

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of General Sessions

Steven H. John, Circuit Court Judge

Case No. 2008-GS-26-01027

State of South Carolina,

Respondent,

v.

Retha Pierce Sturdivant,

Appellant.

RECEIVED

APR 30 2012

SC Court of Appeals

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry  
STATE VS.

INDICTMENT/CASE#: 2008GS2601027

Retha Pierce Sturdivant

A/W#: J318859

AKA: Retha Pierce

Date of Offense: 12/25/2007

Race: B Sex: F Age: 62

S.C. Code §: 16-09-0320(A)

DOB: 05-15-1949 SS#: 243-84-2393

CDR Code #: 0326

Address: 412 32ND AVENUE, SOUTH

City, State, Zip: ATLANTIC BEACH, SC 29582

DL#: 101138035 SID#: \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  
TO: Resisting Arrest; Oppose, resist, or assault law (0 - 1 Year +/-or NLT \$50K)

CONVICTED OF or  PLEADS

in violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45  
w/ minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] 105532 [Signature]  
Grasstein, Scott A. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 1 ~~years~~ years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/ ~~months~~ and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*: the balance is suspended with probation for 18  
months; ~~and~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections Credit for 1 day of service.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

\*Fine: \_\_\_\_\_ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly installments of \$ 25.00 beginning 08/13/2011

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_ \$ \_\_\_\_\_ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_ Other: \_\_\_\_\_

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/vea \$ \_\_\_\_\_

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Presiding Judge: [Signature]

Judge Code: 12811

Sentence Date: 7/13/11

Clerk of Court: Deputy Clerk Melanie Huggins-Hard

Court Reporter: Dixie E. Bank

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In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of General Sessions

Steven H. John, Circuit Court Judge

Case No. 2008-GS-26-01027

The State,

Respondent,

v.

Retha Pierce Sturdivant,

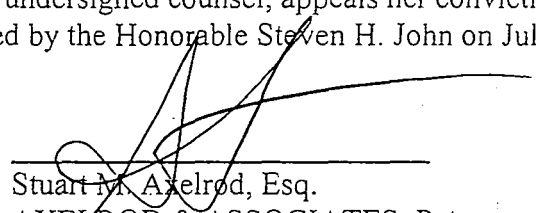
Appellant.

HORRY COUNTY  
11 JUL 22 PM 3:24  
MELANIE HOGGINS-WARD  
CLERK OF COURT

NOTICE OF APPEAL

Retha Pierce Sturdivant, by and through the undersigned counsel, appeals her conviction and sentence in this case. The sentence was imposed by the Honorable Steven H. John on July 13, 2011.

July 22, 2011

  
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Other Counsel of Record:  
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Attorney for Respondent

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
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Steven H. John, Circuit Court Judge

Case No. 2008-GS-26-01027

The State,

Respondent,

v.

Retha Pierce Sturdivant,

Appellant.

HORRY COUNTY  
11 JUL 22 PM 3:24  
MELANIE HODGINS-WARD  
CLERK OF COURT

PROOF OF SERVICE

I certify that I have served the Notice of Appeal upon the Respondent via personal service to Respondent's attorney of record, Scott A. Graustine, at his office at the Horry County Solicitor's Office located in the Horry County Judicial Center, 1101 Second Avenue, Conway, South Carolina 29526 on July 22, 2011.

  
Stuart M. Axelrod, Esq.  
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[Stuart@GotAxelrod.com](mailto:Stuart@GotAxelrod.com)  
*Attorney for Appellant*

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WITNESSES

John Ghent Horry County Police Department

*Cx*

The State of South Carolina  
County of Horry

Scott Graustein 88335-1

COURT OF GENERAL SESSIONS

APRIL, 2008 TERM

ARREST WARRANT NUMBER

J318859  
CDR: 0326 16-09-0320(A)  
DOA: 12/26/2007

THE STATE

vs.

