets?

16 A. I do, yeah.

17 Q. And -- uh -- so you -- you're traffic enforcement,
18 as well?

19 A. Yes.

20 Q. All right. So you were on duty December 25th of
21 last year?

22 A. Yes, I was.

23 Q. And -- uh -- did you come in contact with Thomas
24 Smart that night?

25 A. I did.

1 Q. Tell the jury how you came in contact with Mr.
2 Smart?

3 A. I was in the area of Highway 544 and Highway 501.
4 There's an intersection -- a traffic light there.

5 Uh -- I was actually on Old
6 Highway 544 getting ready to turn on to Highway 501 -- uh
7 -- sitting at a red light.

8 The light turns green.

9 I'm getting ready to proceed
10 through the intersection.

11 Uh -- I could observe and see a
12 black Ford truck -- uh -- traveling at a high rate of
13 speed, getting ready to approach their red light.

14 Not looking like it was going to
15 stop or whatnot, I have to stop from entering the
16 intersection.

17 Uh -- The vehicle begins to stop
18 abruptly. The back tire start to skid a little bit.

19 Once I believe he realizes that
20 he's not able to stop -- uh -- proceeds through the
21 intersection. Actually looks directly at me and
22 continues -- continues to go.

23 At that point, I turned beach-
24 bound onto Highway 501. Uh -- Was able to close distance
25 to him. Initiate a traffic stop with blue lights and

1 siren.

2 Uh -- At that point, the Defendant
3 gained speed.

4 Q. Let me ask you to -- I'm going to stop you right
5 there.

6 A. Okay.

7 Q. Just to make sure we understand where we're at,
8 you're at -- uh -- what intersection?

9 A. We were at -- We were at Highway 501 and Highway
10 544.

11 Q. In what part of the County?

12 A. In -- In Conway area. There is -- There's two gas
13 stations next to each other -- uh -- that are right
14 across the street from each other, as well -- as well as
15 a Conway National Bank on the corner.

16 Q. So where 544 and 501 come together right outside of
17 Conway.

18 A. Yes sir.

19 Q. And -- uh -- were you traveling the same way as he
20 was; or a different direction?

21 A. He was almost perpendicular.

22 Q. And -- uh -- Did you have a green light or a red
23 light?

24 A. I initially had a red -- was sitting at a red light.
25 The light turned green. I went to proceed through the

1 intersection.

2 That's when he was coming down

3 501.

4 Q. And could you see his light?

5 A. Yeah.

6 Q. He had a red light?

7 A. He was sitting directly -- perfectly -- At that
8 intersection, especially at night, you can see a -- a red
9 glow coming from the -- the side of the light.

10 Q. Okay. And -- And so -- I interrupted you just to
11 make sure we knew where we're at.

12 And then, tell -- tell the jury
13 what happened after he looked at -- at you?

14 A. After he looked at me, he proceeded on through the
15 intersection.

16 Uh -- I turned onto Highway 501
17 going towards Myrtle Beach. Uh -- Was able to close
18 distance -- distance a little bit.

19 Initiated my blue lights and siren
20 to initiate a traffic stop.

21 Uh -- Defendant didn't stop;
22 didn't slow down. In fact, he gained speed.

23 Uh -- I notified my dispatch I was
24 in pursuit of a vehicle.

25 Uh -- They in turn -- you know --

1 uh -- notified other -- uh -- motor officers.

2 We began pursuit Highway 501
3 beach-bound.

4 Uh -- My speed got up to -- uh --
5 approximately 110 -- in excess of that.

6 Uh -- At that point, I was -- I
7 was no longer gaining any distance or -- uh -- having a
8 distance gained on me.

9 We were both traveling at the same
10 distance from each other.

11 Q. How fast were you going?

12 A. About a hun -- uh -- At least 110 miles an hour.

13 Q. And -- uh -- Did you have your blue lights on?

14 A. Yes.

15 Q. Did you have your siren on?

16 A. Yes.

17 Q. How far behind were -- uh -- the Defendant -- were
18 you?

19 A. I was approximately 25 yards behind the Defendant.

20 A. And -- uh -- what were the conditions like that
21 night?

22 A. Uh --

23 Q. And what time was it?

24 A. It was just before -- uh -- one second, let me
25 double-check.

1 Right after 1:30 in the morning,
2 the 26th of December.

3 Q. Okay. And -- uh -- what were the conditions like?

4 A. The road conditions were -- were normal. There was
5 very few people on the road -- uh -- being the fact that
6 it was the night after Christmas.

7 Q. Okay. And so -- uh -- really the morning after
8 Christmas -- uh -- the night of Christmas; right?

9 A. Yes.

10 Q. So you're going about 110 miles an hour. You're not
11 gaining on him? How far did y'all travel?

12 A. We traveled -- uh -- from the point of where -- uh
13 -- Coastal Carolina University is, to -- uh -- traveling
14 into the Myrtle -- city limits of Myrtle Beach.

15 Uh -- Crossed into the city limits
16 of Myrtle Beach past Seaboard -- Seaboard Street.

17 Uh -- Approached the intersection
18 of Robert Grissom Parkway right there.

19 Uh -- Defendant went to make a
20 right turn onto Robert Grissom Parkway. And when he did
21 -- uh -- at -- at the rate of speed that he was
22 traveling, began to start -- uh -- the back end of his
23 vehicle began to start coming around on him.

24 Uh -- When I made a turn onto
25 Robert Grissom -- uh -- Defendant's vehicle -- uh -- did

1 three complete 360s and begin rolling backwards on the
2 sidewalk where Ralph Simms -- uh -- auto dealership is
3 right there on Robert Grissom Parkway.

4 Q. Is that when he stopped and got out?

5 A. No.

6 Q. What happened then?

7 A. At that point -- uh -- I notified our dispatch that
8 -- uh -- that he had wrecked.

9 Uh -- he began traveling again.

10 Drove past me.

11 Uh -- Was drive -- Was traveling
12 in the oncoming lane on Robert Grissom. Crossed the
13 beach-bound lane of Highway 501.

14 Uh -- Struck the medium right
15 there.

16 Crossed the Conway bound lane of
17 501.

18 Uh -- Hit -- Right there at that
19 -- that intersection, there's -- there's two ditches and
20 a railroad track.

21 He hit the first ditch. Uh --
22 Went airborne. Cleared the second ditch. And struck the
23 railroad track, going over the railroad track and landing
24 in the ditch.

25 Q. What kind of vehicle was he in?

1 A. It was a -- uh -- black V71.

2 Q. A pickup truck?

3 A. Chevy -- Chevrolet truck. Yes sir.

4 Q. And -- uh -- so he crossed over. Was there a -- a
5 median dividing the -- the two lanes of travel?

6 A. Yes, there's -- there is a median. On -- On Highway
7 501, there's a median that divides -- uh -- It's almost
8 like a median -- a median barrier, almost.

9 Uh -- It almost looks kind of
10 looks like kind of like a post or a hold, if -- if you
11 could say.

12 Q. So he went across the median -- the oncoming lane of
13 traffic?

14 A. In the oncoming lane of traffic; yes.

15 Q. And -- And then, crossed over that.

16 A. Crossed over that.

17 Q. Into -- uh -- the railroad track and on --

18 MR. VON HERRMANN:

19 Object, Your Honor. Leading the
20 witness.

21 THE COURT:

22 Sustained.

23 MR. BRYAN:

24 Is that --

25 WITNESS:

1 Once he was going to begin driving
2 again, he was driving in the oncoming lanes of Robert
3 Grissom Parkway.

4 He drove over the beach bound
5 lanes of Highway 501.

6 He crossed over the median,
7 actually striking the median.

8 He crossed over the Conway-bound
9 lanes of Highway 501 again.

10 And that's when he struck the
11 ditch -- uh -- clearing air to do it; and struck the
12 railroad track, and landed in the ditch.

13 DIRECT EXAMINATION BY SOLICITOR CONTINUED:

14 Q. Let me just make sure I got this straight. He was
15 actually traveling oncoming -- against oncoming --

16 A. Against oncoming traffic.

17 MR. VON HERRMANN:

18 Object, Your Honor. That's asked
19 and answered.

20 THE COURT:

21 Sustained.

22 DIRECT EXAMINATION BY SOLICITOR CONTINUED:

23 Q. All right. What happened next when -- uh -- After
24 he ran over the -- uh -- railroad track, what happened
25 next?

1 A. Once -- Once the vehicle came to a stop the second
2 time -- uh -- I exited my patrol vehicle -- uh -- with my
3 -- with my weapon drawn. Approached the -- the vehicle.

4 At the time the door -- the door
5 opened. Uh -- Defendant began to somewhat stumble out of
6 the vehicle.

7 Uh -- Once it was clear that he
8 had no weapons on him actually in -- in his -- in his
9 possession -- his hands -- uh -- holstered my weapon.

10 Uh -- Made contact with him.

11 Placed him on the ground -- uh --
12 to place him into handcuffs.

13 At that point, it is -- the
14 Defendant began to try and start to roll over on top of
15 me -- uh -- resisting us from -- from placing him under
16 arrest.

17 Uh -- Able to get handcuffs on
18 him.

19 Uh -- The -- The noise from where
20 the vehicles were -- uh -- the sirens or whatnot was
21 extremely deafening -- uh -- being the fact that where
22 our -- the vehicles were in proximity to how close we
23 were.

24 Uh -- Asked the -- uh -- the other
25 officer that was there behind me to -- uh -- turn the

1 sirens off of the -- of the vehicle.

2 Uh -- Was able to get a second
3 handcuff on the Defendant.

4 Uh -- While we holding the
5 Defendant -- Defendant there or whatnot -- uh --
6 continues to try to roll over on us.

7 He's laying on the ground -- uh --
8 trying to roll over on us.

9 When -- The entire time -- uh --
10 from the accident -- He has -- uh -- He has struck the --
11 either the steering wheel or the dashboard.

12 I'm -- He struck some in the
13 vehicle.

14 He's got a bloody mouth; a bloody
15 face.

16 Uh -- The entire time that we're
17 trying to place him under arrest that he's trying to roll
18 over on us -- uh -- he's trying to spit in -- in our
19 direction -- at that point, was trying to spit in our
20 direction.

21 Q. Did he appear to be having trouble breathing?

22 A. Not at all.

23 Q. Uh -- And when you say -- I just want to make sure
24 you clarify to the jury very clearly whether he was
25 spitting on the ground; or in what direction?

1 A. We -- As we're -- we're trying to restrain him from
2 rolling off on us -- When he's attempting to roll over,
3 he's attempting to roll over to his left.

4 And at the entire time that he is
5 doing that, he is spitting blood the entire time, as he's
6 trying to roll over on -- onto his left, which would be
7 towards me.

8 Q. All right. What happened next?

9 A. Uh -- At that point, we -- uh -- we had requested
10 EMS respond.

11 Uh -- We were holding -- uh -- the
12 Defendant there.

13 He's still trying to fight with
14 us; still trying to get up.

15 Right as -- uh -- At that point,
16 other officers have arrived.

17 Uh -- The other officers that have
18 arrived are actually keeping their distance from where
19 we're at due to the simple fact that he's attempting to
20 spit blood on -- on everybody.

21 Q. All right. What happened next?

22 A. Uh --

23 Q. Did he appear to -- You called the EMS?

24 A. We called the EMS; yes.

25 Q. And did he appear to -- uh -- have any life-

1 threatening injuries? Or --

2 A. No. I -- I'm -- Not to -- Not to my knowledge, I
3 guess you could say.

4 Q. Okay. So after you called EMS, what happened next?

5 A. Uh -- Had -- EMS responded out. Uh -- EMS was
6 speaking with him or attempting to try and treat him.

7 Uh -- Defendant was being
8 extremely disorderly.

9 Uh -- Was -- Had no interest
10 whatsoever in having anything to do with any medical help
11 being given to him.

12 Uh --

13 Q. When you say that, how do you know that?

14 A. Uh -- From -- EMS was asking him --

15 MR. VON HERRMANN:

16 Objection, Your Honor; hearsay.

17 THE COURT:

18 Sustained.

19 DIRECT EXAMINATION BY SOLICITOR CONTINUED:

20 Q. Not what they said; but when -- when EMS came to
21 transport him, did the Defendant say anything?

22 A. He -- He refused treatment by Excuse me, sir.

23 Q. And how did he refuse treatment?

24 A. He said that he wasn't -- he wasn't going anywhere.
25 He didn't want anybody to touch him. Everybody leave me

1 alone.

2 Q. And he said that to you; or to who? Who did he say
3 that to?

4 A. He was -- was referring to a -- to -- to EMS as they
5 were asking him what was going on.

6 Q. Okay. So what did they do?

7 A. Uh -- I asked EMS -- I said:

8 You know, we're not going to be
9 out here all night deciding this. Are you all going to
10 -- Is -- Is he going to seek treatment through EMS?

11 Is he going to be transported by
12 EMS?

13 My response -- Their response to
14 me was --

15 MR. VON HERRMANN:

16 Uh -- Objection, Your Honor;
17 hearsay.

18 THE COURT:

19 Sustained.

20 DIRECT EXAMINATION BY SOLICITOR CONTINUED:

21 Q. Not what they said; but what happened next?

22 A. Uh -- He did not -- uh -- did not receive treatment
23 by EMS and was not -- received transport by EMS.

24 Q. And was anybody else injured?

25 A. No, he was the only -- only individual.

1 Q. And EMS came?

2 A. EMS came.

3 Q. Did you send them away?

4 A. (No response.)

5 Q. Who sent -- Who sent EMS away?

6 A. They left after refusal of treatment.

7 Q. Okay. All right. What happened next?

8 A. Uh -- At that point -- uh -- it -- it's my knowledge
9 that with that -- an individual has any type --

10 MR. VON HERRMANN:

11 Objection, Your Honor. Either he
12 knows or he doesn't know.

13 THE COURT:

14 Sustained.

15 WITNESS:

16 Okay. Uh --

17 DIRECT EXAMINATION BY MR. CONTINUED:

18 Q. What happened after EMS left?

19 A. After EMS left, we picked the Defendant up. Took
20 him over to where the patrol cars were to transport him
21 to -- uh -- to actually to transport him to the hospital.

22 And -- uh -- at that time t--

23 Q. Why -- Why were you transporting him to the
24 hospital?

25 A. The jail will not accept an individual that has

1 blood on their face.

2 Q. Okay. So you took him to the hospital -- or went
3 to transport him to the hospital. What happened next? A.

4 Went to transport him to the hospital.

5 Q. Okay.

6 A. When we were walking to the car or whatnot -- uh --
7 the -- there was a second -- a secondary officer -- uh --
8 couldn't tell you he was -- who he was with or whatnot
9 -- was -- uh -- the Defendant -- uh -- attempted to try
10 and -- and lunge at him or whatnot.

11 Q. Was the Defendant saying anything at that point?

12 A. He was -- He was screaming that he was -- uh -- he
13 was going to kill every one of us.

14 Uh -- Specifically -- uh -- he was
15 stating it to me. Uh -- And specifically was stating
16 that -- uh -- he had a mobile dear stand -- a portable
17 dear stand.

18 Was going to -- uh -- take a rifle
19 and shoot myself in the forehead, as well as my wife.
20 And if I had kids, he would kill all my kids as well.

21 Q. Okay. What happened next?

22 A. Uh -- At that point -- uh -- after repeating this
23 numerous times to myself and -- uh -- other individuals
24 there -- attempted to try and -- and take them over to
25 the car.

1 Uh -- That's when he began to try
2 and start lunging at another officer.

3 Uh -- Were able to take control of
4 him again. Get him to the car.

5 Uh -- The officer that was
6 assisting me in carry -- in carrying him to the car went
7 to unlock my patrol car.

8 I went to place the Defendant
9 inside the vehicle.

10 At the time that I took one hand
11 off of him to unlock -- to open the door, is when the
12 Defendant turned around; spun around on me; made a
13 forward motion; spit blood directly in my face.

14 Q. Uh -- Could he have just been clearing his airway
15 there?

16 A. No.

17 MR. VON HERRMANN:

18 Objection, Your Honor. That calls
19 for speculation.

20 THE COURT:

21 Sustained.

22 MR. VON HERRMANN:

23 Move to strike, Your Honor. And
24 instruct the jury, if you would, that that's -- that's --
25 that question was inappropriate and the answer should be

1 disregarded.

2 THE COURT:

3 Correct. And members of the jury,
4 that was an inappropriate question and answer. And I
5 would ask that you would completely disregard that from
6 your minds and from your thought process; and do not
7 discuss it in the juryroom at a later date.

8 Do not let it enter into your
9 decision whatsoever.

10 Continue.

11 DIRECT EXAMINATION BY SOLICITOR CONTINUED:

12 Q. Directly -- uh -- in the seconds before you said
13 that he turned to spit on you, did he seem to be having
14 having trouble breathing?

15 A. No. With -- With the way that he was yelling at
16 everyone that was there and yelling at other officers;
17 the continued threats that he was going to kill myself
18 and my wife and whatnot, there was no -- He had no
19 trouble breathing.

20 Q. And immediately prior to spitting in your face,
21 which direction was he facing?

22 A. He was facing away from me.

23 Q. Did you turn him towards you?

24 A. No, I did not.

25 Q. Did somebody else turn him towards you?

1 A. No, they did not.

2 Q. All right. What happened after you put him in the
3 car? What happened after he spit?

4 A. After he spit blood in my face, we attempted to try
5 and -- uh -- pull the shirt up over his head.

6 Uh -- In --

7 Q. Why -- Why did you do that?

8 A. In doing so, that -- that contains him from trying
9 to spit on anybody else or trying to -- uh -- trying to
10 keep anything -- anybody else from being exposed to any
11 blood or bodily fluids are hazardous materials.

12 Q. Okay. What happened next?

13 A. Uh -- At that point we were able to -- uh -- finally
14 get him in the patrol car.

15 Uh -- I had asked my supervisor --
16 other officer if -- uh -- there was any blood on my face?

17 Uh -- They did say: "yes."

18 I notified -- uh -- I notified to
19 my Sergeant that -- uh -- I needed -- uh -- that there is
20 a --

21 MR. VON HERRMANN:

22 Your Honor, at this time, we need
23 to have a motion, I believe, in limine.

24 THE COURT:

25 All right. If you will just

1 approach.