Retha Pierce Sturdivant  
B/ F  
608 31<sup>ST</sup> AVE., SOUTH, #1  
ATLANTIC BEACH, SC 295824745  
DOB: 1949-05-15  
SSN: 243842393

ACTION OF GRAND JURY

*TRUE BILL*  
*James Wilburn*

Foreperson of Grand Jury  
Date: MAR 20 2008

*Pro Se*  
ATTORNEY: Walker, Irby E.

VERDICT

Indictment for  
RESISTING ARREST

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury  
Date:

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ORIGINAL

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

INDICTMENT

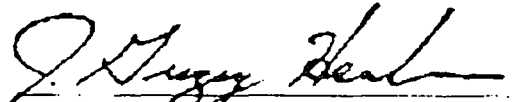
At a Court of General Sessions, convened on MARCH 20, 2008, the Grand Jurors of Horry County present upon their oath:

RESISTING ARREST

CDR: 0326 16-09-0320(A)

That Retha Pierce Sturdivant did in Horry County on or about December 25, 2007, 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 LAMBREE  
FIFTEENTH CIRCUIT SOLICITOR

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1 STATE OF SOUTH CAROLINA ) COURT OF GENERAL SESSIONS  
2 COUNTY OF HORRY ) 08-GS-26-01027

3  
4 STATE )  
5 VERSUS ) TRANSCRIPT OF RECORD  
6 RETHA PIERCE STURDIVANT ) July 12-13, 2011  
7 ) Conway, South Carolina  
8

9 B E F O R E:

10 HONORABLE STEVEN H. JOHN, Judge; AND A JURY.

11 A P P E A R A N C E S:

12 SCOTT A. GRAUSTEIN, ESQ.  
13 ASSISTANT SOLICITOR FOR HORRY COUNTY  
ATTORNEY FOR STATE

14 RETHA PIERCE STURDIVANT  
15 PRO SE DEFENDANT  
16  
17  
18  
19

20 DIXIE COX EUBANK  
21 CIRCUIT COURT REPORTER  
FIFTEENTH JUDICIAL CIRCUIT  
22  
23  
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
24			
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## JURY OUT/ON RECORD

1 (THE FOLLOWING TAKES PLACE ON JULY 12, 2011, AND OUTSIDE  
2 THE PRESENCE OF THE JURY VENIRE.)

3 THE COURT: All right, this is the State of South  
4 Carolina versus Retha Pierce Sturdivant, 2008-GS-26-1027,  
5 regarding the State's charge and indictment against the  
6 defendant for resisting arrest.

7 Is the State ready to proceed?

8 MR. GRAUSTEIN: The State is ready, Your Honor.

9 THE COURT: All right, Ms. Pierce, you are here  
10 representing yourself. Are you ready to proceed?

11 MS. PIERCE: I am. We do have a jury coming, right,  
12 Your Honor?

13 THE COURT: Yes Ma'am. We are going to proceed with a  
14 jury trial in just a -- just a minute. I just wanted to make  
15 sure that you are ready for that.

16 All right, what we are going to do, I just want to go  
17 over a couple of things just to -- I know you are familiar  
18 with them, Ms. Pierce, since you said that you were ready and  
19 able to defend yourself, and knew the rules, and were able to  
20 proceed in this matter pro se when we had your hearing to  
21 relieve your attorney.

22 You will remember, of course, that when you address the  
23 Court, you will stand. When you address the jury, you will  
24 be standing. When you make your opening statement to the  
25 jury, you will be confined to the facts that you believe will

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## JURY OUT/ON RECORD

1 MS. PIERCE: I just want -- wanted to ask you  
2 briefly ---

3 THE COURT: Again, I will remind you when you address  
4 the Court, you must stand, Ma'am. Thank you.

5 MS. PIERCE: I just want to ask you briefly do I give  
6 you a copy of the motion before I make it or what?

7 THE COURT: Well, that's one of the reasons why I asked  
8 you at the beginning were you prepared for trial, and you  
9 told me you were. You didn't indicate you have any motions,  
10 so you are now telling me you have a motion?

11 MS. PIERCE: By the fact I was told outside that you  
12 would tell me when to ---

13 THE COURT: I cannot tell you anything.

14 MS. PIERCE: Well, I know in other courts, I tell them  
15 up front.

16 THE COURT: You are here prepared to represent  
17 yourself. Ma'am, let's just start off right now ---

18 MS. PIERCE: Okay.

19 THE COURT: When I talk, you will be quiet, and I will  
20 do the best I can when you speak to listen attentively to you  
21 and not to interrupt you. Unless I just deem it absolutely  
22 necessary, I won't do that, but please, when I am speaking,  
23 you must be quiet because you need to hear what I'm saying.  
24 Are we in agreement there, Ma'am?

25 MS. PIERCE: Yes, Your Honor.

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## JURY OUT/MOTIONS

1           **THE COURT:** All right, thank you very much.

2           Bailiff, can you grab the motion from the defendant,  
3 please.

4           Do you have a copy for the Solicitor?

5           **MS. PIERCE:** I gave him one before you ---

6           **MR. GRAUSTEIN:** She provided me one about a half ago,  
7 Your Honor.

8           **MS. PIERCE:** But I left one in his office like he told  
9 me to yesterday. He had told me I was supposed to be in  
10 Court tomorrow, ---

11          **THE COURT:** Okay.

12          **MS. PIERCE:** --- and then they called me at home and  
13 told me it was today, so I did as I told him I would do.

14          **THE COURT:** As far as the Court was concerned, it was  
15 at nine o'clock this morning, but apparently there was some  
16 confusion.

17          **MS. PIERCE:** Yes sir, I understand it, but I ---

18          **THE COURT:** I appreciate that, but it really doesn't  
19 matter, Ms. Pierce. There's no sense in going off on that  
20 for us to discuss it because we're here today about the  
21 trial, so we will just go on with that.

22          All right, let me take a minute, please, Ma'am, and read  
23 your motion.

24          All right, Solicitor, number one, the motion says to  
25 dismiss case J318859, resisting arrest, and case J322615, hit

## JURY OUT/MOTIONS

1 and run. As I understand it, the State is only proceeding at  
2 this time with 2008-GS-26-1027 for resisting arrest, is that  
3 correct?

4 MR. GRAUSTEIN: That is correct, Your Honor.

5 THE COURT: All right, so, Ms. Pierce, we will not need  
6 to deal with your -- the part of the motion that deals with  
7 another case since that matter is not before the Court.  
8 We'll just deal with the issue regarding the resisting arrest  
9 charge that the State intends to proceed on at this time.

10 All right, Ms. Pierce, are there any arguments you want  
11 to make regarding your motion to dismiss, the written motion  
12 that you have here to dismiss your -- the charge against you  
13 for resisting arrest?

14 MS. PIERCE: Yes, I do, Your Honor.

15 THE COURT: All right. You may proceed.

16 MS. PIERCE: To the Court, Your Honor, I am submitting  
17 this motion to -- motion to dismiss case on Number J318859,  
18 resisting arrest, and the only reason I put Case Number  
19 J322615, hit and run, with it is because those two have been  
20 used against me together. I have been held out from being  
21 allowed to be exonerated from the resisting arrest, but I was  
22 offered by the Solicitor Department that if I would plea no  
23 contest to resisting arrest, they would drop the hit and run  
24 before they sent the indictment up to the governor, former  
25 governor, Sanford. Of course, I refused, because I said to

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## JURY OUT/MOTIONS

1       them, I am innocent of all charges.

2               **THE COURT:**    Ma'am, we're -- I'm sorry, Ma'am. Turn to  
3 me and address me. You are not addressing anyone else in the  
4 courtroom but the Court. Thank you, Ma'am.

5               **MS. PIERCE:**    I said that I'm innocent of all charges,  
6 which I am, and I am asking for this motion, the motion to  
7 dismiss, because of their witness they have against me with  
8 all the fabrications is an officer who has been dismissed  
9 from the Horry County Police Department.

10              They don't even want to have anything to do with him  
11 because he has similarly done something to another driver  
12 like he's mistreated me, and I have seen his report and heard  
13 many fabrications that are just not true, but for the State  
14 to proceed against me because of political vendetta is an  
15 injustice to me, to have me face someone who has been fired  
16 from the Horry County Police Department for doing these kinds  
17 of thing, and who have no regard for accuracy and truth.