2 (WHEREUPON: Counsel for each party
3 very briefly conferred off the record with The Court at
4 the bench.)

5 DIRECT EXAMINATION BY SOLICITOR CONTINUED:

6 Q. Let me just stop you right there. What did you do
7 with the Defendant next? What happened next with the
8 Defendant?

9 A. He was transported to the hospital.

10 Q. Who transported him?

11 A. I did.

12 Q. And -- uh -- how long did it take you to get to the
13 hospital?

14 A. Uh -- Under -- I would -- Under 10 minutes. I mean,
15 it was no traffic on the road. It was from Grissom to
16 Conway Hospital.

17 Q. Did he make any -- Did the Defendant make any
18 statements towards you while -- uh -- there?

19 A. (No response.)

20 Q. Or while being transported?

21 A. While being transported, he continued that -- the
22 same statements of -- that he was going to kill all of
23 us.

24 Q. Okay. And when you got him to the hospital, what
25 happened?

1 A. When we got to the hospital?

2 Q. Well --

3 A. I'm sorry.

4 Q. What happened when you took him to the hospital --
5 keeping in mind --

6 A. Yes.

7 Q. Okay.

8 A. Uh -- We arrived at the hospital. Uh -- I -- When
9 we got to the ambulance entrance to the hospital -- uh --
10 brought him inside where he was treated for his injuries.

11 Uh -- And at the point of when he
12 was being discharged, he was placed back in my vehicle
13 and was transported to J. Reuben Long.

14 Q. The hospital keep him overnight?

15 A. No.

16 Q. So they released him to go to the jail that same
17 morning -- early morning?

18 A. Yes.

19 Q. All right. Do you know about how long they kept
20 him?

21 A. Uh -- I -- I couldn't -- couldn't tell you.

22 Q. Okay. Uh -- Now your car; is it equipped with a
23 video?

24 A. It is.

25 Q. And -- uh -- did this -- To the best of your

1 knowledge, did the video come on when the pursuit
2 happened?

3 A. Yes, it did.

4 Q. All right. And what -- Do you have the video now?

5 A. I do not have the video now.

6 Q. Tell the jury why not.

7 A. Uh -- The video is actually initiated -- uh -- when
8 I activate my blue lights. It's automatic.

9 I have no control over whether it
10 comes on. Uh -- It comes on the entire time.

11 The only time would be -- When we
12 went to the hospital -- uh -- being that I knew that I
13 was going to -- not going in and coming right back out --
14 shut my car off.

15 Our video systems are -- As much
16 energy -- I mean, as much power as they -- they drain,
17 there is something to do with the video where after about
18 an hour -- between the hour and 10 minutes -- an hour and
19 20 minutes -- uh -- the system itself will shut off to
20 save the battery life of the car.

21 Uh -- At that point, when the --
22 and the video is continuously running -- then any video
23 that is still going when -- when its powered off, is not
24 there.

25 Because once we power the -- the

1 camera back on, that's when it -- it initiates from
2 startup.

3 Q. So what happened to the video?

4 A. I could not tell you. It -- It -- It's -- We're not
5 -- We don't use VHS tapes. We don't have DVDs.

6 It's a hard drive. And it's not
7 on the hard drive.

8 MR. BRYAN:

9 I don't have any other questions.

10 Please answer any questions Mr. Von Herrmann has.

11 THE COURT:

12 Cross?

13 MR. VON HERRMANN:

14 Thank you.

15 CROSS-EXAMINATION BY MR. VON HERRMANN:

16 Q. Officer Brantly -- uh -- first of all, you were
17 equipped with a Taser that night, weren't you?

18 A. Yes sir, I was.

19 Q. So any real resisting arrest, y'all aren't very
20 hesitant to use those tasers; are you?

21 A. When the need arises.

22 Q. And the need would arise pretty good if you thought
23 your -- uh -- safety was in jeopardy; or maybe somebody
24 was continuing to struggle by a car for over 15 minutes?

25 That seems like a pretty good time

1 to be -- uh -- using it; doesn't it?

2 A. Depending upon the circumstances.

3 Q. In fact, when you walked up to the car, it was a
4 stressful situation; no question about it?

5 I mean, you had just been in a
6 high speed chase.

7 No question that he failed to stop
8 for a blue light; right?

9 A. Yes sir.

10 Q. And -- And in all honesty, that's probably law
11 enforcement's worst nightmare?

12 A. Yes sir.

13 Q. It -- You don't know what you're doing?

14 A. Yes sir.

15 Q. When your approach the car, you've got your firearm
16 out? And you realize he doesn't have a weapon. And he's
17 laying there.

18 And you've got to spend probably
19 close to -- and the video will show it later on -- about
20 two minutes trying to get him waken (sic) up to where
21 he's even talking?

22 A. (No response.)

23 Q. Is that true?

24 A. Yes.

25 Q. So he's not trying to get out and fight you at that

1 point?

2 A. I don't -- Was that -- I don't know if that was a
3 question or --

4 Q. He wasn't trying to fight with you that point. He
5 was as -- He was at the wheel unconscious.

6 MR. BRYAN:

7 That's -- That's a statement, Your
8 Honor. I think he -- he needs to ask a question.

9 THE COURT:

10 Sustained.

11 CROSS-EXAMINATION BY MR. VON HERRMANN CONTINUED

12 Q. Was he at the wheel unconscious for two minutes
13 while you were trying to wake him up, or -- and your
14 partner?

15 A. No; he was not at the wheel unconscious.

16 Q. Where was he unconscious at?

17 A. He was -- had stepped out of the vehicle.

18 Q. And he's unconscious outside of the car?

19 A. Not -- You can't be unconscious fighting with us.

20 Q. So you would agree with me that if this video that
21 they're about to play shows and indicates that y'all --
22 that somebody was saying:

23 Wake-up, Hoss. Wake up there,
24 Slick.

25 You would agree with me that your

1 testimony today would be wrong.

2 A. I would agree that he was not responsive once the
3 handcuffs were placed on him.

4 Q. In other words, he was unconscious?

5 A. He was not responsive once the handcuffs had been
6 placed on him.

7 Q. Well how can he fight you and -- being unconscious.
8 Explain that to me, please.

9 A. Once the handcuffs are placed on him --

10 Q. Once the handcuffs were placed on him, he then was
11 unconscious?

12 A. That's when he was unresponsive --

13 Q. Okay.

14 A. -- to us.

15 Q. But then, a little while ago, you testified that he
16 we tend to and spit.

17 A. There was a moment where he was responsive. And
18 there was a moment when he was unresponsive.

19 Q. Isn't it true that his teeth had actually come
20 through the upper part -- or the lower part of his lip
21 and his mouth was full of blood?

22 A. I -- I would agree that his mouth was full of blood.
23 I would not know the injuries sustained to his lip.

24 Q. You didn't check?

25 A. No sir.

1 Q. And you -- you just said:

2 You're totally a mess. We ain't
3 going to be out here all night. Make a decision.
4 Whatever y'all going to do, make a decision. We're not
5 going to be here all night.

6 A. After he was refuse treatment with EMS; yes.

7 Q. And you would agree with me that the standard
8 protocol in a wreck that you respond to on the average
9 day would be:

10 To have EMS put him on the board
11 with a neck brace and all of that to have him
12 transported.

13 You would agree that's standard
14 protocol for a traffic accident?

15 A. No sir.

16 Q. That's not standard pro --

17 A. I -- I have nothing to do with traffic accidents.
18 We don't respond to traffic accidents.

19 Q. If you, in your department, were to respond to a
20 traffic accident -- Certainly you've backed up the
21 Highway Patrol haven't you?

22 A. Yes sir. Yes.

23 Q. And you've seen the standard response. The EMS
24 shows up. They put him on a backboard.

25 Isn't that true?

1 A. If -- If they deem necessary.

2 Q. And -- And they put him in a neck brace?

3 A. (No response.)

4 Q. And they don't worry about whether or not they're
5 going to be there all night?

6 A. That's a -- That's a call for EMS to make. That's
7 their -- That's their decision.

8 Q. And EMS isn't here?

9 A. No. No. You're right. They're not.

10 Q. And the guy that supposedly told you to cover his
11 head up, he's not here to testify today either; is he?

12 A. To my knowledge.

13 Q. As a matter of fact, there's nobody here to testify
14 and there's no evidence on the video of -- of having am
15 blood split on you.

16 MR. BRYAN:

17 Objection, Your Honor. That's
18 argument, Your Honor.

19 MR. VON HERRMANN:

20 It's a question.

21 THE COURT:

22 Overruled.

23 CROSS-EXAMINATION BY MR. VON HERRMANN CONTINUED

24 Q. Is there or is there not?

25 THE COURT:

1 Go ahead and answer.

2 MR. BRYAN:

3 He's asking him to go ahead and testify,
4 Your Honor.

5 MR. VON HERRMANN:

6 I'm asking him the question.

7 CROSS-EXAMINATION BY MR. VON HERRMANN CONTINUED

8 Q. Is there or is there not anybody out of the hundred
9 officers out there and EMS and everybody else to testify,
10 other than you and another officer?

11 A. To testify where he spun around he split blood
12 direct in my face?

13 Q. Right.

14 A. No.

15 Q. And this miraculous video that keeps disappearing,
16 your partner, who's going to testify here in a few
17 minutes, has the same type video you have.

18 Isn't that correct?

19 A. Yes.

20 Q. But we have his video and we're going to watch that
21 here in a little while; right?

22 A. Yes.

23 Q. So yours would've had more information and more
24 stuff for this jury to make a decision on than his would
25 have?

1 A. Probably; yes.

2 Q. But we don't have his.

3 A. He was fortunate enough not to have to turn his car
4 off.

5 Q. That you know of.

6 A. That I know of.

7 Q. But you said:

8 Even if you turn the car off, it goes to
9 hard drive.

10 And you don't have the hard drive?

11 A. If the video is processing.

12 Q. So everything seems to be working out just perfect
13 for y'all.

14 A. (No response.)

15 Q. You have a video camera or a digital camera or
16 anything? You got a cell phone camera.

17 A. Yes.

18 Q. Did you take any pictures of the blood that was on
19 you?

20 A. No.

21 Q. You know, there are cameras in the hospital?

22 A. I -- I wouldn't know that.

23 Q. Did you ask. Did you go back and try to find it?

24 A. No.

25 Q. You're the lead investigator in this case; aren't

1 you?

2 A. I'm the arresting officer.

3 Q. And you're lead investigator.

4 A. I'm the arresting officer.

5 Q. And you list in your report that you're the lead
6 investigator; correct?

7 A. The responding officer; yes.

8 Q. No; you go one step further. You are, according to
9 your report, the leading investigator.

10 A. I'd have to see where "leading investigator" is
11 actually being shown.

12 My name shows I'm the reporting officer.

13 Q. Well, you didn't sign the warrant; did you?

14 A. I'd have to look at the warrant to re -- refresh my
15 memory.

16 Q. You don't -- As important a case this is, you
17 haven't reviewed the warrants already?

18 A. Six months.

19 Q. Six months that you --

20 A. Seven months.

21 Q. -- have met with the prosecutor and read the
22 warrants and gone through your file?

23 A. I have. I -- I've refreshed my memory of the events
24 that took place that night.

25 Q. Well, let's just say -- See if this helps you out.

TESTIMONY OF OFFICER JOHN BRANTLY

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1 A. Your answer would be no, then. Yes. I'm sorry. No
2 I did not.

3 Q. Okay. So you didn't sign the warrant?

4 A. No I did not.

5 Q. You didn't check the hospital. Now you're claiming
6 not to be the lead investigator.

7 But this is an important case to
8 you?

9 A. It is.

10 Q. And there's no doubt that -- no doubt that my client
11 stop -- did not stop for your blue lights; none.

12 We all agree about that; right?

13 A. Yes.

14 Q. Okay. Other cars had video; didn't they?

15 A. Other cars were --

16 Q. Other patrol cars?

17 A. Other cars were equipped with vehicle video. I'm
18 not positive that other --

19 Q. As an investigator, or as a lead person, or as
20 arresting agent or anything, wouldn't that have been
21 important to you to go around and collect that and bring
22 -- or interview those people to see what they saw?

23 A. Yes.

24 Q. But you didn't do it?

25 A. No.

1 Q. In fact, my client was talking about how he was John
2 Gotti at one point; didn't he?

3 A. Yes.

4 Q. He's clearly is not John Gotti; right?

5 A. No.

6 Q. Did it stop anybody from poking fun at him about
7 being John Gotti?

8 A. (No response.)

9 Q. Do you remember people saying:

10 Oh, you're John Gotti. We've
11 been looking for you for years.

12 A. I don't remember that.

13 Q. You don't remember that?

14 A. No sir.

15 Q. If the video shows it, you wouldn't disagree with
16 it; would you?

17 A. If -- I'd have to listen to the video.

18 Q. Okay. And -- And -- But we will. We'll --

19 A. Yes sir.

20 Q. -- listen to all that.

21 Isn't it true, my -- my client,
22 Mr. Smart, was really struggling with his faculties?

23 A. (No response.)

24 Q. Struggling with this mental process?

25 A. (No response.)

1 Q. He had just jumped -- Well, let me just stop there.

2 And I'll ask you another question.

3 A. Are -- Are you asking whether he was drunk or not?

4 Q. Not drunk; just struggling.

5 I mean, we don't know whether he
6 had a concussion; whether he was drunk; whether he was
7 just -- I mean, we don't know.

8 But he was struggling with his
9 mental faculties?

10 You'd agree with that?

11 MR. BRYAN:

12 Objection; that calls for --

13 MR. VON HERRMANN:

14 An observation.

15 MR. BRYAN:

16 -- uh -- an impression of
17 another person's state of mind.

18 MR. VON HERRMANN:

19 It calls for an observation,
20 Your Honor.

21 THE COURT:

22 Overruled.

23 WITNESS:

24 Yes; whether it was intentional
25 or unintentional.

1 MR. VON HERRMANN:

2 Okay. That -- That's fair.

3 CROSS-EXAMINATION BY MR. VON HERRMANN CONTINUED

4 Q. And tell me again, because I'm not real sure exactly
5 how far all of this jumping and crossing and taking place
6 -- He ended up crashing into a -- a -- a railroad track?

7 A. Yes.

8 Q. Where he broke it.

9 A. Yes.

10 Q. And he cleared at least two ditches?

11 A. Cleared -- He cleared -- cleared one ditch.

12 Q. One ditch --

13 Q. And struck the railroad track and landed in that
14 second ditch.

15 Q. And you would agree with me, even though you don't
16 work accidents, that's a bad accident?

17 That's -- you know -- That's
18 going to be a bad scene.

19 A. That's not what somebody wants to do; no.

20 Q. No. And that can certainly -- you know -- impact
21 your health and things of that nature?

22 You agree with me?

23 I mean, you've worked -- you've
24 backed up the Highway Patrol enough to know that?

25 A. You could -- you could sustain some type of physical

1 injury with that; yes.

2 MR. VON HERRMANN:

3 And -- Well, I'll withdraw that.

4 I have no further questions,

5 Your Honor.

6 THE COURT:

7 Redirect?

8 MR. BRYAN:

9 Thank Your Honor.

10 REDIRECT EXAMINATION BY MR. BRYAN:

11 Q. Uh -- Mr. Von Herrmann asked you about -- uh -- 15
12 minutes of struggling.

13 Was he struggling for the whole
14 15 minutes?

15 A. At -- At what -- I mean, at what point?

16 Q. Well he asked you -- He said -- He was asking you
17 about tasing him. And you had a taser. Do you remember
18 that?

19 A. Yes.

20 Q. And he said:

21 Uh -- Couldn't you just tase him
22 if he was struggling for 15 minutes?

23 Do you remember those questions?

24 A. Yes.

25 Q. Uh -- How long did it take you to get the handcuffs

1 on him?

2 A. Uh -- Not long. Very -- Very short. Very short
3 timeframe.

4 Q. Uh -- Less than five minutes?

5 A. Oh, yes.

6 Q. And so, would you tase somebody with handcuffs on
7 them?

8 A. No.

9 Q. Uh -- As far as him being conscious or unconscious
10 -- uh -- you said that he was unresponsive; is that
11 right?

12 A. Unresponsive to verbal -- verbal questions or --or
13 verbal statements.

14 Q. And was that before or after he had struggled
15 initially?

16 A. He --

17 Q. When he got out of car, was he conscious when he got
18 out of the car.

19 A. Yes.

20 Q. Was he conscious when you tried to put the handcuffs
21 on him?

22 A. Yes.

23 Q. Was he then unresponsive after you got the handcuffs
24 on him?

25 A. Yes..

1 Q. And then, did he -- What happened after that?

2 A. It was a -- a mix-up between a struggle and an
3 unresponsiveness.

4 Q. And -- uh -- according to your observations, did you
5 believe that he was unconscious or just not answering the
6 questions?

7 A. Believe he was not answering questions -- quite
8 possible.

9 Q. Do you think he was unconscious?

10 A. No.

11 Q. Now -- And I think there was some question about the
12 -- the board and all that.

13 You -- You've been to a few
14 accidents, although you don't technically work them; the
15 Highway Patrol does; is that right?