18              I am offering this motion also to because the various  
19 solicitors I feel have gone out of the parameters of their  
20 obligation of office in order to ensure political  
21 assassination to the defendant by deliberately denying me a  
22 speedy trial and willingly allow the dictates beyond official  
23 boundaries to channel and control violation of Defendant  
24 Pierce's inalienable rights.

25              Solicitors Hembree and ---

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## JURY OUT/MOTIONS

1           **THE COURT:**   Ma'am, and I'm sorry, I don't mean to  
2 interrupt you, Ms. Pierce, but I don't need for you to read  
3 to me the contents of your motion. I have read the motion.  
4 I understand what is in your motion. I am asking you do you  
5 have any additional argument that you wanted to make in  
6 addition to your written motions?

7           **MS. PIERCE:**   Well, my additional argument would  
8 basically be summed up as I feel an injustice in a nation  
9 that says you are innocent until proven guilty. I have been  
10 treated all this time that I got -- that I'm guilty until I'm  
11 proven innocent, and I am offering this motion because you  
12 have brought one officer in here who have not been a good  
13 officer and he's done the same or similar thing to somebody  
14 else. He's been fired, and yet you have him in here to  
15 prosecute me.

16           **THE COURT:**   Thank you, Ma'am.  
17                           Solicitor, your response, sir.

18           **MR. GRAUSTEIN:**   Yes, just briefly, Your Honor. I don't  
19 see any -- any legal argument being presented by the  
20 defendant with regard to her grounds for dismissal in this  
21 matter. Of course, she's free to raise the issues of witness  
22 credibility during the trial of this matter, and that is, of  
23 course, her prerogative to do that. I don't think that --  
24 there's no evidence that the Solicitor's Office acted --  
25 conducted itself improperly in any way.

## JURY OUT/MOTIONS

1           As far as the trial and the speediness of her trial,  
2 she's had two different attorneys for both of these charges.  
3 They have not been -- they did not work together. The  
4 Solicitor's Office did what it could to conduct itself to  
5 resolve both matters in a speedy manner, and the defendant  
6 made it clear last month that she wished for a speedy trial,  
7 and that's why we're here today, Your Honor.

8           **THE COURT:** All right, thank you.

9           Based on the matters set forth in the written motion to  
10 dismiss and the arguments of Ms. Pierce regarding her motion,  
11 I do not find any grounds at this point in time to dismiss  
12 the case. Your request to dismiss the case is denied.

13           Any further motions, Ms. Pierce? Any further motions  
14 that you have, Ma'am?

15           **MS. PIERCE:** Your Honor, if the case is not going to be  
16 dismissed, I ask that it be continued.

17           **THE COURT:** And the reason for that being, please,  
18 Ma'am?

19           **MS. PIERCE:** Okay, so I can bring on my other attorney,  
20 because he just said something that's not right. I did not  
21 have two attorneys on this case.

22           **THE COURT:** Not on this case. Didn't you have at one  
23 point in time -- now, correct me if I'm wrong. You had an  
24 attorney representing you in the resisting arrest case  
25 and ---

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## JURY OUT/MOTIONS

1           **MS. PIERCE:**    Mr. Irby Walker, yes.

2           **THE COURT:**   And then you had another attorney, is that  
3 right?

4           **MS. PIERCE:**    No; no.

5           **THE COURT:**    Well, who did I relieve of counsel? The  
6 Solicitor just said that there were two different attorneys.  
7 There wasn't one attorney representing you on both cases.  
8 You had an attorney on two different cases, and as I  
9 understood what the Solicitor said, he was trying to  
10 communicate with both attorneys and couldn't get them to  
11 agree, so that hampered him in apparently resolving it is  
12 what he argued it to me. Be that as it may, that is not the  
13 basis for my ruling. Whether or not you had two different  
14 attorneys or not, that's not the basis.

15           I find there are no grounds to dismiss the matter. Your  
16 request for a continuance, therefore, is denied.

17           Any further motions at this point in time, Ma'am?

18           Ms. Pierce, any further motions at this point in time,  
19 Ma'am?

20           Can you hear me, Ms. Pierce? Can you hear me?

21           **MS. PIERCE:**    Yes sir.

22           **THE COURT:**    All right. Please, Ma'am, when I direct a  
23 question to you, I would ask that you answer me, please.

24           Do you have any further motions at this point in time,  
25 Ma'am?

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## JURY OUT/MOTIONS

1           **MS. PIERCE:**   Not at this time, Your Honor.

2           **THE COURT:**   All right, Ma'am.  Let's just review  
3 briefly how the selection process will go forward so  
4 everybody is on the same page here.

5           As I indicated to you, both the State and the Defense  
6 will have five strikes.  The panel of, I believe it is,  
7 thirty-five jurors from the jury venire will be present.  
8 They will be called in a random order selected by a computer.  
9 The order of those is not known to the Court and will not be  
10 known until they are assembled, and that random order has  
11 been established through the use of computer draw.

12           The Clerk of Court will call the first name on the list  
13 and will proceed down that list that was set forth by  
14 computer draw.  The State -- the Clerk will inquire, ask of  
15 the State whether to excuse or present the juror.  If the  
16 juror is excused up to five by the State, then that person  
17 will be returned to the whole panel.  If they are presented  
18 by the State, the Clerk will turn to Ms. Pierce and ask  
19 whether to excuse or seat the juror.  Up to five may be  
20 excused by the defendant.  After that, then they would just  
21 be on the jury as called if the defendant has exceeded her  
22 five strikes.

23           If the juror is seated by the defendant after having  
24 been presented by the State, then the Clerk will tell the  
25 juror to go over to the jury box and have a seat as one of

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DEFENDANT'S OPENING STATEMENT (PIERCE)  
ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

1 I thank you for whatever attention is given, but the pro  
2 se defendant simply did not resist arrest and you will see  
3 that individual did not resist arrest. Thank you.

4 **THE COURT:** All right, thank you, Ma'am.

5 All right, Solicitor, your first witness, please, sir.

6 **MR. GRAUSTEIN:** Yes, Your Honor. The State calls  
7 Robert Dale.

8 **THE COURT:** All right, please come around and be sworn.

9 **ROBERT WESLEY DALE, JR.,** being first duly  
10 sworn, states as follows:

11 **THE COURT:** You may proceed, Solicitor.

12 **MR. GRAUSTEIN:** Thank you, Your Honor.

13 **DIRECT-EXAMINATION BY MR. GRAUSTEIN:**

14 Q. Mr. Dale, how old are you?

15 A. I'm thirty-one.

16 Q. Where do you currently work?

17 A. The South Carolina Employment and Work Force Center in  
18 Conway.

19 Q. How long have you worked there?

20 A. For -- since March.

21 Q. Since March. Did you used to be a police officer with  
22 the Horry County Police Department?

23 A. Yes, I did.

24 Q. All right. How long did you work there?

25 A. I was there from February 2006 to November of 2010.

ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

1 Q. And were you on duty on December 25th, 2007?

2 A. Yes sir, I was.

3 Q. What were -- what were your duties with the Police  
4 Department?

5 A. I was a patrol officer. I responded to calls for  
6 service by the public, responded to 911 calls, routine calls,  
7 calls in progress, any type of 911 emergency.

8 Q. Traffic violations?

9 A. Also traffic violations, you know, traffic stops,  
10 patrolled the area.

11 Q. Okay. Do you recall where you were -- where you were  
12 patrolling on the night of -- on December 25th, 2009 -- or  
13 2007? I'm sorry.