16 A. Yes.

17 Q. And -- uh -- every accident you go to, they put
18 somebody on a board and carry them to the hospital?

19 A. No.

20 Q. Okay. And did this Defendant get the opportunity
21 to go with EMS?

22 A. Yes; a --

23 Q. Who called EMS?

24 A. -- few times. I -- Well, I requested EMS. It was
25 sent to dispatch.

1 Q. For him?

2 A. Yes.

3 Q. And they came?

4 A. Yes.

5 Q. And -- uh -- there was a question about whether you
6 took a picture of the blood he spit on your face?

7 Uh -- When you got spit in your
8 face -- uh -- is that -- what -- what did you think
9 about?

10 Did you think about taking a
11 picture of it?

12 A. No, I didn't want to -- I actually didn't want to
13 contaminate anything else.

14 Q. Did you wipe it off?

15 A. (No response.)

16 Q. Did you wipe the blood off your face after you got
17 spit on?

18 A. Oh, Yes.

19 MR. BRYAN:

20 I don't have any other
21 questions.

22 THE COURT:

23 Recross?

24 MR. VON HERRMANN:

1 I have no questions, Your Honor.

2 THE COURT:

3 All right. Thank you. You
4 may step down.

5 All right. Call your next
6 witness.

7 MR. BRYAN:

8 The State calls Jeremy Crews.

9 WHEREUPON: OFFICER JEREMY CREWS
10 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:
11 CLERK:

12 Thank you. Please be seated.
13 State your full name; and spell
14 your last name

15 WITNESS:

16 Jeremy Alan Crews; it's C-r-e-w-s.

17 DIRECT EXAMINATION BY MR. BRYAN:

18 Q. Who do you work for?

19 A. Horry County Police Department.

20 Q. Uh -- And what are your duties and responsibilities?

21 A. Uh -- Patrol Officer.

22 Q. And were you working on -- uh -- Christmas night,
23 last year?

24 A. Yes.

25 Q. And you got -- How did you get involved in this

1 case?

2 A. I was sitting on 501 on top of the 44 coverpass. I
3 was Conway bound. And I was sitting on top of the
4 bridge.

5 And the central-side dispatch had
6 dispatched me a call; and said that -- uh -- Officer
7 Brantly was in a pursuit heading beach-bound on 501.

8 Q. What did you do?

9 A. I started heading down 501 Conway-bound. I got to
10 the light at Waccamaw Pines on Highway 501.

11 At that time, I saw them approach
12 at a high rate of speed.

13 Uh -- As they passed me, I turned
14 around in the median and began trying to catch up.

15 Q. Okay. And -- uh -- tell the jury what you did
16 after you turned around?

17 A. I turned around to try to catch up. They was moving
18 at a high rate of speed.

19 I had initially went approximately
20 about 105; maybe 110 miles an hour. Realized I was not
21 catching up. Uh -- Ended up getting up to 129.

22 Uh -- We went over the Waccamaw
23 bridge. Uh -- Went under the 17 bypass.

24 And -- uh -- I initially started
25 there gaining on them as they passed Seaboard Street.

1 And initially actually caught up to them at Robert
2 Grissom and 501.

3 Q. Okay. And where did you -- where did you start the
4 pursuit?

5 A. It started at Waccamaw Pines and -- and -- uh --
6 Highway 501 where the factory stores is at.

7 Q. Is that Tangier Outlets?

8 A. Yes.

9 Q. Okay. And -- uh -- when you caught up to him, what
10 was he doing? What was the Defendant's vehicle doing
11 when you caught up to him?

12 A. When I made the right-hand turn on Robert Grissom --
13 that would be southbound -- uh -- I followed John Brantly
14 -- uh -- Officer Brantly's car.

15 He had slowed down because the
16 suspect had spun out and actually went backwards over to
17 the curb.

18 And then, after he stopped, he
19 went forward; went back northbound, passed me.

20 And Officer Brantly had turned
21 around.

22 I waited for him to turn around.
23 And he passed me. And I had turned around. And the
24 suspect had went over the median and went across 501 on
25 -- uh -- went down Robert Grissom the wrong way. Went

1 over the 501 median and across the lane; and ended up
2 crashing into a ditch.

3 Q. Okay. And -- uh -- what did you do after that?

4 A. Uh -- We -- Both of us had pulled our cars -- cars
5 upon on the road. Blocked the road. Got out. Ran
6 toward the vehicle.

7 At that time the suspect had
8 opened the door. He got out of the car. Seemed a little
9 confused. We then put him down to the ground.

10 And when we started to put him
11 into custody, he kind of pulled away a little bit. And
12 as we got him into custody, I turned around; went back to
13 the cars; and shut off the siren on the vehicle.

14 Q. Okay. Uh -- Describe -- uh -- as fully as you can
15 -- Well first of all, were you -- uh -- in front or
16 behind Brantly?

17 A. Behind Brantly.

18 Q. Okay. And got out of the car first?

19 A. Brantly. Officer Brantly did.

20 Q. Who got to the Defendant first?

21 A. Officer Brantly.

22 Q. And -- uh -- what happened -- describe the -- uh --
23 you said he struggled a little bit. Tell the jury what
24 happened.

25 A. He was pulling his arm away as we tried to get one

1 handcuff on him and just kind of basically trying to roll
2 over, as he was on his stomach.

3 Q. Did he seem unconscious while he was doing that?

4 A. No.

5 Q. Uh -- Okay. And what happened after you -- uh --
6 got the cuffs on him?

7 A. I had walked back to the car. Uh -- Turned the
8 siren off on my car. Went over to Officer Brantly's car
9 and turned the sirens off.

10 And then went back; and at that
11 point he was laying there, acting as if he wasn't moving,
12 kind of basically not making any movement.

13 Q. How long did he do that?

14 A. I'd say maybe approximately maybe a couple of --
15 maybe a minute or two. And we were waiting on -- because
16 we had called for -- uh -- EMS to come.

17 Q. Okay. And then, did he ultimately become
18 responsive again?

19 A. Yes sir.

20 Q. What -- Tell the jury about that.

21 A. Uh -- He became responsive; started turning his head
22 and spitting towards the ground. And walked to right of
23 him, because we had him laid down beside where the door
24 opened up.

25 And he began -- While he was in

1 handcuffs, he was trying to rollover and things like
2 that.

3 And we were waiting on EMS
4 personnel. And then, he had -- I mean, started making --
5 At first, he started making comments about how he was
6 John Gotti and how he would, if he had a gun, he would
7 kill us all.

8 And other officers started to show
9 up. And we a stepped -- A couple of us had stepped off
10 while Officer Brantly had his foot on his back,
11 basically, so he wouldn't roll over and try to spit
12 towards him.

13 Q. Okay. And when you said that he was spitting, was
14 he spitting towards -- How close to the car was he?

15 A. Maybe --

16 Q. Or the truck, I guess.

17 A. Maybe 2 feet, maybe 3 feet.

18 Q. And -- uh -- was he spitting in the direction of the
19 truck or in the other direction.

20 A. Towards the right, away from the truck?

21 Q. And who was on the other -- Who was on that side of
22 him? Anybody?

23 A. I don't know. Officer Brantly was standing towards
24 -- maybe towards that side of him, but more towards --
25 like here is my thigh area -- and had his foot towards

1 his back.

2 Q. Okay. Uh -- Okay. So what happened after -- You
3 called EMS?

4 A. (No response.)

5 Q. Is that right?

6 A. Yes sir.

7 Q. And then -- uh -- what happened when EMS got there?

8 A. EMS got there. He was still disorderly; cussing at
9 us; telling us -- you know -- he was going to -- he was
10 making comments about how he was going snipe us out of
11 the field like deers (sic) from a tree.

12 Uh -- EMS got there.

13 He was very disorderly with him.

14 They -- They didn't -- They tried
15 to seek attention to him. And he kind of denied
16 attention, basically.

17 So they ended up clearing him;
18 going back. And he ended up having to transport him to
19 the hospital.

20 Q. And -- uh -- who transported him to the hospital?

21 A. Officer Brantly.

22 Q. And did you -- uh -- You got a video in your car?

23 A. Yes sir.

24 Q. Uh -- I'm going to hand you --

25 MR. VON HERRMANN:

1 With -- Without objection, Your
2 Honor.

3 THE COURT:

4 All right.

5 MR. BRYAN:

6 This is State's 1.

7 THE COURT:

8 State's 1 in evidence?

9 MR. BRYAN:

10 Yes, sir, Your Honor.

11 Well --

12 THE COURT:

13 Is that correct, Mr. Von Herrmann?

14 MR. BRYAN:

15 I'm going to --

16 MR. VON HERRMANN:

17 Without objection, Your Honor. He
18 can play it.

19 THE COURT:

20 Into evidence?

21 MR. VON HERRMANN:

22 Yes sir.

23 THE COURT:

24 All right. State's Number 1 into
25 evidence.

1 WHEREUPON: THE VIDEO TAPE (WITH
2 NO ACCOMPANYING TRANSCRIPT) THAT WAS EARLIER MARKED BY
3 THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 1, WAS
4 ENTERED INTO EVIDENCE WITHOUT OBJECTION.

5 MR. BRYAN:

6 Thank Your Honor.

7 DIRECT EXAMINATION BY SOLICITOR CONTINUED:

8 Q. Now -- uh -- what -- what you're going to see on the
9 -- uh -- I think we've probably covered it.

10 But this is out of your car; is
11 that right?

12 A. Yes sir.

13 Q. And you will where in relationship to the Defendant
14 and Brantly?

15 A. Where my car was pointing at?

16 Q. Yeah.

17 A. It was pointing --

18 Q. First of all, when -- when we first pick it up,
19 where are you -- where are you pointing?

20 Are you traveling the same way; or
21 the other way?

22 A. (No response.)

23 Q. When you first cut your video on? Are you --

24 A. I'm traveling towards them. They're heading towards
25 me.

1 Q. Opposite direction.

2 A. Opposite direction.

3 Q. And then -- uh -- ultimately you turned around on
4 them?

5 A. Yes. I turned around.

6 Q. And then -- uh -- you obviously got in behind them?

7 A. Uh-huh.

8 MR. BRYAN:

9 Uh -- We'd request to publish it
10 now, Your Honor.

11 THE COURT:

12 Sure. Any objection?

13 MR. VON HERRMANN:

14 No objection, Your Honor.

15 THE COURT:

16 It's into evidence.

17 MR. VON HERRMANN:

18 Absolutely.

19 WHEREUPON: State's Exhibit Number

20 1 was played in the courtroom for the jury beginning at
21 12:16 PM and continuing until 12:41 PM, July 20, 2010.

22 DIRECT EXAMINATION BY SOLICITOR CONTINUED:

23 Q: Uh -- After all this chase happens and everything,
24 there's a --

25 After the case happens and -- uh -- the car stops -- the

1 truck the Defendant was driving stops -- uh -- you get
2 out of your car.

3 Is that you, when we see you
4 running --

5 MR. VON HERRMANN:

6 Objection, Your Honor, leading the
7 witness.

8 THE COURT:

9 Sustained.

10 MR. BRYAN:

11 I'm asking him -- uh -- at a
12 particular point in time. I'm just trying to have him
13 clarify who was on the video.

14 DIRECT EXAMINATION BY SOLICITOR CONTINUED:

15 Q. Can you see yourself running across the -- uh -- Did
16 you watch the video here?

17 A. Yes sir.

18 Q. Did you see yourself run across the side of the --

19 A. Yes, I ran across the video towards the left.

20 Q. All right. Did you ever see the Defendant or -- uh
21 -- Brantly on there?

22 A. On the video; no sir.

23 Q. Uh -- At that point?

24 A. At that point; no.

25 Q. Okay. And then when you came -- Did you come back

1 onto the camera? Or the cam -- view of the camera?

2 Did you see yourself come back
3 into the picture?

4 A. When I came back to turn the sirens off the car.

5 Q. And at that point -- uh -- about how long was that
6 after you had initially run passed off the camera?

7 A. I'd say maybe a minute maybe.

8 Q. Okay. And at that point was the Defendant in
9 custody?

10 A. Yes.

11 Q. In other words, was he handcuffed?

12 A. I -- Yes. Yes. Did I -- We had put him in cuffs
13 and then I had walked back to turn the sirens off in the
14 cars.

15 Q. So just so that's clear, he was handcuffed when you
16 came back across the --

17 MR. VON HERRMANN:

18 Objection, Your Honor; leading the
19 witness.

20 THE COURT:

21 Sustained.

22 DIRECT EXAMINATION BY SOLICITOR CONTINUED:

23 Q. When you walked back across the screen, was the
24 Defendant --

25 MR. VON HERRMANN:

1 Again Your Honor, objection;
2 leading the witness.

3 MR. BRYAN:

4 I'm asking at a particular point
5 in time on the video, was he or was he not handcuffed.

6 THE COURT:

7 Overruled.

8 MR. BRYAN:

9 He can answer either way.

10 THE COURT:

11 Continue.

12 DIRECT EXAMINATION BY MR. CONTINUED:

13 Q. Was he or was he not handcuffed when you walked back
14 across the screen?

15 A. Yes.

16 MR. BRYAN:

17 I don't have any other questions.

18 THE COURT:

19 Cross.

20 MR. VON HERRMANN:

21 Thank Your Honor.

22 CROSS-EXAMINATION BY MR. VON HERRMANN:

23 Q. At some point the Defendant wasn't make any movement
24 on the ground at all, was he?

25 A. No sir.

1 Q. And y'all were concerned about him, because you kept
2 going -- you know:

3 Are you okay buddy? Are you okay?

4 And that lasted several minutes?

5 A. Not several minutes.

6 Q. So if I told you that I taped this and it was about
7 two minutes, you would disagree with that?

8 A. It -- It was about two minutes, yeah, that he wasn't
9 moving.

10 Q. Okay. So you were concerned?

11 A. (No response.)

12 Q. And you in -- Is that right?

13 A. Yes.

14 Q. Okay. And you indicated that he was spitting
15 towards the ground.

16 A. Towards the -- He turned his head towards the right
17 spitting.

18 Q. Towards the ground.

19 A. (No response.)

20 Q. And he --

21 MR. BRYAN:

22 Objection, Your Honor. He's
23 making a comment after the question was answered, which
24 was different than the answer.

25 MR. VON HERRMANN:

1 His answer was exactly the same.

2 THE COURT:

3 Continue.

4 MR. BRYAN:

5 He said --

6 MR. VON HERRMANN:

7 So he had --

8 MR. BRYAN:

9 The witness said to the right; and
10 he said to the ground, Your Honor.

11 THE COURT:

12 Continue.

13 CROSS-EXAMINATION BY MR. VON HERRMANN CONTINUED:

14 Q. So we had a foot on his back?

15 A. (No response.)

16 Q. And you would agree with me there was officers out
17 there poking fun at the guy?

18 A. No. No sir.

19 Q. Not calling him John Gotti? Saying: You're John
20 Gotti. We been looking for you forever.

21 A. Well, we --

22 Q. Do you not consider that poking at him?

23 A. He -- He kept telling us he was John Gotti. We kept
24 -- He didn't have any I.D. on him. And the next thing,
25 he -- At first he wasn't responsive kind of.

1 So what you would do is probably
2 get somebody to actually talk to him to keep responses
3 while EMS is coming.

4 Q. So you're telling that you believed he was John
5 Gotti now?

6 A. No. Not that I would.

7 Q. Okay. So you were poking at him?

8 A. That wasn't me.

9 Q. Well, other officers were poking at him.

10 A. I wouldn't say they was poking at him. They was
11 talking to him.

12 Q. You don't think that making comments like:

13 So you're John Gotti. We been
14 looking for you for years.

15 You don't think that's poking to
16 the guy?

17 A. (No response.)

18 Q. How about the -- uh -- comments you made about:

19 Missed a good one there; didn't
20 you?

21 To the other officers.

22 What did you mean by that?

23 A. Good chase.

24 Q. So it was a good chase.

25 Q. It -- It was car chase, yeah.

1 COURT REPORTER:

2 It was a what? I'm sorry?

3 WITNESS:

4 Car chase. Car chase.

5 CROSS-EXAMINATION BY MR. VON HERRMANN CONTINUED:

6 Q. And you could have left the sound on the whole time,
7 couldn't you?

8 A. Well, John -- Officer Brantly had a mike. And for
9 himself, he had the same camera system I did.

10 And when you got the camera system
11 on, the green light is on, on your body mike. His was
12 on.

13 And he was standing by the
14 suspect.

15 Q. You could have left your cam -- your video on. We
16 don't have his video; right? We all know that.

17 A. Uh --

18 Q. You could've left your video or your audio on?

19 A. Yes sir.

20 Q. And we'd know what everybody out there was saying if
21 you left it on; wouldn't we?

22 A. Well -- From the video -- I -- I wasn't standing
23 that close to him. So you -- you could hear Brantly more
24 because he was more vocal than him.

25 Q. We would have known everything that you would have

1 heard on your microphone? That's the reason y'all have
2 them; isn't it?

3 A. Uh --

4 Q. And yet you chose, right after you said the F-word
5 -- and not that we're not all over 21 -- but I believe we
6 know. There's no sense in --

7 A. Yes.

8 Q. Right after you said that, you cut it off.

9 A. I -- I had -- I had -- was speaking with my direct
10 supervisor and -- and the other officers that are
11 actually on my shift; because I have a different
12 supervisor than Brantly does. And he chased him down
13 towards out precinct.

14 And I explained to him how I got
15 involved and what exactly happened.

16 Q. But you had cut your microphone off during your
17 explanation; didn't you?

18 A. Yes sir.

19 Q. And during the time that, for instance, when we
20 might've heard something when he was coming up from -- uh
21 -- of what he said?

22 A. That's possible.

23 Q. Did you have a cell phone with you?

24 A. It was in my car.

25 Q. That night?

1 A. Yes sir.

2 Q. You could've taken pictures; couldn't you?

3 A. I don't take pictures with my cell phone; no.

4 Q. You've got capabilities with your --

5 A. I've got capabilities; yes.

6 Q. And you could have turned your camera on your video
7 to take pictures of what was going on; couldn't you?

8 A. At the angle of that, possibly.

9 Q. And if we had all those police officers -- How many
10 do you estimate there were?

11 A. There was Highway Patrol. There was Myrtle Beach.
12 There was Horry County.

13 Q. A bunch of cameras; right?

14 A. Yes.

15 Q. And a bunch of ways to collect evidence; right?

16 A. Well, not -- Not everybody had their cameras on.
17 Unless they've actually initiated or would turn their
18 lights on.

19 Q. But there's a bunch of ways to collect evidence.

20 A. Yes.

21 Q. And Horry County, in fact, has a evidence unit that
22 goes out and will collect and process the crime scene?

23 Is that true?

24 A. Yes sir.

25 Q. And you can call them pretty much at will and

1 they'll come out and process a crime scene?

2 A. That was -- They wouldn't respond to a chase.

3 Q. But if you had said there was a crime scene and we
4 need a process, they would've come out there; right?

5 A. That's actually not like -- like a crime scene that
6 they would come out to.

7 A -- A car chase; unless there was
8 bodily injury, they -- they would not have responded.

9 Q. But there was bodily injury. We've got a guy that's
10 passed out. So they would've responded to that one.

11 A. I'm referring to like great bodily injury; something
12 where it was life-threatening.

13 Q. Did you know it wasn't great bodily injury?

14 A. No sir. EMS came and checked him out.

15 Q. But you didn't know -- EMS -- They took him to the
16 hospital; didn't they?

17 A. Yeah, they took him to the hospital; yes.

18 Q. So you didn't know there wasn't great bodily injury.
19 Did you bother calling the crime scene people and ask
20 them to come out and process the crime scene?

21 A. No sir.

22 MR. VON HERRMANN:

23 No further questions.

24 THE COURT:

25 Redirect?

1 MR. BRYAN:

2 No, Your Honor.

3 THE COURT:

4 All right. You may step down.

5 Thank you.

6 Anything further from the State?

7 MR. BRYAN:

8 No, Your Honor... That's the
9 State's case.

10 THE COURT:

11 All right.

12 Members of the jury, we're going
13 to take a lunch break. We have to take up some matters
14 of law here in the courtroom. So we need a little bit
15 longer for lunch than you do.

16 So we're going to take a break
17 until three o'clock. If you would be back in the
18 juryroom at three o'clock.

19 But again, let me instruct you:

20 Do not talk about the case among
21 yourselves at all.

22 You have not heard everything that
23 you need to hear.

24 If you go home, don't talk about
25 with your family members. Just don't talk about it with

1 anything (sic).

2 You can talk about anything else
3 you want, but not the case itself.

4 Thank you very much. And we'll
5 see you at three o'clock.

6 (WHEREUPON: The jury empanelled
7 in the case withdrew from the courtroom at 12:49 PM, July
8 20, 2010; and was no longer present during the following
9 proceedings.)

10 THE COURT:

11 All right; motions from Defense?

12 MR. VON HERRMANN:

13 Yes, Your Honor.

14 Your Honor, we have no motion with
15 regards to failure to stop for a blue light as we find,
16 we believe, that there is evidence to go to the jury, and
17 without a doubt.

18 We've admitted that and confessed
19 the fact that there is probably -- and -- and my client
20 understands that there is the likelihood that -- and --
21 and almost the impossibility that the jury will find
22 anything other than not guilty in that particular case.

23 However, with regards to the other
24 ones -- uh -- we do have a motion for a directed verdict,
25 specifically with the threatening the life of a public

1 official.

2 They have not proved -- uh -- at
3 this point that there's any public official whose life
4 has been actually threatened -- uh -- in any way, shape,
5 or form, not to mention that there is no adequate -- uh
6 -- really an adequate way to say -- to determine the
7 intent.

8 Uh -- This Defendant was rambling.
9 He obviously was in a state, according to the police
10 officer's testimony -- uh -- in a state where he was --
11 you know -- essentially unconscious at times -- uh --
12 fading in and out.

13 There is no indication -- and --
14 and quite frankly the evidence is -- is exactly opposite,
15 in that:

16 If we had the video; if we had the
17 audio that was available to the Police Department -- uh
18 -- it might have showed something different.

19 Uh -- And that's certainly -- uh
20 -- we're going to request a charge if the -- if the -- uh
21 -- this motion is denied.

22 Your Honor, for that reason, we
23 would request a directed on that particular charge.

24 THE COURT:

25 Any response, Mr. Bryan?

1 MR. BRYAN:

2 Uh -- Well I think the evidence is
3 clear that he made some threats to kill the officer who
4 is a public officials.

5 THE COURT:

6 I find it's a question of fact. I
7 deny the motion.

8 MR. VON HERRMANN:

9 Your Honor, we would also -- uh --
10 with regards to resisting arrest -- uh -- we believe
11 there's insufficient evidence to send that to the jury
12 for -- uh -- there consideration on resisting arrest, as
13 we believe there's not sufficient evidence.

14 THE COURT:

15 Any response.

16 MR. BRYAN:

17 No argument, Your Honor.

18 THE COURT:

19 All right.

20 MR. BRYAN:

21 Judge, when I say no argument, I'm
22 -- I'm not agreeing.

23 THE COURT:

24 All right.

25 MR. BRYAN:

1 I just think the record is clear
2 on all the issues.

3 THE COURT:

4 I'm glad you bring that up.
5 Motion denied.

6 MR. VON HERRMANN:

7 I'm with on the burglary --

8 THE COURT:

9 All right. Continue.

10 MR. VON HERRMANN:

11 -- if he wants to do that one?

12 The last one, throwing the bodily
13 fluids, Your Honor, I believe the statute is -- is clear
14 that you have to throw.

15 I understand we'd had some
16 pretrial motions with regard to it. We would simply
17 renew our motion on that -- uh -- to stand on the same
18 grounds that we believe that throwing, or to be thrown,
19 would actually not -- uh -- be under the statute; that
20 the statute should have been at a simple assault, assault
21 and battery, or things of that nature.

22 I understand The Court's ruling on
23 that; and I just wanted to put that on the record and --

24 THE COURT:

25 Sure.

1 MR. VON HERRMANN:

2 -- and please note my exception to
3 -- I guess I ought to let you rule. You might --

4 THE COURT:

5 Again, motion denied.

6 MR. VON HERRMANN:

7 And --

8 THE COURT:

9 Anything further?

10 MR. VON HERRMANN:

11 And I would ask The Court to --
12 you know -- note my exception.

13 THE COURT:

14 Sure. Anything further --

15 MR. BRYAN:

16 No, Your Honor.

17 THE COURT:

18 -- from the State?

19 MR. BRYAN:

20 No, Your Honor.

21 THE COURT:

22 Defense?

23 MR. VON HERRMANN:

24 No Your Honor.

25 THE COURT:

1 He said he was not.

2 MR. BRYAN:

3 Thank Your Honor. I'm sorry.

4 THE COURT:

5 Do you want to rest in front of
6 the jury; or have you rested?

7 MR. VON HERRMANN:

8 Uh -- I've rested. But I'd like
9 to rest in front of the jury.

10 THE COURT:

11 Okay.

12 (WHEREUPON: The jury empanelled
13 in the case was escorted back into the courtroom at 3:10
14 PM, July 20, 2010; and was in fact present during the
15 following proceedings.)

16 THE COURT:

17 Mr. Von Herrmann, call your next
18 witness.

19 MR. VON HERRMANN:

20 Your Honor, we see no need to call
21 any witnesses. So Defense rests at this time.

22 THE COURT:

23 All right.

24 Members of the jury, just for a
25 brief moment, I'm going to send you back out. I have to

1 take up motions at this time. And we'll bring you right
2 back in real quick.

3 Thank you.

4 (WHEREUPON: The jury empanelled
5 in the case withdrew from the courtroom at 3:11 PM, July
6 20, 2010; and was no longer present during the following
7 proceedings.)

8 THE COURT:

9 Any motions?

10 MR. VON HERRMANN:

11 Your Honor, Defendant renew all
12 the motions in pretrial -- uh -- uh -- previously made
13 before on -- under the directed verdict for all four
14 cases -- or all four charges, with the same reasons.

15 THE COURT:

16 Okay. The motions are denied
17 again.

18 Solicitor, anything from you?

19 MR. BRYAN:

20 (No response.)

21 THE COURT:

22 Any motions?

23 MR. BRYAN:

24 No sir, Your Honor.

25 THE COURT:

1 All right.

2 Let's go ahead and bring the jury
3 back in.

4 (WHEREUPON: The jury empanelled
5 in the case was escorted back into the courtroom at 3:14
6 PM, July 20, 2010; and was in fact present during the
7 following proceedings.)

8 THE COURT:

9 All right. Thank you very much.

10 I just wanted to make sure you get
11 your exercise after lunch.

12 (Laughter erupts in the
13 courtroom.)

14 THE COURT:

15 All right.

16 Solicitor, you're recognized.

17 MR. BRYAN:

18 If it please The Court?

19 I appreciate your patience and --
20 uh -- your abilities to pay attention.

21 I think everybody on the jury --
22 It looked to me like you were paying attention and taking
23 the job serious.

24 And even though it's -- uh -- like
25 I said, a pretty quick case -- uh -- it's important to

1 everybody in the courtroom too.

2 And -- uh -- all we want you to do
3 is to do justice in the case.

4 And -- uh -- we want you to just
5 simply use common sense.

6 And the judge is going to charge
7 you on reasonable doubt that it's a -- a verdict that you
8 -- leaves you firmly convinced -- that the evidence in
9 the case leaves you firmly convinced, either way -- uh --
10 that's when you come -- that's when you come back in the
11 courtroom.

12 And if you are firmly convinced of
13 the Defendant's guilt on each of these charges, then your
14 responsibility is to come back: guilty.

15 Let me talk just quickly about the
16 evidence.

17 Uh -- It's basically from the
18 officers -- those two officers who testified and the
19 video.

20 That's all the evidence there is
21 in the case.

22 And -- uh -- the judge is going to
23 charge you on credibility. And I suggest to you that
24 both officers -- uh -- looked forthright.

25 He's going to talk about their

1 demeanor.

2 Uh -- Did they look like they were
3 telling the truth?

4 Did they act like they had
5 something to hide?

6 Did they seem like they were
7 extremely bias.

8 Uh -- But I would suggest to you
9 that:

10 Officer Brantly came in and just
11 told you what happened factually.

12 And what happened is:

13 He was on patrol on Christmas Day.

14 So he's got the -- uh -- He drew
15 the short stick. And he's working Christmas Day into the
16 midnight and beyond of the 26th.

17 And he's just on routine patrol,
18 when he sees the -- the Defendant come by in his car.

19 He's going too fast.

20 He goes right through the
21 intersection and stops in the middle of it.

22 And he looks over and he sees the
23 officer, at which point he takes off.

24 And the failure to stop is later
25 caught on video but the officer said that he was going --

1 uh -- Crews testified that he was going 120 miles an hour
2 and not catching up to the Defendant.

3 So he's putting his -- his life in
4 jeopardy; the lives of the officers; the life of anybody
5 unfortunate enough to be on the road at -- uh -- one or
6 two o'clock in the morning on Christmas Night.

7 And he goes all the way in to
8 Myrtle Beach, at which point he never stops.

9 At some point he takes a right.
10 He does a couple of spins.

11 You see him go back in reverse.

12 He steps on it again.

13 And he doesn't stop, ever.

14 And that's what I want you to --
15 to keep in mind in this case.

16 Uh -- Mr. Von Herrmann is probably
17 going to say a lot of things that -- that I won't
18 address.

19 But I hope you just use your
20 common sense. And -- And think about what's on the video
21 and what the testimony was.

22 If there's one thing we know is,
23 that:

24 That Defendant never stopped, ever
25 voluntarily.

1 He didn't stop when he ran his car
2 into oncoming traffic, across median, across the road he
3 was supposed to be on, across the grass there, and
4 ultimately into the -- uh -- railroad track.

5 And once he crashed his vehicle
6 and he couldn't drive anymore, they got him.

7 When they got him, he tried to
8 pull away. That's the resisting arrest.

9 The two of them were able to take
10 him down and arrest him and put his hands behind his
11 back, at which point he starts playing possum.

12 And now he's gone from -- uh --
13 resisting and struggling, to spitting all over the place.
14 And now he's just unconscious.

15 And you hear the officer say:

16 Hey, you all right buddy.

17 He says:

18 Uh -- EM -- EMS is on the way

19 Hoss; right.

20 And if he was condescending -- uh
21 -- then you are the judge of that.

22 I suggest to you that nothing that
23 Brantly ever did was condescending or in any way -- uh --
24 is he responsible for what happened.

25 So they -- they arrest -- they --

1 they place him in cuffs.

2 He calls EMS.

3 When he calls EMS, it takes about
4 10 minutes to get there.

5 When they get there, the Defendant
6 refuses EMS treatment.

7 EMS came. EMS left. They didn't
8 take the Defendant with them.

9 That wasn't his fault.

10 That was EMS's decision based on
11 what they heard from this Defendant.

12 Now, at the end, and this tape is
13 in evidence.

14 So the video's in evidence.

15 Uh -- I want to use your common
16 sense. And if you need to go back and look at this, I --
17 I urge you to do so.

18 But with about 17 -- at 2:17:35 in
19 the morning, you see this -- uh -- that Mr. Von Herrmann
20 characterized -- uh -- half-consciously Defendant coming
21 across the screen.

22 And he is pulling two officers
23 with him, as he is barking in the other direction,
24 obviously screaming at somebody and trying to attack
25 somebody while he's got his handcuffs still on.

1 Now, I'm not making that up.
2 That's on the video. And that's what the evidence will
3 show. And that's consistent with what the officers
4 testified to.

5 So he wouldn't quit, even when
6 they got him in handcuffs.

7 Now a lot has been made about the
8 other video. Uh -- There is one video. You have what
9 you have. It's the evidence that's in front of you.

10 But I suggest that:

11 Even if there was another video,
12 it wouldn't capture the Defendant spitting on the victim,
13 because it would be heading straight ahead anyway and
14 they're in there next to the door.

15 So that's just a bunch of -- uh --
16 making a big deal about nothing. Because it wouldn't be
17 on there anyway.

18 The point is:

19 He's handcuffed. And when he --
20 uh -- when he -- uh -- goes to put him in the car, he
21 turns, according to the testimony, and spits directly in
22 his face.

23 Now a lot's been made on cross-
24 examination about professionalism, and whether these
25 officers were professional or not.

1 And -- uh -- I would suggest to
2 you that the fact that the Defendant made it to the
3 hospital in the same condition he was in prior to
4 spitting in the officer's face, is about as professional
5 as a man can be expected to behave.

6 If someone spits in another
7 person's face -- uh -- it's not sending them a birthday
8 card.

9 It's pretty clear -- uh -- what
10 your intention is.

11 And I can't think of anything more
12 insulting than you can do from one person to another than
13 spit in their face.

14 Now when the matter can clear and
15 the blood -- Again, when you see him come across the
16 screen, if you'll take a look at that on the video -- or
17 if you saw it the first time:

18 Did he look like somebody who was
19 having trouble breathing; that he was half-unconscious;
20 that he was -- uh -- in dire need of medical care.

21 He was pulling two officers trying
22 to get to somebody else, even though he was handcuffs.

23 Then, he spit in that officer's
24 face.

25 And the question comes:

1 Well did you take a picture of it?

2 So, if you've ever heard of a
3 Monday-morning-quarterback, it's easy to -- uh -- ask
4 questions six months or a year later on a Tuesday
5 afternoon in the courtroom when you got a law degree.

6 When you get spit in your face, a
7 bunch of spit and blood, I suggest to you the first thing
8 you -- you're thinking is probably not:

9 Where's my camera?

10 Probably you're going to wipe the
11 spit off, and the blood off of your face.

12 The other thing that -- uh -- is
13 in evidence that I think is very telling about it, is:

14 And we didn't make 25 officers --
15 uh -- come off duty, or -- or come here while they were
16 off duty to testify to this; because you can see clearly
17 on that video.

18 You see that officer doing that
19 (gestures by pulling his hand up over his head).

20 And the testimony is -- and it
21 seems just really clear and obvious if you use your
22 common sense -- what they're saying is:

23 Put the shirt over his face so you
24 don't have to get blood -- any more blood spit in your
25 face.

1 And that's another piece of
2 evidence that you can put along with the testimony in
3 evidence to make it clear that's what's been alleged is
4 what happened.

5 Mr. Von Herrmann is also going to
6 say or he's referred to -- uh -- the fact that it's not
7 "throwing."

8 And -- uh -- because he didn't
9 spit blood into his hand and try to hurl it at him, which
10 I suggest would be impossible, and really eviscerate the
11 statute.

12 I want to read the definition of
13 "throw" to you from the dictionary. It's pretty clear:

14 To discharge into the air by any
15 means.

16 I would take "any means" to be
17 spitting.

18 To hurl straightforth as in anger.

19 That's another definition.

20 So, I don't think they get out of
21 -- uh -- spitting on the officer's face by saying that he
22 didn't throw the spit at him.

23 When the judge charges you the
24 law, he'll tell you what -- uh -- throwing bodily fluids
25 on an officer is, according to statute.

1 And it will say:

2 Throwing blood, urine, spit,
3 feces.

4 I suggest to you that the statute
5 would be meaningless with respect to "spit," if it was
6 talking about throwing it with your hand.

7 So I don't think that should be an
8 issue if you use your common sense and think about it.

9 The question here -- you know --
10 it's not a question of what don't you have. It's a
11 question of what do you have and what do you know.

12 And if you don't believe that the
13 officer testified credibly?

14 If you think that he made that up
15 about being spit on?

16 If you think that he just made up
17 the fact that he said he was sitting in a deer stand,
18 which I suggest to you, you can actually hear about two
19 hours -- uh -- two o'clock -- maybe 2:18 in the morning,
20 you hear -- the officer says what?

21 I've got a portable -- He says
22 he's got a portable deer stand. He's going to come shoot
23 you.

24 And you can actually hear him at
25 2:18, he says:

1 I promise one day I will sit in a
2 tree.

3 And about 13 seconds later, you
4 hear something about "shot."

5 There's some mumbling. You can't
6 quite hear between there. But clearly that corroborates
7 what the officer testified to.

8 There's no question that he was
9 threatening in his demeanor and his manner.

10 He was actually trying to get at
11 the officers while he was cuffed.

12 While he was still cuffed and he
13 couldn't fight anybody anymore, he spit on them.

14 And I would suggest to you that:

15 Rather than bending over backwards
16 to exonerate the Defendant, when it's clear to everybody
17 that he was not going to quit.

18 He was running -- Nobody made him
19 -- you know -- Mr. Von Herrmann said that -- uh -- that
20 he caused it; that the officers, I think he said, caused
21 it -- and those other things.

22 If he suggest to you that -- that
23 the officers caused this, or that they were somehow at
24 fault -- let's think about it with a realistic point of
25 view -- caused it.