14 A. Yes, I was.

15 Q. Do you know where you were patrolling?

16 A. Yes.

17 Q. And where were you patrolling?

18 A. During the incident, it was on Highway 17 in the  
19 Little River section of Horry County.

20 Q. Okay. Now, you are on patrol. About what time --  
21 what -- what was your shift like?

22 A. I was working -- I believe I was working nights, 5:45  
23 P.M. to 06:00 the next morning, ---

24 Q. Okay.

25 A. --- a twelve-hour shift.

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ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

1 Q. And so you are -- you -- correct me if I'm wrong, but  
2 you said you were -- you were on patrol that evening, ---

3 A. Yes sir.

4 Q. --- Christmas evening?

5 A. Yes sir.

6 Q. And did you have occasion during your -- that patrol  
7 watch to come in contact with the defendant in this case?

8 A. Yes, I did.

9 Q. How did you come into contact with her?

10 A. I observed her vehicle being operated in a reckless  
11 manner, swerving from lane to lane as I was behind the  
12 vehicle observing it, and some other vehicles had had to move  
13 out of the way from being struck at that time, so I  
14 determined that it was necessary to conduct a traffic stop on  
15 that vehicle.

16 Q. Okay, and to conduct that traffic stop, what did you  
17 do?

18 A. Got in behind the vehicle, activated my blue lights  
19 and siren.

20 Q. Okay, and after you activated your blue lights and  
21 siren, what did the defendant's vehicle do?

22 A. She slowly, but surely, pulled over into a parking lot  
23 off of -- I believe it was Horseshoe Road.

24 Q. Okay, so she didn't attempt to flee from you at that  
25 point?

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ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

1 A. No.

2 Q. Okay. You don't -- do you remember what it was a  
3 parking lot for or a parking area for?

4 A. I believe it was a parking lot of the old -- the old  
5 fireworks store. I don't think it was -- I don't think  
6 anything was in this -- the area at the time.

7 Q. And so she pulls over, and then what did you observe  
8 after she had stopped her vehicle?

9 A. She immediately exited her vehicle and she locked her  
10 doors, which made me suspicious that something might be going  
11 on, so I exited my vehicle pretty quickly because I did not  
12 know the intentions of the driver at the time. Then I made  
13 contact with her as quickly as I could.

14 Q. Okay, so when you made contact with her, was she in or  
15 out of her vehicle?

16 A. She was outside of her vehicle.

17 Q. Now, when you do a -- conduct a traffic stop, or when  
18 -- at the time you were with Horry County Police or at the  
19 time of this incident, did Horry County Police have a -- a  
20 certain procedure for conducting a traffic stop?

21 A. Yes, they did.

22 Q. Okay. What did that entail, and I guess -- well, let  
23 me -- did the procedure involve whether the driver should be  
24 inside the vehicle or outside?

25 A. Usually we require the driver to stay inside the

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ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

1 vehicle for their safety, as well as the officer that is on  
2 the scene, ---

3 Q. Okay.

4 A. --- due to traffic related issues and also, you know,  
5 if they're outside the vehicle, then they could do harm to  
6 the officer.

7 Q. Okay, and you said that was a Police Department  
8 procedure that they have in place?

9 A. We try to remain inside the vehicle, the drivers.

10 Q. And so the defendant got out of the vehicle. Had you  
11 gotten out of your vehicle at that point?

12 A. No. I was still calling in the traffic stop.

13 Q. Were your blue lights on?

14 A. Yes.

15 Q. The blue lights are flashing?

16 A. Yes sir.

17 Q. And where did you -- where was your vehicle in  
18 relation to hers?

19 A. Right behind hers.

20 Q. Any other vehicles in the area?

21 A. Not -- not on that road, not on Horseshoe Road, no.

22 Q. Okay, so you -- you said you went to approach. You  
23 went to make contact with her, I think, is what you said?

24 A. Yes sir.

25 Q. Okay. Were you able to make contact with her?

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ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