1 The officer didn't make him go a
2 120 miles an hour.

3 The officer didn't make him fight
4 him.

5 The officer didn't make him
6 scream:

7 I'm going to kill you. I'm going
8 to kill your wife and kids.

9 And -- And if we had this point
10 about:

11 Oh, well he didn't really do
12 anything. It was all just a harmless threat.

13 He was just spouting off. He's
14 not really John Gotti.

15 I suggest to you:

16 It's not up to us to determine
17 whether he actually killed somebody.

18 If he had killed him, we (sic)
19 wouldn't be sitting here charged with threatening the
20 life of a public official.

21 It would be much different charge.

22 He doesn't have to carry out the
23 threat.

24 There is nothing in law that
25 requires him to carry out the threat to make it a threat.

1 The point is:

2 It is illegal to tell an officer
3 that you're going to kill him; that you're going to kill
4 their wife; that you're going to kill their children.

5 He shouldn't have to hear that.

6 He should have to deal with it.

7 And he certainly shouldn't have to deal with it on
8 Christmas Day -- or Christmas Night.

9 All we're asking you to do is to
10 do justice in this case.

11 I suggest to you that whether
12 there were other officers who were laughing and joking
13 around, it wasn't funny to Officer Brantly when he got
14 spit in his face.

15 He didn't try to do any justice
16 himself that night. He left it in your hands.

17 And I'd suggest to you that the
18 only just verdict that you can bring back is guilty on
19 all these.

20 Thank you.

21 THE COURT:

22 All right. Thank you.

23 Mr. Von Herrmann?

24 MR. VON HERRMANN:

25 Folks, the only thing that Bo and

1 I agreed about the entire time is -- well, not the only
2 thing -- but is this:

3 They didn't provide a whole lot of
4 much of anything at all.

5 They could have provided pictures.

6 They could have provided video.

7 They could have brought videos in.

8 They chose not to.

9 They had all those EMS operators.

10 They were available. They could've brought them in to
11 tell you that he refused medical attention.

12 They could have brought in
13 independent police officers. There was enough out there.

14 They could have shown video from
15 at least, I counted, 12 or 13 cars. It's up to y'all to
16 count them and figure out -- you know -- how many
17 officers were on the scene and the credibility.

18 But the truth of the matter is:

19 What we're really talking about
20 here, when we talk about all the lack of evidence, it's
21 not necessarily any one detail that -- that they didn't
22 bring in, as much as that is.

23 No pictures.

24 No blood.

25 Look at the video.

1 They talk about he's concerned
2 about the -- uh -- blood.

3 Well, let me tell you this:

4 When you watch the video, he comes
5 up, he didn't have any blood on his face at all.

6 The officers are not concerned at
7 that point at all, apparently. Because when they had him
8 down on the ground and they had his foot on his back so
9 he couldn't roll over and spit on them, they act like
10 they had a big concern.

11 They could have taken care of it
12 right then. (Snaps fingers loudly.) Done. No problem.

13 So that tells me a lot.

14 And what that tells me is:

15 Not only were they not concerned,
16 it didn't happen.

17 That there wasn't a spitting
18 intentionally of anybody's face. Because it could have
19 been rectified right there.

20 They had already identified,
21 according to the testimony, if you believe the police
22 officer -- and I have no reason to believe it's -- I
23 mean, the officer said:

24 He was turning to the right and
25 spits in the grass.

1 I want to watch that video.

2 Because the interesting thing about that video is:

3 There are at least three police
4 officers that spit that night that are uninvolved in this
5 case.

6 And none of them had been in a
7 horrible car wreck where their teeth came through the
8 roof in their mouths -- or the front of their mouths.

9 And I think that's telling.

10 This is a pile-on case.

11 He -- He failed to stop for a blue
12 light. No question about it. No question about it.

13 I expect that that verdict will be
14 one of the quickest things that's ever come back in the
15 history of Horry County law, is the fact that he ran.

16 And he did some bad things that
17 night. No question about it.

18 But the rest of it, when you get
19 in an accident and you are facing and you have had the
20 amount of injuries that this man has had, and you are not
21 treated by EMS.

22 And we don't have any indication
23 other than police officer saying:

24 Yeah, he -- he rejected EMS help.

25 We don't have any EMS officers

1 here to say:

2 Yeah, we talked to him. He was
3 cognizant. We -- you know -- We ran through this test --
4 Number ones/ten test -- or ten to one test.

5 We -- you know -- asked him to do
6 at one legged stand; all the DUI test.

7 Didn't do any of them.

8 And what is it that really makes
9 it important about that?

10 Two things:

11 First of all:

12 There's reasonable doubt.

13 The State has to prove beyond a
14 reasonable doubt that my client, Mr. Smart, did these
15 actions; that he spit in somebody's face.

16 And what evidence do we really
17 have of that?

18 Nothing. There is nothing.

19 And it could've been so easily
20 captured a million different ways.

21 What evidence do we have that he
22 threatened somebody; threatened to kill?

23 Is that -- Is that a person that
24 is thinking right? Or is that a bear -- Is that the bear
25 that's getting poked?

1 Because he thinks he's John Gotti
2 while he's laying on the ground and he's being poked and
3 made fun of by 14 -- 15 people.

4 You heard the testimony from John
5 -- uh -- Brantly.

6 Everybody was standing back
7 because of the blood.

8 You look at the video, everybody's
9 walking up to the car.

10 And if you'll notice -- watch the
11 video -- one of the officers puts his foot up on the
12 trunk of his car and he starts (gestures) doing this.

13 It's a natural movement to get the
14 blood out of your mouth.

15 Now I don't know that it did or
16 did not get on the ground; or that the officer felt like
17 it was being -- he was being spit at.

18 I don't know. I can't get in his
19 mind and figure it out.

20 But what I can tell you is:

21 They've got to prove beyond a
22 reasonable doubt -- the highest degree of proof known in
23 the law -- that that's what occurred.

24 And they have failed that.

25 They have failed that, not only

1 just a little bit. They have failed that miserably, by
2 not providing you the information that you need to make
3 that determination and decision; by not providing a
4 picture.

5 If we had a picture, or if we had
6 the hospital information?

7 If we had one of a hundred video
8 cameras?

9 If we had the audio tape that the
10 officer cut off; because he had to say the F-word and run
11 to the scene.

12 Well, he didn't run to the scene.
13 He ran 'cause he was bloody.

14 And the man's surrounded by ten or
15 twelve, fourteen cops. And they're all doing what?

16 Poking and laughing at him.

17 Look at the videotape.

18 When he's drug out, even after
19 they didn't put him on the backboard and do the neck
20 brace and everything else, they're still laughing at him.

21 You poke a bear long enough, I
22 mean, of course he's going to react.

23 I'm not saying as that's fair.
24 I'm not saying that that's the way that -- that police
25 officers, really in life, should be treated.

1 I'm saying that is life. And I'm
2 saying that's how people react.

3 And if we have gotten to point in
4 our lives and in law-enforcement lives where you can
5 arrest, and poke fun, and joke, and laugh, when a man's
6 in handcuffs, and yet, you don't expect them to say
7 anything bad to you, I subject to you -- suggest to you
8 that:

9 We're in a bad state of affairs.

10 We're in trouble.

11 We're in a bad state of affairs,
12 if I -- if a professional law enforcement officer can
13 continue to act that way, poke and prod at somebody,
14 allow his buddies to laugh at him.

15 The guy's in handcuffs. Clearly
16 they weren't concerned about the blood; clearly. Because
17 they would have already taken care of it.

18 There was -- You saw the guy with
19 a baseball bat -- I mean, baseball bat. He could put it
20 on him and it would've been done, if that was really the
21 concern.

22 Yeah. Mr. Bryan's right.

23 There's a lot of stuff that I'm bringing up that he don't
24 want to talk about.

25 He don't want to talk about it,

1 because the other thing is: beyond a reasonable doubt.

2 You have to be firmly convinced
3 that these offenses occurred.

4 And we've already said:

5 He failed to stop for a blue
6 light. And I've already explained to you that:

7 The -- The law just doesn't allow
8 certain things.

9 And that all can be discussed
10 later after the trial. And -- And maybe we're able to --
11 you know -- sit down and -- and talk.

12 But right now is not the time for
13 that and is not the place for that.

14 But we know that he didn't stop
15 for the blue light.

16 We know that there was obviously
17 blue lights.

18 We know that what he did was mess
19 up real bad that night.

20 But don't let them do what they
21 did on the night of that day -- or excuse me -- the 26th
22 of December -- and pile-on for the sole purpose of making
23 it worse and worse and worse and worse on him.

24 That's not fair. And justice is
25 fair; fundamental fairness.

1 And you folks are the ones that
2 has the absolute power and control to control that
3 activity, and to allow people the opportunity to make a
4 mistake, even if it is our -- horrendous mistake -- that
5 -- that -- that, thank goodness, like he indicated, going
6 that fast.

7 Sure, it could have killed
8 somebody. It could have hurt somebody. It almost did;
9 him.

10 But we punish people, not for what
11 could have happened. Because if we did that, everybody
12 would be in trouble.

13 We punish people for what they've
14 done.

15 And what he did was:

16 He failed to stop for the blue
17 light.

18 It had horrendous effects.

19 It had the effect physically,
20 mentally, emotionally, on him. And now he's at trial for
21 it.

22 I mean, he's in a fight. He's in
23 a fight for his life.

24 The prosecutors are just doing --
25 and the police -- are piling on.

1 They're -- They're over -- I won't
2 say "exaggerate," that's probably not fair.

3 But they didn't bring you the
4 evidence to overcome the burden of proof that they carry
5 squarely on their shoulders.

6 You see, as my client sits there
7 today, it's been described by people a heck of a lot
8 smarter than I am, as:

9 He wears a cloak of innocence.
10 And that cloak is absolute. And until it's removed by
11 you folks, he is an absolute innocent man.

12 Now, while that cloak has some
13 tethering -- because there's no question that he did
14 violate the law in speeding and failing to stop for the
15 blue light and all that -- there are tethering.

16 And with that tethering comes
17 responsibility.

18 But there's no sense in it being
19 taken completely off of him just because police officers
20 were mad.

21 Folks, y'all are sworn to -- to
22 truly and try this case correctly. I submit to you:

23 There is no evidence of three of
24 the charges.

25 I submit to you that:

1 There is absolutely -- him -- The
2 realistic view of him pulling away with two officers that
3 are a lot bigger than he is, in handcuffs, yelling and
4 barking at somebody else.

5 You know, you honestly would have
6 the evidence that you needed to know to whether he
7 threatened somebody or didn't threaten somebody; but he
8 cut his -- he cut his remote off.

9 So there's no audio of it; or
10 else, you know what?

11 I might have been up saying:

12 Yeah, he ran -- failed to ran a
13 red light -- or stop for a blue light, and he did what
14 they said he did with a public official.

15 But they didn't give you that.

16 And that's their responsibility.
17 He doesn't have to prove anything. Nothing.

18 And it's your responsibility to
19 uphold that, the law and the Constitution.

20 And for that reason, I understand
21 you're going to find him guilty of failure to stop for a
22 blue light.

23 But I submit to you folks, as I
24 did in the beginning, the rest of the charges should come
25 back: not guilty.

1 Thank you.

2 THE COURT:

3 All right. Thank you.

4 Members of the jury, it's now that
5 point in time with this trial when I have to charge you
6 on the law applicable to this case.

7 I want you to understand it's
8 eleven pages long, and it's 3390 words.

9 So before I do that, why don't we
10 just stand up, stretch our legs, catch a breath, and then
11 we'll go through that, and hopefully, complete this
12 trial.

13 So, if you would just stand up and
14 stretch your legs.

15 And you can to, if you would like.

16 All right.

17 Members of the jury, it is now my
18 duty as the trial judge to instruct you on the law
19 applicable to this case.

20 It is your duty as jurors to
21 accept and apply the law that I now state to you.

22 Furthermore, it is your exclusive
23 duty to decide all the issues of fact in this case, and
24 to determine the effect, value, weight, and truth of the
25 evidence.

1 Both the State and Defendant have
2 the right to expect that you will carefully consider and
3 evaluate the evidence and apply the law of this case to
4 it; so that in the end, both the State of South Carolina
5 and this Defendant will receive a fair and impartial
6 trial.

7 I want you to understand that:

8 When I -- When I use the word
9 "Defendant," I refer to Mr. Tom on -- Thomas Allen Smart.

10 Furthermore, it is important to
11 understand that the State of South Carolina charges the
12 Defendant, Thomas Smart, with the offenses known as:

13 Hurling Bodily Fluids on a
14 Correctional Facility Employee or Local Law Enforcement
15 Officer;

16 Failing to Stop for a Blue Light
17 or Siren;

18 Threatening a Public Official; and
19 Resisting Arrest .

20 To these charges, the Defendant
21 has entered a plea of not guilty.

22 This plea of not guilty places the
23 burden of proof on the State to prove the guilt of the
24 Defendant to you, the jury, beyond a reasonable doubt.

25 It is vital to understand that the

1 Defendant is presumed under the law to be innocent of
2 these charges.

3 It is a fundamental rule of our
4 law that a Defendant, irrespective of the seriousness of
5 the charges against him, is always presumed innocent of
6 the crimes for which he is charged, unless and until his
7 guilt has been proven by evidence which satisfies you
8 beyond a reasonable doubt.

9 This presumption of innocence is
10 not a mere legal theory or a legal phrase.

11 This presumption of innocence is
12 very important. And you need to understand that this
13 presumption accompanies the Defendant from the time of
14 his arrest and appearance in this Court, and continues
15 with the Defendant, even after you retire to the jury
16 room to deliberate.

17 In other words, the Defendant
18 receives the burden (sic) of the presumption of innocence
19 until the very end of this trial, when you, the jury,
20 will deliberate upon the evidence and decide whether the
21 State has proved his guilt beyond a reasonable doubt.

22 Proof beyond a reasonable doubt is
23 proof that leaves you firmly convinced of the Defendant's
24 guilt.

25 There are very few things in this

1 world that we know with absolute certainty. So even in
2 criminal cases, the law does not require proof that
3 overcomes every possible doubt.

4 However, if based on your
5 consideration of the evidence, you are firmly convinced
6 that the Defendant is guilty of the crime charged, you
7 must find him guilty.

8 If on the other hand, you think
9 there is a real possibility that he is not guilty, you
10 must give him the benefit of the doubt and find him not
11 guilty.

12 Please understand that:

13 Reasonable doubt may arise from
14 evidence which has been presented in the case, or from
15 the lack of evidence in the case.

16 It is your responsibility to
17 determine whether or not reasonable doubt exists as to
18 the guilt of this Defendant.

19 I charge you that Defendant is
20 entitled to every reasonable doubt arising in the whole
21 case, or arising in any defenses asserted by the
22 Defendant.

23 If upon any issues of fact
24 essential to a conviction and a verdict of guilty, you
25 have a reasonable doubt as to how that issue should be

1 resolved, it would be your duty to resolve that
2 reasonable doubt in favor of the Defendant.

3 Thus, in summary, it is important
4 to understand that a Defendant is not required to prove
5 his innocence.

6 Instead, the State is required by
7 law to prove every essential element of the offense
8 charged against the Defendant by evidence which satisfies
9 you of his guilt beyond a reasonable doubt.

10 Only then can you convict the
11 Defendant and find him guilty.

12 There are two types of evidence
13 which are generally presented during a trial: direct
14 evidence and circumstantial evidence.

15 Direct evidence is the testimony
16 of a person who claims to have actual knowledge of a
17 fact, such as an eyewitness. It is evidence which
18 immediately establishes the main fact to be proved.

19 Circumstantial evidence is proof
20 of a chain of facts and circumstances indicating the
21 existence of a fact.

22 It is evidence which immediately
23 establishes collateral facts from which a main fact may
24 be inferred.

25 Circumstantial evidence is based

1 on inference and not on personal knowledge or
2 observation.

3 The law makes absolutely no
4 distinction between the weight or value to be given to
5 either direct or circumstantial evidence. Nor is a
6 greater degree of certainty required of circumstantial
7 evidence than of direct evidence.

8 You should weigh all the evidence
9 in the case.

10 If, after weighing all the
11 evidence, you are not convinced of the guilt of the
12 Defendant beyond a reasonable doubt, you must find the
13 Defendant not guilty.

14 The Defendant in this case has not
15 testified.

16 This is his constitutional right,
17 and it is not a circumstance that you can take into your
18 consideration, or even allow to enter into your
19 discussions in your jury room.

20 Under the Constitution of South
21 Carolina, and under the United States Constitution, it is
22 his constitutional right not to testify.

23 The burden of proof is upon the
24 State of South Carolina to establish guilt by competent
25 evidence beyond a reasonable doubt.

1 The fact that the Defendant did
2 not take the witness stand and testify in his own behalf
3 does not create any inference against him.

4 The jury must not permit the --
5 that fact to weigh in the slightest degree against this
6 Defendant; nor should this fact enter into discussions or
7 deliberations of the jury in any manner whatsoever.

8 When you consider the whole case,
9 if you have a reasonable doubt as to the guilt or the
10 innocence of the Defendant, then he is entitled to that
11 reasonable doubt and would be entitled to a verdict of
12 not guilty.

13 However, if upon considering the
14 whole case you find that the State has proved by evidence
15 which satisfies you of the guilt of the Defendant beyond
16 a reasonable doubt, then in such circumstances, it would
17 equally be your duty to convict the Defendant and find
18 him guilty.

19 During this trial, you and I have
20 separate duties to perform.

21 As the trial judge, it is my
22 responsibility to preside over this trial. I also have
23 the duty to rule upon the admissibility of the evidence
24 offered during the trial.

25 In that regard, you are to

1 consider only the evidence before you, And you are to
2 disregard from your mind any testimony ordered stricken
3 from the record of this case during the progress of this
4 trial, if there be any.

5 Thus you are to consider only the
6 testimony which has been presented from this witness
7 stand, together with any exhibits admitted into the
8 records of this case.

9 Furthermore, I have the additional
10 duty to charge you on applicable law of this case.

11 And in that regard, I am the sole
12 judge of the law of this case.

13 It is your duty to accept and
14 apply the law as I now state it to you.

15 If you have any preconceived ideas
16 as to what the law is, or what the law ought to be, and
17 it does not agree with what I tell you the law is; you
18 are obligated under your oath to abandon those
19 preconceptions, because you are sworn to accept the law
20 as I now state it to you.

21 In this trial, you are the sole
22 and exclusive judge of the facts.

23 I am the judge of the law.

24 Please do not infer that I have
25 any opinion about the facts in this case from anything I

1 have said during the course of this trial.

2 In this regard, the law simply
3 does not permit me to have an opinion about the facts.

4 As jurors, it is your duty alone
5 to determine the effect, value, weight, and truth of the
6 evidence presented during the course of this trial.

7 In determining what the facts in
8 this case are, you must judge the credibility, which
9 simply means the believability, of the witnesses; and the
10 value of weight to be given to their testimony.

11 You alone must decide the force,
12 effect, and truth of the testimony.

13 In making this decision, there are
14 many things you may, and should, take into consideration,
15 such as:

16 The appearance and manner of the
17 witness on the stand; a characteristic often referred to
18 as the demeanor of the witness.

19 Was the witness forth with --
20 forthright or hesitant?

21 Was the witness' testimony
22 consistent? Or did it contain discrepancies?

23 What was the ability of the
24 witness to know the facts about which he or she
25 testified?

1 Did the witness have a cause or
2 reason to be biased and prejudiced in favor of the
3 testimony he or she gave?

4 Was the testimony of the witness
5 corroborated or made stronger by other testimony in
6 evidence? Or was it made weaker or impeached by such
7 other testimony and evidence?

8 Also, members of the jury, please
9 understand that:

10 The testimony of a police officer
11 is not entitled to more weight than that of any other
12 witness.

13 You are the sole judges of the
14 credibility of a witness. And you are not to give more
15 weight to a police officer's testimony solely because he
16 is a police officer.

17 Rather, you should judge an
18 officer's testimony by the same standards that you apply
19 to all other witnesses.

20 As jurors, please understand that:

21 You have the right to believe a
22 small portion of a witness' testimony and disregard the
23 large -- larger portion, or vice versa.

24 You may believe all of a witness'
25 testimony, or none.

1 You may believe the testimony of a
2 single witness against that of many, or the other way
3 around.

4 In exercising your mental
5 processes and attempting to decide the truth, the law
6 simply requires that you exercise your good judgment,
7 your common sense, your sense of logic and reason, and
8 your experiences in life.

9 You then apply these attributes to
10 the evidence and apply the law as I now state it to you,
11 and thus arrive at a verdict.

12 In order to establish criminal
13 liability, criminal intent is required.

14 For example:

15 The mental state required to be
16 proven by the state for a particular crime might be
17 purpose, intent, knowledge, recklessness, or criminal
18 negligence.

19 Criminal intent must be proven by
20 the State beyond a reasonable doubt.

21 Criminal intent is always a matter
22 that must be determined by the jury from the
23 circumstances surrounding the situation.

24 There is no way to prove intent to
25 a mathematical certainty.

1 There is no way medical science
2 can dissect a person's brain and determine what the
3 person had in mind.

4 So the law says that criminal
5 intent may be inferred from the circumstances shown to
6 have existed.

7 This is how you make a
8 determination of whether or not the element requiring
9 intent was present.

10 It is not necessary to establish
11 intent by direct and positive evidence. However, intent
12 may be established by inference in the same way as any
13 other fact, by taking into consideration acts of the
14 parties, and all the facts and circumstances of the case.

15 Criminal intent is a mental state;
16 a conscious wrongdoing.

17 It is up to you to determine what
18 the Defendant intended to do, based on the circumstances
19 shown to have existed.

20 Criminal intent can arise from
21 action or failure to act.

22 It may arise from negligence,
23 recklessness, or indifference to duty, or to consequences
24 that is considered by the law to be the equivalent of
25 criminal intent.

1 The Defendant in this case is
2 charged with four indictments.

3 Each indictment charges a separate
4 and distinct offense.

5 You must decide in each
6 indictment, separately on the evidence and the law
7 applicable to it, un-influenced by your decision as to
8 any other indictment.

9 The Defendant may be convicted or
10 acquitted on any or all of the offenses charged.

11 You will be asked to write a
12 separate verdict of guilty or not guilty for each
13 indictment or offense.

14 I will now define each offense for
15 you:

16 The Defendant is charged with
17 throwing bodily few -- fluids on a correctional facility
18 employee or local law enforcement officer.

19 In order to prove this crime, the
20 State must prove beyond a reasonable doubt that the
21 Defendant was an inmate, detainee, a person taken into
22 custody, or a person under arrest; and that the Defendant
23 attempted to throw or threw body fluids, including but
24 not limited to:

25 Urine, blood, feces, vomit,

1 saliva, or semen, on an employee of a State or local
2 correctional facility, a State or local law enforcement
3 officer, a visitor of a correctional facility, or any
4 other person authorized to be present in a correctional
5 facility in an official capacity.

6 The Defendant is also charged with
7 failing to stop for a blue light.

8 In order to prove this crime, the
9 State must prove beyond a reasonable doubt:

10 That the Defendant was driving a
11 motor vehicle;

12 That the Defendant was driving a
13 motor vehicle on a road, street or highway of this State;

14 That the Defendant was signaled to
15 stop by a law enforcement vehicle by means of a siren or
16 flashing light; and

17 That the Defendant did not stop.

18 In determining whether or not
19 there are mitigating circumstances which would justify
20 the Defendant's failure to stop for the blue light, you
21 may consider:

22 Actual road conditions;

23 Actual roadside conditions;

24 Other conditions, such as lighting
25 and weather, officer, driver, and/or passenger safety;

1 and

2 Any other circumstances you
3 believe to reasonably mitigate the alleged violation.

4 An official signal requiring a
5 motorist to stop may be a siren or flashing lights. But
6 both are not required.

7 An attempt to increase the speed
8 of a vehicle, or in some other manner avoid the pursuing
9 law enforcement vehicle when signaled by a siren or
10 flashing light, may be considered as evidence of the
11 failure to stop for a blue light.

12 However, it is merely an
13 evidentiary fact to be taken into consideration by you,
14 along with all of the other evidence in the case, and to
15 be given the weight that you decide it should receive.

16 The Defendant is charged with
17 threatening a public official.

18 In order to prove this crime, the
19 State must prove beyond a reasonable doubt that:

20 The Defendant knowingly and
21 willfully delivered or conveyed to a public official or
22 to a teacher or principal of an elementary or secondary
23 school, any letter or paper, writing, print, missive,
24 document, or electronic communication, or verbal or
25 electronic communication, which contained a threat to

1 take the life of, or to inflict bodily harm upon, the
2 public official, teacher, or principal, or members of his
3 immediate family if the threat is directly related to the
4 public official's, teacher's, or principal's professional
5 responsibilities.

6 "Public official" means:

7 Any elected or appointed official
8 of the United States or of this State; or of a county,
9 municipality, or other political subdivision of this
10 State.

11 "Immediate family" means:

12 The spouse, child, grandchild,
13 mother, father, sister, or brother of a public official,
14 teacher, principal, or public employee.

15 The Defendant is also charged with
16 resisting arrest.

17 The state must prove beyond a
18 reasonable doubt that:

19 Defendant knowingly and willfully
20 opposed or resisted a lawful arrest being made by a
21 person the Defendant knew, or reasonably should have
22 known, was a law enforcement officer.

23 "Knowingly" means: with knowledge;
24 consciously done.

25 "Willfully" means: done

1 intentionally, or not done by accident.

2 "Resisting" means: to oppose,
3 strive against, or struck -- obstruct.

4 "Obstruct" means: to impede,
5 hinder, or interfere with.

6 Even peaceful, nonviolent,
7 indirect obstruction of an arrest or the service or
8 execution of process is considered resisting arrest.

9 If the means used are sufficient
10 to prevent the officer from making an arrest, the
11 Defendant is guilty of resisting arrest.

12 Ladies and gentlemen, I'm now
13 drawing near the end of my charge, and I want you to
14 clearly understand that:

15 You are not partisans or advocates
16 for the State or this Defendant.

17 You do not serve as jurors to
18 reward your friends or punish your enemies.

19 In this regard, you have been
20 selected by both the State of South Carolina and this
21 Defendant to be fair and impartial jurors.

22 It is your duty by your joint
23 deliberations, to determine the truth in this case,
24 giving to this Defendant the benefit of every reasonable
25 doubt on each and every issue.

1 Then, to the facts which you
2 determine to be true, you should take and apply the law
3 which has been given to you by This Court, and thus
4 arrive at a verdict which speaks the truth in this case.

5 In fact, the word "verdict," which
6 has a Latin derivative, means: "a true saying".

7 Thus, when you have accomplished
8 these responsibilities, you will have satisfied your oath
9 as jurors, and you will have discharged your duty to This
10 Court.

11 Now Mr. Foreman, I'm going to hand
12 you this verdict form.

13 Ms. Clerk, if you would hand that
14 to him, I would be appreciative.

15 WHEREUPON: The Clerk did as
16 instructed by The Court.

17 THE COURT:

18 Thank you.

19 Mr. Foreman, when you arrive at a
20 verdict in this case, you will write your verdict on the
21 verdict form.

22 If the State has failed to prove
23 the guilt of this Defendant beyond a reasonable doubt, of
24 course, your verdict would be two words:

25 Not Guilty.

1 Likewise, if the State has proved
2 the guilt of this Defendant beyond a reasonable doubt,
3 your word (sic) would be one word:

4 Guilty.

5 And you would need to do that for
6 each charge listed on the verdict form.

7 Mr. Foreman, once a decision has
8 been made, just check the choices -- obviously that is
9 your decision -- knock on the juryroom door, and we will
10 receive you back into the courtroom as quickly as
11 possible.

12 Now, of course, I want you all to
13 understand that the verdict of the jury must be a
14 unanimous verdict. It must be the verdict of all 12 of
15 you.

16 Just because I give the Foreperson
17 the verdict form does not mean that his verdict or his
18 vote has any more weight than anybody else's.

19 He is simply the spokesperson for
20 the jury.

21 I again emphasize that your
22 verdict must be unanimous.

23 Now, Mr. Foreman, at any point in
24 time that you might have a question during your
25 deliberations, please knock on the juryroom door, put

1 that question in writing, date it, and sign it; hand it
2 to the Bailiff. She will take it to me. And we'll try
3 to answer your question as promptly as possible.

4 Again, once you have reached a
5 verdict, just knock on the juryroom door and inform the
6 Bailiff and let her know; and we'll receive you back into
7 the courtroom as shortly as possible.

8 But right now, I would ask that
9 you please go back into the jury room, but do not begin
10 your deliberations.

11 I have to talk with the lawyers
12 and make sure that I did not make a mistake with my
13 charge, or leave something out with my charge.

14 Once we have gone over that with
15 them, I will send any items of evidence back into the
16 juryroom with you, along with this jury charge. And I
17 will have the Bailiff specifically tell you at that time
18 to begin your deliberations.

19 So if you would, make sure
20 everybody goes to the juryroom and do not begin your
21 deliberations.

22 (WHEREUPON: The jury empanelled
23 in the case withdrew from the courtroom at 3:56 PM, July
24 20, 2010; and was no longer present during the following
25 proceedings.)

1 THE COURT:

2 Any objections from the State?

3 MR. BRYAN:

4 No, Your Honor.

5 THE COURT:

6 Any objections from the Defense?

7 MR. VON HERRMANN:

8 None from the Defense, Your Honor.

9 THE COURT:

10 And have both of you reviewed the
11 verdict form?

12 MR. BRYAN:

13 Yes sir.

14 THE COURT:

15 Is it in order with the State?

16 MR. VON HERRMANN:

17 No objection.

18 MR. BRYAN:

19 No objection.

20 THE COURT:

21 All right.

22 If you would, look over the items
23 of evidence, which I believe is just the video.

24 MR. BRYAN:

25 Yes sir.

1 THE COURT:

2 Is that it?

3 MR. BRYAN:

4 Yeah. We can send the video now

5 if you --

6 MR. VON HERRMANN:

7 I'm sorry, Your Honor?

8 THE COURT:

9 The only item in evidence is the
10 video.

11 MR. VON HERRMANN:

12 Yes, sir, Your Honor.

13 And I guess we need to send some
14 way back there for them to watch it.

15 And I have no objection -- You
16 don't have the --

17 MR. BRYAN:

18 The only -- uh -- I -- I'm not
19 sure how we need to do that. Because -- uh -- my
20 computer, obviously --

21 THE COURT:

22 I'll tell you what let's do.

23 MR. BRYAN:

24 -- has my password on it.

25 THE COURT:

1 Lets -- Lets send the DVD, or
2 whatever it is, back there with them. And I'm also going
3 to send Courts Exhibit Number 1 (sic) (Judge's Charge).

4 And I'm just going to tell them
5 that:

6 If they want to see it, to let us
7 know. We'll let them come back out here. We'll lower
8 the screen and they can watch it and go back, if they
9 need to.

10 How about that?

11 MR. VON HERRMANN:

12 That's fine, Your Honor.

13 THE COURT:

14 Solicitor?

15 MR. BRYAN:

16 Yes, sir, Your Honor, if they want
17 to see any particular piece of it.

18 I don't care to watch the whole 24
19 minutes if they don't want to, Your Honor.

20 THE COURT:

21 All right. Thank you.

22 COURT REPORTER:

23 And Your Honor, that's Court's
24 Exhibit 3 (Judge's Charge), because we had two other
25 Court's Exhibits.

CLOSING ARGUMENTS AND JUDGE'S CHARGE

235

1 THE COURT:

2 Yeah. Court's Exhibit 3. All
3 right. (Judge's Charge)

4 If you will get the DVD?

5 DEPUTY:

6 Is that all the exhibits?

7 THE COURT:

8 That's it. And tell them to
9 begin deliberations.

10 If they want to see the video,
11 tell them to let me know.

12 DEPUTY:

13 All right.

14 WHEREUPON: The jury was
15 instructed to begin deliberating, and the alternate juror
16 was pulled from the jury room and released by The Court,
17 at 3:58 PM, July 20, 2010.

18 THE COURT:

19 All right. We'll be at ease
20 until something happens.

21 MR. VON HERRMANN:

22 Your Honor, if you don't mind,
23 I've got two pleas that I have to do in the courtroom
24 next door.

25 I mean, I'll be available,

1 certainly.

2 THE COURT:

3 Sure.

4 MR. VON HERRMANN:

5 Thank you, Your Honor.

6 (WHEREUPON: The court was
7 declared in recess at 3:59 PM, July 20, 2010.)

8 WHEREUPON: The jury informed the
9 Bailiff at 4:38 PM, that they wanted to view the DVD,
10 State's Exhibit Number 1, again. (See Court's Exhibit)

11 (WHEREUPON: The court was called
12 to order by the Bailiff at 4:42 PM, July 20, 2010; and
13 all pertinent parties, along with their counsel, were
14 back and present in the courtroom.)

15 DEPUTY:

16 Order in the court. All Rise.

17 WHEREUPON: When The Court entered
18 the courtroom, both counsel went straight to the bench
19 and there was a bench conference at 4:42 PM, July 20,
20 2010.

21 THE COURT:

22 You know, the jury wants to see
23 the tape.

24 MR. VON HERRMANN:

25 They want to see the whole thing.

JURY REQUEST

237

1 THE COURT:

2 Let's ask the Foreman what he
3 wants and maybe you can get it set up.

4 MR. BRYAN:

5 That's fine.

6 MR. VON HERRMANN:

7 I was going to say yeah, and that
8 would give me a chance to run down there and make sure
9 that --

10 THE COURT:

11 You want to be here though, don't
12 you?

13 MR. VON HERRMANN:

14 Yes sir. If I can just run down
15 there and let them know not to leave, because they're
16 going to knock off.

17 THE COURT:

18 You want to do that will quick.
19 And we'll wait and bring the jury in.

20 MR. VON HERRMANN:

21 (Returning to the courtroom.)

22 Thank you, Judge.

23 THE COURT:

24 All right. You want to go ahead
25 and bring the jury out.

1 DEPUTY:

2 Yes sir.

3 MR. VON HERRMANN:

4 Judge, they wanted to see the
5 whole thing?

6 THE COURT:

7 I'm going to ask them.

8 MR. VON HERRMANN:

9 Okay. Oh, I --

10 THE COURT:

11 Do you want them to see the whole
12 thing; or does it matter?

13 MR. VON HERRMANN:

14 It doesn't matter to me, Your
15 Honor. Whatever they want to see. I kind of thought
16 they would have known, but --

17 THE COURT:

18 They just said they wanted to see
19 the whole tape.

20 (WHEREUPON: The jury empanelled
21 in the case was escorted back into the courtroom at 4:45
22 PM, July 20, 2010; and was in fact present during the
23 following proceedings.)

24 THE COURT:

25 Mr. Foreman, it's my understanding

1 y'all would like to see the tape again?

2 FOREPERSON:

3 Yes sir.

4 Is there any way we can see the
5 tape from the time of the accident to the end of it?

6 THE COURT:

7 Sure. All right. Solicitor, go
8 ahead.

9 FOREPERSON:

10 Instead of having to sit through
11 all of it?

12 THE COURT:

13 All right.

14 FOREPERSON:

15 Okay.

16 MR. BRYAN:

17 Your Honor, I don't know why it's
18 not playing now. It played so I'm not sure --

19 THE COURT:

20 Why don't eject it and put it back
21 in.

22 MR. BRYAN:

23 I -- I just tried that one. I did
24 that twice.

25 MR. VON HERRMANN:

1 You want to try my copy?

2 MR. BRYAN:

3 Yeah.

4 MR. VON HERRMANN:

5 I don't object, Your Honor. I
6 don't object as long as I have it.

7 WHEREUPON: A portion of State's
8 Exhibit Number 1 was played before the jury again
9 beginning at 4:49 PM and ending at 5:09 PM, July 20,
10 2014.