- 1 A. Yes, I did.
- 2 Q. Okay. When you make -- and when you say make contact  
3 with her, what do you mean?
- 4 A. Basically make a -- start a verbal conversation, ---
- 5 Q. Okay, so ---
- 6 A. --- identifying, you know, who I am or why I'm there  
7 and the reason for the traffic stop.
- 8 Q. Were you wearing a uniform?
- 9 A. I was.
- 10 Q. So you went up and spoke with her?
- 11 A. Yes.
- 12 Q. And what was the nature of that conversation?
- 13 A. Basically I went up to her and I believe I asked why  
14 she was driving in the manner that she was driving.
- 15 Q. Okay, and did she give you any response?
- 16 A. She told me that she had to use the restroom.
- 17 Q. And what did -- what did you tell her?
- 18 A. I advised her that she would be allowed to go to the  
19 restroom as soon as the traffic stop was complete, and then I  
20 asked her for her driver's license and other required  
21 documentation, ---
- 22 Q. Okay.
- 23 A. --- i.e., registration and proof of insurance.
- 24 Q. Okay. Did she give you her driver's license?
- 25 A. No, she did not.

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ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

- 1 Q. Did she give you her registration?
- 2 A. No, she did not.
- 3 Q. Did she give you proof of insurance?
- 4 A. No, she did not.
- 5 Q. Did she indicate where those were?
- 6 A. No, she did not.
- 7 Q. Did -- did she -- now, she was outside the vehicle
- 8 when you were talking to the ---
- 9 A. Yes sir.
- 10 Q. --- talking about asking for this stuff?
- 11 A. Yes sir.
- 12 Q. Did she go back in the vehicle to look for -- to look
- 13 for it or anything?
- 14 A. No sir.
- 15 Q. No, okay, so what did -- what did she do? Don't tell
- 16 me what she said; just tell -- what she did.
- 17 A. She just attempted to walk away from the traffic stop.
- 18 Q. Okay. Did you instruct her not to do that?
- 19 A. Yes, I did.
- 20 Q. One time?
- 21 A. I don't recall how many times I instructed her, but it
- 22 was more than one.
- 23 Q. And did she ever comply with your instruction?
- 24 A. No sir.
- 25 Q. What, if anything, did you have to do in this

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ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

1 situation?

2 A. As she was walking away, I had to physically grab her  
3 by the wrist to try to keep her at the scene, and she then  
4 jerked away from me, so I had to escalate and place her  
5 against her vehicle so I could get her in a situation where I  
6 could make an arrest.

7 Q. Okay, so you had to use some sort of physical  
8 restraint on her?

9 A. Yes. It was a wrist lock.

10 Q. Okay. Did you take her to the ground?

11 A. No sir.

12 Q. No. Did you taze -- use a tazer on her?

13 A. No sir.

14 Q. Did you use any sort of weapon on her?

15 A. No sir.

16 Q. And you said you had her up against the car?

17 A. Yes sir.

18 Q. All right, and after you had her up against the car,  
19 what did you do?

20 A. I attempted to put handcuffs on the defendant.

21 Q. Were you able to get handcuffs on her?

22 A. Yes.

23 Q. Okay, and then what -- what did you do with her?

24 A. Tried to walk her to my car, to my patrol vehicle, to  
25 place her in the back of the patrol car.

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ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

1 Q. Were you able to place her in the back of the patrol  
2 car?

3 A. After a little coaxing, but eventually.

4 Q. You say a little coaxing?

5 A. Yes.

6 Q. What do you mean by a little coaxing?

7 A. Well, the defendant really didn't want to go walk to  
8 my car or she didn't want to get in the back of the patrol  
9 car, so -- and she was, you know, jerking away from me while  
10 I was trying to walk her to the car, so I just, you know,  
11 told her to stop resisting, you know, multiple times. I  
12 don't know how many times. It was multiple times, and  
13 finally were able -- I was able to get her in the vehicle.

14 Q. Now, in your experience as a police officer when you  
15 conduct a traffic stop, is the person, the subject of the  
16 traffic stop, are they free to leave?

17 A. No, they're not.

18 Q. So was your action to your knowledge, was your actions  
19 that night with regard to restraining the defendant, were  
20 those in compliance with Horry County Police Department  
21 procedures?

22 A. Yes sir.

23 Q. Were you disciplined in any way for your conduct that  
24 night?

25 A. No.

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ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

1 Q. Now, you -- did you end up transporting the defendant?

2 A. Yes, I did.

3 Q. Okay. Did you transport her to a jail?

4 A. Yes sir.

5 Q. Which jail did you take her to?

6 A. North Myrtle Beach City.

7 Q. Now, you testified that she had told you that she had  
8 to go to the bathroom when you first got to this traffic  
9 stop?