11 THE COURT:

12 Mr. Foreman, you may retire to the
13 juryroom and continue your deliberations.

14 FOREPERSON:

15 Thank you, sir.

16 (WHEREUPON: The jury empanelled
17 in the case withdrew from the courtroom at 5:09 PM, July
18 20, 2010; and was no longer present during the following
19 proceedings.)

20 THE COURT:

21 All right.

22 Anything else we need to do?

23 MR. VON HERRMANN:

24 No, Your Honor.

25 MR. BRYAN:

1 No sir.

2 THE COURT:

3 We'll be at ease until they come
4 back.

5 (WHEREUPON: The court was
6 declared in recess at 5:10 PM, July 20, 2010.)

7 WHEREUPON; We were informed by
8 the Bailiff at 5:19 PM, July 20, 2010, that the jury had
9 reached a verdict.

10 (WHEREUPON: The court was called
11 to order by the Bailiff at 5:21 PM, July 20, 2010; and
12 all pertinent parties, along with their counsel, were
13 back and present in the courtroom.)

14 BAILIFF:

15 Order in the court. All Rise.

16 THE COURT:

17 All right. Thank you.

18 Everybody be seated.

19 All right. Do we have a verdict?

20 MR. VON HERRMANN:

21 My understanding, Your Honor.

22 THE COURT:

23 All right. Sounds good.

24 All right, folks; let me just tell
25 everybody in the courtroom before the jury comes in:

1 This jury has a hard job. They're
2 doing what they think is right. And when they come in
3 and the verdict is read, whatever it is, good or bad, I
4 don't want them to have to put up with any kind of
5 reaction from anybody.

6 I don't care that it's a good
7 verdict or a bad verdict, I don't want anybody clapping;
8 anybody saying "yea" or "good" or anybody getting upset
9 and causing any commotion. Because, if you do, I promise
10 you I'm going to lock you down today.

11 So if you don't think you can be
12 good and sit there like a church mouse, you need to go
13 now.

14 If you can responsible and sit
15 there and -- and show respect to the jury, you're welcome
16 to stay.

17 Anybody want to go?

18 (No response.)

19 THE COURT:

20 All right. Thank you very much.

21 If you would, bring them in.

22 (WHEREUPON: The jury empanelled
23 in the case was escorted back into the courtroom at 5:24
24 PM, July 20, 2010; and was in fact present during the
25 following proceedings.)

1 THE COURT:

2 All right, Mr. Foreman, have you
3 reached a verdict?

4 FOREPERSON:

5 Yes, Your Honor, we have.

6 THE COURT:

7 All right.

8 Would you hand it to the Deputy,
9 please.

10 FOREPERSON:

11 Sure.

12 THE COURT:

13 All right.

14 I find the verdict form is in
15 order. And Ms. Clerk, if you would publish the verdict.

16 CLERK:

17 Yes sir.

18 Indictment Number 2010-GS-26-682,
19 2010-GS-26-683, 2010-GS-26-684, 2010-GS-26-685, State of
20 South Carolina County of Horry versus Thomas Allen Smart:

21 As to the charge of throwing
22 bodily fluids on a correctional facility employee or a
23 local enforcement officer, we the jury unanimously find
24 the Defendant Thomas and Alice Smart: Guilty.

25 As to the charge of failure to

1 stop for a blue light or siren, we the jury unanimously
2 find the Defendant Thomas Allen Smart: Guilty.

3 As to the charge of threatening a
4 public official, we the jury unanimously find the
5 Defendant: Guilty.

6 As to the charge of resisting
7 arrest, we the jury unanimously find the Defendant Thomas
8 Allen Smart: Guilty.

9 Dated July 20th, 2010. Signed by
10 Foreperson Glenn Dale Jernigan, Juror -- Juror Number
11 195.

12 Ladies and gentlemen of the jury,
13 if this is your verdict so signify by raising your right
14 hand.

15 WHEREUPON: All jurors signified
16 their agreement with the verdict by raising their right
17 hand.

18 CLERK:

19 Thank you.

20 THE COURT:

21 All right.

22 Is there need for further polling?

23 MR. VON HERRMANN:

24 No, Your Honor.

25 THE COURT:

1 his hands.

2 When he's not on anything, he's
3 the most loveliest person and hard-working. Anybody who
4 knows him loves him.

5 But today, he has a problem with
6 alcohol; but I promise you he wouldn't never threaten (?
7 Inaudible) people; because he does have a good heart.

8 THE COURT:

9 All right. Thank you.

10 All right. If you would stand.

11 All right.

12 The sentence of The Court on
13 Indictment Number 2010-GS-26-00682, throwing bodily
14 fluids, the sentence of The Court is that:

15 The Defendant is committed to the
16 State Department of Corrections for a term of 10 years.

17 In reference to 2010-GS-26-00683,
18 failure to solve a blue light:

19 The Defendant is committed to the
20 State Department of Corrections for a term of 3 years.

21 In reference to 2010-GS-26--00684:

22 The Defendant is committed to the
23 State Department of Corrections for a term of 3 years.

24 In reference to 2010-GS-26-00685:

25 The Defendant is committed to the

1 State Department of Corrections for a term of 6 months.

2 And all of these will be
3 consecutive.

4 Thank you very much.

5 WHEREUPON: There being nothing
6 further in this matter, these proceedings were concluded
7 at 5:37 PM, July 20, 2010

8 MOTION TO RECONSIDER THE
9 SENTENCE WAS HEARD ON JULY 21, 2010. PLEASE SEE
10 FOLLOWING PAGES FOR TRANSCRIPT OF THAT HEARING.

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1 (WHEREUPON: The court was called
2 to order in this particular matter at 12:05 PM, July 21,
3 2010; and all pertinent parties, along with their
4 counsel, were back and present in the courtroom.)

5 THE COURT:

6 Solicitor, I'm ready.

7 MR. BRYAN:

8 Thank Your Honor.

9 If it please The Court?

10 This is Thomas Allen Smart. He
11 was a jury trial earlier --

12 THE COURT:

13 Hold on one second.

14 COURT REPORTER:

15 Somebody's talking.

16 THE COURT:

17 Y'all go ahead and finish.

18 MR. BRYAN:

19 I'm sorry, Your Honor.

20 This is -- uh -- Anthony -- I'm
21 sorry (laughs).

22 This is Thomas Allen Smart. He
23 was a jury trial, which -- uh -- earlier this week in --
24 in front of This Court in which the jury came back guilty
25 on all the indictments; those being 2010-GS-26-681, six

1 Uh -- You know, sometimes people
2 follow through with that.

3 If he didn't have any kind of
4 violence in his background, then I would not take as
5 serious; but he has a horrendous record.

6 And he does have violence in his
7 background.

8 And it just seems to me that my
9 sentence was well thought out.

10 It was not the maximum by any
11 means. But something needed to be done, weighing not
12 only his rights, but also the public and victims and
13 other people. And weighing those is how I came up with
14 that sentence itself.

15 It's certainly no reflection on
16 you. You're just a great lawyer and did an outstanding
17 job. And he could not have not been more lucky.

18 I don't know if he hired you or
19 got -- you know -- if you were appointed or wasn't. But
20 if you were appointed, you had one of the best lawyers in
21 the State and you're lucky.

22 Uh -- But that had nothing to do
23 with my -- my decision.

24 I based my decision on everything.
25 Not only him, but everything else.

MOTION TO RECONSIDER SENTENCE

275

1 So I'm going to leave it the same.

2 MR. VON HERRMANN:

3 Thank Your Honor.

4 THE COURT:

5 But I thank you for coming
6 forward.

7 MR. BRYAN:

8 Thank Your Honor.

9 MR. VON HERRMANN:

10 Thanks; I appreciate it.

11 WHEREUPON: There being nothing
12 further in this matter, these proceedings were concluded
13 at 12:21 PM, July 21, 2010.

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CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR, Official Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceedings were taken on the 19th, 20th, and 21st days of July, 2010;

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 17th day of October, 2010.

H. Eugene Buckner

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

WITNESSES

J Brantly Horry County Police Department

DOCKET NO. 2010-GS-26-00682

The State of South Carolina

County of Horry

Robert B. Bryan

09H05084

COURT OF GENERAL SESSIONS

JANUARY, 2010 TERM

DISTRICT WARRANT MURDER

JCS/MS

CDR: 2526 24-13-0470

DOA: 12/26/2009

THE STATE

vs.

Thomas Allen Smart
WMConway, SC
DOB:
SSN:

ATTORNEY: Wilson, Kia T.

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Petit Jury
FEB 10 2010

VERDICT

Foreperson of Petit Jury
Date:Indictment for
THROWING BODILY FLUIDS ON CORRECTIONAL
FACILITY EMPLOYEE OR LOCAL LAW ENFORCEMENT
OFFICER

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

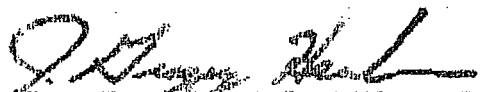
At a Court of General Sessions, convened on January 21, 2013, the Grand Jurors of Horry County present upon their oath:

THROWING BODILY FLUIDS ON CORRECTIONAL FACILITY
EMPLOYEE OR LOCAL LAW ENFORCEMENT OFFICER

CDR: 2526 24-13-0070

That Thomas Allen Smart did on or about December 26, 2009, while in Horry County and in custody or under arrest, throw or attempt to throw bodily fluids to wit: on John Brantly, an employee of a local correctional facility, in violation of Section 24-13-0070 S. 2, Code of Laws, 1976 as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided,


 J. GREGORY MERE
 FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

J Brantly Horry County Police Department

DOCKET NO. 2010-GS-26-00683

The State of South Carolina

County of Horry

Robert B. Bryan

09H05084

COUNTY OF HORRY

JANUARY, 2010 TERM

GRAND JURY

JURY

CDR: 0065 56-05-0750(1)(1)

DOA: 12/26/2009

THE STATE

VS.

Thomas Allen Smart
W/M

Conway, SC

DOB:

SSN:

ATTORNEY: Wilson, Kia Y.

ACTION OF GRAND JURY

TRUE BILL

Marshall D. Brown

Foreperson of Grand Jury
FEB 18 2010

VERDICT

Indictment for

FAILURE TO STOP FOR BLUE LIGHT/SIREN

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HORRY)

At a Court of General Sessions, convened on January 21, 2010, the Grand Jurors of Horry County present upon their oath:

FAILURE TO STOP FOR BLUE LIGHT SIREN

CDR: 0065 56-03-0750(B)(1)

That Thomas Allen Smart did in Horry County on or about December 25, 2009, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, did refuse and fail to stop his/her motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, in violation of Section 56-05-0750(B)(1), South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY MCMEHEE
FIFTEENTH CIRCUIT SOLECTOR

WITNESSES

J Brantly Horry County Police Department

DOCKET NO. 2010-GS-26-00624

The State of South Carolina
County of Horry

Robert B. Bryan

08H05084

COURT OF GENERAL SESSIONS

JANUARY, 2010 TERM

SUBJECT WARRANT NUMBER

JAN 15 2010

CUR: 0541 18-03-1040

DOA: 12/28/2008

THE STATE

VS.

Thomas Allen Smart
W/M

Conway, SC
DOB:
SSN:

ATTORNEY: Wilson, Kia T.

Indictment for

THREATENING A PUBLIC OFFICIAL

J. Gregory Hembree, Solicitor

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: FEB 18 2010

VERDICT

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF HORRY

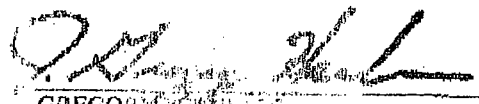
At a Court of General Sessions, convened on January 21, 2010, the Grand Jurors of Horry County present upon their oath:

THREATENING A PUBLIC OFFICIAL

CDR: 0541 16-03-1040(A)

That Thomas Allen Smart did in Horry County, on or about December 28, 2009, knowingly and willfully deliver or convey to a teacher, principal, or public official to wit: John Brantly, a law enforcement officer, a letter or paper, writing, print, document, or electronic or verbal communication which contained a threat to take the life of or to inflict bodily harm upon the victim or members of his immediate family, in violation of Section 16-03-1040(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 GREGORY J. GAFFNEY
 FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

J Brantly Horry County Police Department

DOCKET NO. 2010-GS-25-00685

The State of South Carolina

County of Horry

Robert B. Bryan

09H05084

COURT OF GENERAL SESSIONS

JANUARY, 2010 TERM

THE STATE

VS.

Thomas Allen Grand
W/MConway, SC
DOB:
SSN:

ATTORNEY: Wilson, Kia T.

Indictment for

RESISTING ARREST

J. Gregory Hembree, Solicitor

ORIGINAL

ARREST WARRANT NUMBER

Jb24854

CDR: 0326 16-09-0320(A)

DOA: 12/26/2009

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: FEB 13 2010

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on January 21, 2010, the Grand Jurors of Horry County present upon their oath:

RESISTING ARREST

CDR: 0326 16-09-0320(A)

That Thomas Allen Smart did in Horry County on or about December 26, 2009, knowingly and willfully oppose or resist an arrest being made by one whom the defendant knew or reasonably should have known was a Law Enforcement Officer, in violation of Section 16-09-0320(A), S. C. Code of Laws, 1976, as amended.

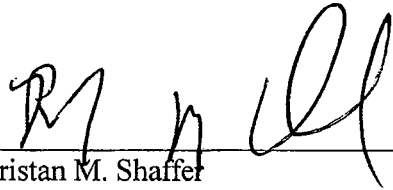
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 J. GREGORY AMBREE
 FIFTEENTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 30th, 2011



Tristan M. Shaffer
Appellate Defender

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Division of Appellate Defense
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(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS SMART,

APPELLANT

FINAL BRIEF OF APPELLANT

TRISTAN M. SHAFFER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Should Appellant's motion for directed verdict, in this prosecution for throwing bodily fluids, have been granted when the officer alleged that Appellant *spit* blood on him, but there was no evidence that Appellant *threw* blood on the officer?

STATEMENT OF THE CASE

Appellant was indicted by the Horry County Grand Jury for failure to stop for a blue light, resisting arrest, threatening a public official, and throwing bodily fluids. R. 189. (indictments). On July 19, 2010, Appellant was called to trial before the Honorable William H. Seals and a jury. R. 1. Appellant was represented by William Bertram Von Herrmann and the State was represented by Robert Bryans. R. 2

Appellant was found guilty of all charges. Appellant was sentenced to ten years for throwing bodily fluids; which ran *consecutive* to his six and a half year sentence for the other charges. R. 183, l. 17 – R. 184, l. 3. Appellant's motion to reconsider was denied on July 21, 2010. R. 187, l. 1. This appeal follows.

ARGUMENT

Appellant's motion for directed verdict should have been granted for throwing bodily fluids when the officer alleged that Appellant spit blood on him, but there was no evidence that Appellant *threw* blood on the officer.

Introduction

During the State's closing arguments in Appellant's case, Assistant Solicitor Robert Bryan read the *second* definition of "throw" from the American Heritage Dictionary; the definition read defines "throw" as "to discharge into the air by any means." R. 33, ll. 16-20; R. 134, ll. 5-17. By doing so, Bryan was trying to broaden the language of the throwing bodily fluids statute to cover spitting on an officer. However, spitting is not criminalized by the specific language of *this* statute.

Since there was no evidence that Appellant "*threw*" bodily fluids on the officer, his motion for directed verdict should have been granted.

Relevant Facts

On Christmas night, 2009, Officer John Brantley of the Horry County Sheriff's office observed Appellant's pickup truck run a red light. R. 58, ll. 20-21; R. 59, ll. 5-22. When Brantley attempted to initiate a traffic stop, Appellant sped away. A high speed chase ensued. R. 62, ll. 12-14. Appellant was travelling at speeds in excess of 110 miles per hour. Eventually, Appellant lost control of his truck, jumped a ditch, and crashed into railroad tracks. Appellant's truck crashed with such force that it broke the railroad tracks. R. 92, ll. 4-9. Appellant sustained a concussion and was bleeding profusely from his mouth as a result of the crash.

When Brantley arrived at the crash site, Appellant was barely conscious. Brantley and his backup handcuffed Appellant. Appellant was allegedly resisting arrest. Appellant then began to claim he was John Gotti. Then Appellant allegedly threatened to kill Brantley and his family. While Appellant was allegedly making threats toward Brantley, blood was spewing from his mouth and on to Brantley. Brantley claimed that Appellant was intentionally trying to *spit* blood on him, so Brantley added a *throwing* bodily fluids charge to Appellant's long list of other charges.

Prior to trial, Appellant argued that the *throwing* bodily fluids statute did not cover spitting. R. 32, l. 20 – R. 33, l. 6. The State then argued that spitting could constitute throwing under the *second* and *third* definitions listed in the American Heritage Dictionary. R. 33, ll. 16-22. The trial court agreed with the State. R. 34, ll. 3-5.

At the close of the State's case Appellant renewed his prior argument in a motion for directed verdict. R. 33, ll. 5-6; R. 121, ll. 11-23. The trial court denied his motion for directed verdict. R. 122, 4-5. Appellant was convicted of throwing bodily fluids and sentenced to ten years for that charge concurrent with his other charges.

Discussion

In 1997, the South Carolina legislature enacted the throwing bodily fluids statute (the Statute). Pursuant to the Statute, a defendant could face up to fifteen years in prison if he "attempts to throw or *throws* bodily fluids including, but not limited to, urine, blood, feces, vomit, saliva, or semen on" a law enforcement officer. S.C. Code § 24-13-470. Merriam Webster's online dictionary defines the term "throw" as the following:

A: To propel through the air by a forward motion of the hand and arm <throw a baseball>

B: to propel through the air in any manner <a rifle that can throw a bullet a mile>

C: pitch <threw a no hitter>¹

Whereas spitting is defined as “to eject (as saliva) from the mouth.”²

This Court should find that the Statute clearly and unambiguously criminalizes the *throwing* of bodily fluids and *not* the *spitting* of bodily fluids. There is no indication that the legislature meant for the term “throw” to mean anything but propelling through the air *by movement of the hand*. However, even if the Statute was ambiguous, the applicable statutory construction would require that the trial court interpret the ambiguity in favor of Appellant. *See State v. Muldrow*, 348 S.C. 264, 559 S.E.2d 847 (2002) (interpreting the armed robbery statute). Therefore the trial court should have granted a directed verdict for Appellant.

“Throwing” does *not* mean spitting.

In interpreting a statute, “[L]egislative intent should be found in the plain language of the statute itself. If a statute’s language is plain and unambiguous and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning.” *Binney v. State*, 384 S.C. 539, 543, 683 S.E.2d 478, 480 (2009) (*quoting Gay v. Ariail*, 381 S.C. 341, 344, 673 S.E.2d 418, 420 (2009)). The Court should give words their “plain and ordinary meaning and will not resort to forced construction that would limit or expand a statute.” *State v. Branham*, 392 S.C. 225, 708

¹ Throw—Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/throw> (Last visited June 14, 2011).

² Spit—Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/Dictionary/spit> (Last visited June 14, 2011).

S.E.2d 806, 810 (2011) (citing *Harris v. Anderson County Sheriff's Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009)).

The Statute makes it unlawful for a prisoner to “throw” bodily fluids on a corrections officer. S.C. Code § 24-13-470. The “plain and ordinary meaning” of the word “throw” is to propel something through the air by use of a person’s arm. See Throw—Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/throw>; see also Throw—Google Dictionary, <http://google.com/dictionary> (Last visited June 16, 2011) (first definition of “throw” is “[p]ropel (something) through the air by a movement of the arm and hand).

Although the term “throw” has not officially been defined by the Courts of this State, in *State v. Paul*, the Court of Appeals of Utah defined the term “throw” in their throwing bodily fluids statute. In 1992, it was unlawful for a prisoner to “throw”³ bodily fluids on a corrections officer. *State v. Paul*, 860 P.2d 992 (Utah Ct. App. 1993)⁴; see also Utah Code Ann. § 76-5-102.6 (Supp 1993). The *Paul* Court noted the following:

No dictionary we have examined defines “throw” as spitting. The following dictionary definitions of “throw” are the first listed and most commonly accepted: (1) “to propel through the air by means of a sudden straightening or whirling of the arm,” *Webster’s Illustrated Contemporary Dictionary* 768 (1982); (2) “to propel through the air with a swift motion of the arm, *The American Heritage Dictionary* 1314 (2d ed. 1985); and (3) “to send through the air with a motion of the hand or arm,” *Roget’s II, The New Thesaurus* 1012 (expanded ed. 1988). While some secondary definitions define the term much more broadly, we do not consider such subsidiary definitions since section

³ Section 76-5-102.6 provides that ‘any prisoner who throws fecal material of any other substance or object at a peace or corrections officer is guilty of a class A misdemeanor’” *Paul*, 860 P. 2d at 993.

⁴ The Utah statute was later broadened by adding “otherwise propel” language. Utah Code Ann. § 76-5-102.6.

76-5-102.6 uses “throw” in its usual sense. Therefore, under its most commonly accepted meaning, throw does not encompass spitting. To interpret the statute to include spitting would be to add a new provision that was not put there by the legislature.

Similarly, the statute uses “throw” in its usual sense. Therefore the ordinary meaning should be adopted rather than adopting a broader definition. *See Branham, Supra.*

The legislature never intended for throwing to mean spitting.

“All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonable discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). However, even if this court looked past the language used in the statute, the legislature still intended to limit the prohibited act to throwing by means of the hand.

“There is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.” *See Whitner v. State*, 328 S.C. 1, 6, 429 S.E.2d 777, 779 (1997) (finding that the legislature is presumed to be aware of South Carolina court cases). Therefore it can be presumed that in 1997, the South Carolina legislature was aware of the Utah statute and *Paul*. Had the legislature intended to further⁵ criminalize spitting on an officer then it would have included it in the language of the statute⁶.

⁵ As point out by trial counsel, spitting on an officer would still constitute assault and battery.

⁶ Other states have similar statutes which contain more broad language than this State’s statute. E.g. Wis. Stat. Ann. § 941.375 (“Throws or expels”); N.J. Stat. Ann. § 2C:12-13 (“throws ... or otherwise purposely subjects such employee to contact with bodily

Narrow interpretation of throwing is required.

If this Court finds that the legislature did not clearly intend throwing to mean to propel by use of the hand and arm, then the applicable rules on statutory construction would require that the court interpret “throw” narrowly. “[W]hen a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.” *State v. Blackmon*, 304 S.C. 270, 274, 403 S.E.2d 660, 662 (1991). This rule both ensures that a person will not be punished for an ambiguous law and “keeps the courts from making criminal law” in the legislature’s stead. *See United States v. Santos*, 553 U.S. 507, 514, 128 S.Ct. 2020, 2025 (2008) (interpreting “proceeds” to mean “profits” instead of all “receipts” under the federal money laundering statute).

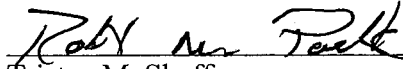
Propelling something through the air by using one’s hand is always going to be considered throwing, but it is an impermissible stretch to say that the term *throwing* in a criminal statute encompasses *spitting*.

fluids”); 18 Pa. Cons. Stat. Ann. § 2703.1 (“causes or attempts to cause another to come into contact”).

CONCLUSION

Appellant respectfully requests that this court reverse his conviction for throwing bodily fluids and vacate his sentence for that charge.

Respectfully submitted,

for 
Tristan M. Shaffer
Appellate Defender

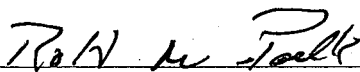
ATTORNEY FOR APPELLANT

This 20th day of October, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 20th, 2011


for Tristan M. Shaffer
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

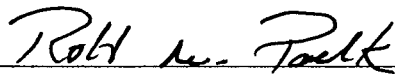
V.

THOMAS SMART,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of October, 2011.

for 
Tristan M. Shaffer
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of October, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable William H. Seals, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

THOMAS SMART,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion for directed verdict where Appellant deliberately threw blood on the officer by spitting on him.

STATEMENT OF THE CASE

Appellant was indicted in Horry County in February 2010 for throwing bodily fluids on a correctional facility employee, failure to stop for a blue light, threatening a public official, and resisting arrest. (R. p. 189-96). On July 19, 2010, Appellant was tried before the Honorable William H. Seals, Jr., and a jury. The jury found him guilty on all charges, and Judge Seals sentenced Appellant to ten years for throwing bodily fluids, three years for failure to stop for a blue light, three years for threatening a public official, and six months for resisting arrest. (R. p. 183, line 12 – p. 184, line 1). All sentences were to run consecutively. (R. p. 184, lines 2-3). Appellant's motion to reconsider the sentence was denied on July 21, 2010. (R. p. 186-87). A timely notice of appeal was served and filed.

ARGUMENT

The trial judge properly denied Appellant's motion for directed verdict where Appellant deliberately threw blood on the officer by spitting on him.

Appellant was charged with throwing or attempting to throw bodily fluids on a law enforcement officer. (R. p. 189-90). Prior to trial, Appellant's counsel made a motion to dismiss the case on the ground that the statute under which Appellant was charged required a "throwing" but the only conduct charged was spitting. (See R. p. 32-33). The trial judge denied the motion to dismiss, agreeing with the State that the conduct with which Appellant was charged arguably fit within the definition of throwing. (R. p. 33-34). At trial, Officer Brantly testified that Appellant intentionally spit blood on him while he was in the process of arresting Appellant. (See R. p. 67-76). At the close of the State's case, the judge denied Appellant's motion for directed verdict on this ground. (See R. p. 121, line 12 – p. 122, line 14; see also p. 124, lines 11-17). Appellant now argues that the trial judge erred in failing to direct a verdict because the applicable statute does not criminalize "spitting," only "throwing." Thus, this case hinges upon the proper definition of the word "throw."

"A cardinal rule of statutory construction is that words used in a statute should be given their plain and ordinary meaning unless something in the statute requires a different interpretation." Multimedia, Inc. v. Greenville Airport Com'n., 287 S.C. 521, 524, 339 S.E.2d 884, 886 (Ct. App. 1986) (citing Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980) & Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975)). "[A]ll rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be

construed in light of the intended purpose of the statute.” Nelson v. Ozmint, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (citation omitted).

When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning. See, e.g., State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002) (citation omitted). Courts should not resort to subtle or forced construction to limit or expand the statute's operation. See, e.g., Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 569, 703 S.E.2d 197, 200 (2010). The term must be construed in context and its meaning determined by looking at the other terms used in the statute. Id. (citation omitted). Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. Id. (citations omitted). The statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Id. (citation omitted). A court must reject a statute's interpretation if it leads to absurd results not intended by the legislature. Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002).

S.C. Code Ann. § 24-13-470 (A) provides:

An inmate, a detainee, a person taken into custody, or a person under arrest, who attempts to throw or throws body fluids including, but not limited to, urine, blood, feces, vomit, saliva, or semen on an employee of a state correctional facility or local detention facility, a state or local law enforcement officer, a visitor of a state correctional facility or local detention facility, or any other person authorized to be present in a state correctional facility or local detention facility in an official capacity is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years. A sentence under this provision must be served consecutively to any other sentence the inmate is serving. This section shall not prohibit the prosecution of an inmate for a more serious offense

if the inmate is determined to be HIV-positive or has another disease that may be transmitted through body fluids.

Section (B) of this statute provides:

A person accused of a crime contained in this section may be tested for a blood borne disease within seventy-two hours of the crime if a health care professional believes that exposure to the accused person's body fluid may pose a significant health risk to a victim of the crime.

The clear purpose of this statute is discourage conduct that would cause law enforcement and correctional officers to suffer the disgrace of having another's bodily fluid forced upon him, and also to protect law enforcement from potential diseases that may be transmitted through bodily fluids. The potential harm occurs regardless of the manner in which the inmate throws the fluids. Therefore, Respondent submits that the appropriate definition of the word "throw," as used in the context of this particular statute, is "to discharge into the air by any means." (See R. p. 33, lines 16-20). See American Heritage Collegiate Dictionary p. 1413 (3d ed. 1997); see also American Heritage Dictionary p. 852 (4th ed. 2001) (second definition of "throw" is "to put with force; hurl"); Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/throw> (Last visited August 31, 2011) (definition 1(b) in a list of 18 definitions is "to propel through the air in any manner"); <http://freedictionary.org/?Query=throw&button=Search> (Last visited August 31, 2011) (definition # 1 in a list of 15 definitions is to "propel through the air").

Appellant proposes that the word "throw" be interpreted to include only throwing by hand. Such a narrow construction would thwart the plain and obvious legislative intent. See State v. Sachs, 264 S.C. 541, 552, 216 S.E.2d 501, 507 (1975). In that vein, it would lead to a plainly absurd result if the word "throw" were construed to mean only

propelling by hand. See Wade v. State, *supra*. An inmate who spits into his hand and then throws the spit upon an officer would be guilty under the statute, but an inmate who spits *directly* upon the officer would not be guilty – even though the end result, and the harm, is exactly the same. Clearly, the legislature did not intend that such an illogical distinction be drawn. Instead, the legislature intended to provide an enhanced penalty – a penalty beyond that which a person could receive for simple assault and battery – for inmates and arrestees who intentionally expel bodily fluids upon an officer. If the legislature had intended to limit the proscribed conduct to throwing *only by the hand*, it would have explicitly done so. See State v. Jacobs, Op. No. 27015 (S.C. Sup. Ct. filed July 25, 2011) (if the legislature intends to limit a statute, it will do so using restrictive language). By not doing so, the legislature expressed a clear intent that the broader meaning suggested above be applied.

Appellant argues that using a “secondary” definition for the word throw is inappropriate.¹ Respondent submits that Appellant is urging this Court to adopt a forced construction of the word “throw” to suit his purposes in this case and is selecting a single definition of a word that has many, many common usages.² As discussed above, the appropriate definition of “throw” must be gleaned from the context and purpose of the entire statute, not simply by selecting the first definition from a list of possible alternative meanings in a dictionary. See Heilker v. Zoning Bd. of Appeals for City of Beaufort, 346 S.C. 401, 409-410, 552 S.E.2d 42, 46-47 (Ct. App. 2001) (cautioning against reliance

¹ Respondent would point out that this so-called “secondary” definition is included in the dictionary Appellant cites under section 1(b) of a list of 18 definitions. (See Brief of Appellant, p. 6-7, citing to Merriam Webster’s Online Dictionary, see *supra* p. 7).

² The common and customary usage of the word “throw” routinely encompasses the act of propelling something through the air in a manner not involving the hand and arm. Two common examples include “throwing up,” and a horse “throwing” its rider to the ground.

upon dictionaries as an end point in defining a word, since dictionaries only set forth possible alternative definitions for a term and cannot provide a definitive definition for what that term actually means in a specific context).

Appellant also contends that “throwing” under this statute cannot possibly include “spitting.” Respondent disagrees and submits that throwing does indeed include spitting, just as it also includes hurling, slinging, flinging, casting, spraying, squirting, and any other methods of propelling bodily fluids through the air. Despite the fact that “spitting” may also encompass the same conduct as throwing blood from one’s mouth, it is clear from the context of the statute that the legislature used the broader term “throw” so as to include not only fluids from the mouth, but all of the other various bodily fluids that could be harmful to law enforcement or correctional officers. As the solicitor pointed out in his closing argument, the term “saliva” is specifically listed as one of the prohibited bodily fluids, and saliva is typically thrown via the act of spitting. It would eviscerate the statute to excuse conduct such as Appellant’s simply because Appellant neglected to spit the blood in his hand before throwing it upon the officer. (See R. p. 134-35).

Appellant asserts that the South Carolina legislature must have intended a narrow definition of “throw” because, he contends, the legislature is presumed to be aware of the previous Utah case of State v. Paul, 860 P.2d 992 (Utah Ct. App. 1993), and the bodily fluids statute that the case interpreted. However, the case Appellant cites for this proposition, Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997), indicates only that the South Carolina legislature is presumed to be aware of legislation it previously enacted in *South Carolina*, and previous *South Carolina* case law interpreting it. See Whitner v. State, *supra* (applying the presumption and discussing previous South

Carolina cases); see also Berkebile v. Outen, 311 S.C. 50, 53, 426 S.E.2d 760, 762 (1993) (applying the presumption in the context of a previously-enacted South Carolina statute); Bell v. South Carolina State Highway Dept., 204 S.C. 462, 30 S.E.2d 65, 67 (1944) (applying the presumption in the context of previous South Carolina legislation); State v. Hood, 181 S.C. 488, 188 S.E.134 (1936) (also applying the presumption in the context of previous South Carolina legislation). Respondent submits that the South Carolina legislature should not be presumed to be aware of a Utah statute or a Utah case interpreting that statute.

In any event, the Utah case cited by Appellant is not controlling authority and is distinguishable in any event. The statute at issue in that case read as follows: "any prisoner who throws fecal material or any other substance or object at a peace or correctional officer is guilty of a class A misdemeanor." See State v. Paul, 860 P.2d 992 (Utah Ct. App. 1993). Thus, the Utah statute did not specifically mention liquid substances like saliva, blood, or urine, as South Carolina's statute does; instead, it specifically referenced only "fecal material" and no liquid substances which are typically projected in a manner other than throwing by hand. See Utah Code Ann. § 76-5-102.6 (1993 version). In addition, the Utah statute did not discuss testing for diseases as South Carolina's statute does. See S.C. Code Ann. 24-13-470(B). Further, South Carolina's statute is a great deal broader than the Utah statute and it is obviously intended to cover a wide range of conduct by persons coming into contact with law enforcement or correctional employees. Therefore, since the Utah statute discussed in State v. Paul is fundamentally different from South Carolina's statute, the reasoning of that case does not apply here. Unlike the Utah statute, the context of our South Carolina statute makes it

clear that a broad definition of “throw” is warranted. In any event, Respondent submits that the State v. Paul case was wrongly decided using an overly narrow definition of “throw,” and would urge this Court not to follow the flawed reasoning of the Utah appellate court.³

In sum, the definition of “throw” that best fits the context of this statute and best comports with the legislative intent is “to discharge into the air by any means.” Appellant’s conducting in spitting blood on Officer Brantly falls within the purview of the conduct proscribed by the statute. Appellant, by his proposed construction of the statute, seeks to excuse his conduct because he spit blood on the officer directly as opposed to spitting it onto his hand before throwing it upon the officer. The absurdity of Appellant’s proposed construction is clear; therefore it must be rejected. See Wade v. State, *supra*. Accordingly, this Court should conclude that the trial court properly denied Appellant’s directed verdict motion.

³ The legislators in Utah appeared to have agreed that State v. Paul was wrongly decided inasmuch as they quickly amended the statute after the opinion was issued. See Utah Code Ann. § 76-5-102.6 (as amended in 1994) (“Any prisoner . . . who *throws or otherwise propels any substance or object* at a peace or correctional officer is guilty of a class A misdemeanor”) (emphasis added).

CONCLUSION

Based on the foregoing, Respondent requests that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,

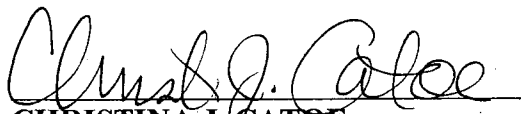
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ATTORNEYS FOR RESPONDENT

October 19, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable William H. Seals, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

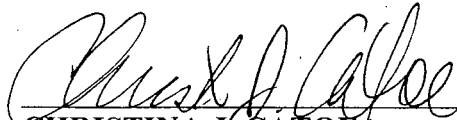
v.

THOMAS SMART,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.



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ATTORNEYS FOR RESPONDENT

October 19, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable William H. Seals, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

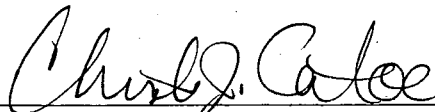
v.

THOMAS SMART,

APPELLANT.

AFFIDAVIT OF SERVICE

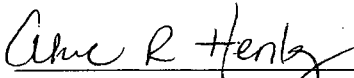
The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **TRISTAN M. SHAFFER**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **19th day of October, 2011**.



CHRISTINA J. CATOE
Assistant Attorney General

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SWORN to before me this 19th day of October, 2011.



Notary Public for South Carolina.

My Commission Expires: 7/18/2017