10 A. Yes sir.

11 Q. So you transported her to North Myrtle Beach jail?

12 A. Yes sir.

13 Q. And did you book -- take her in to book her in or  
14 to -- into the jail?

15 A. Yes sir.

16 Q. Do you -- after you take a -- somebody out of the back  
17 of your car to jail, do you inspect the back of the vehicle  
18 at all?

19 A. Yes sir.

20 Q. And why do you inspect the back of the vehicle?

21 A. They could put contraband in the back of the vehicle,  
22 weapons, anything of that nature.

23 Q. And did you find anything unusual in the back of your  
24 vehicle?

25 A. No, I did not.

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ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

- 1 Q. Did your vehicle require any unforeseen cleaning?
- 2 A. No.
- 3 Q. Now, let me ask you, Mr. Dale, if you recognize what
- 4 has been marked as State's Exhibit 1?
- 5 A. Yes sir.
- 6 Q. And could you tell me what that is?
- 7 A. It is a video tape or a C.D. of my traffic stop on the
- 8 25th of December of 2007 ---
- 9 Q. Okay.
- 10 A. --- showing the defendant and being stopped by me.
- 11 Q. Okay, so you have your vehicles equipped with video
- 12 equipment?
- 13 A. Yes sir.
- 14 Q. And it was operating on the 25th?
- 15 A. Yes sir.
- 16 Q. It was operating properly at the time of the incident?
- 17 A. Yes sir.
- 18 Q. And you said the recording of this incident was made
- 19 on your video?
- 20 A. Yes sir; yes sir.
- 21 Q. And were there any problems with your video equipment
- 22 at all that you were aware of?
- 23 A. No sir.
- 24 Q. Have you viewed this tape?
- 25 A. Yes sir.

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ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN

1 Q. And does this recording fairly and accurately depict  
2 the events during that traffic stop on Jan- -- on December  
3 25th, 2007?

4 A. Yes sir, start to finish.

5 MR. GRAUSTEIN: Your Honor, the State would move to  
6 enter State's Exhibit 1 into evidence.

7 THE COURT: All right. Is there any objection to that  
8 from the Defense?

9 MS. PIERCE: No objection, Your Honor.

10 THE COURT: It is in evidence as State's Exhibit 1.

11 (C.D. OF TRAFFIC STOP (12/15/07) ADMITTED INTO EVIDENCE  
12 AS STATE'S EXHIBIT NUMBER 1.)

13 MR. GRAUSTEIN: Your Honor, the State would move to  
14 publish the recording marked as State's Exhibit 1 for the  
15 jury.

16 THE COURT: All right. State's 1 is in evidence  
17 without objection.

18 Is there any objection by the Defense to publication to  
19 the jury, that is the playing of the C.D. to the jury?

20 MS. PIERCE: No objection.

21 THE COURT: All right. You may do so, sir.

22 MR. GRAUSTEIN: All right. Thank you, Your Honor.

23 (STATE'S EXHIBIT NUMBER 1 IS PLAYED FOR THE JURY IN OPEN  
24 COURT.)

25 Q. Mr. Dale, does that accurately represent the events of

ROBERT WESLEY DALE, JR. - DIRECT BY GRAUSTEIN  
JURY OUT

1 the evening of July -- December 25, 2007?

2 A. Yes sir.

3 Q. Let me ask you real quick, and I don't know, at the  
4 time you worked for Horry County Police Department, did they  
5 have a procedure to cover situations such as this where a  
6 person subject to a traffic stop was claiming they had to go  
7 to the restroom?

8 A. Not that I'm aware of.

9 Q. Okay, so they didn't have a set procedure for that?

10 A. No sir.

11 Q. Okay.

12 A. No sir.

13 Q. All right.

14 **MR. GRAUSTEIN:** Please answer any questions Ms.  
15 Sturdivant may have for you.

16 A. Yes sir.

17 **THE COURT:** Before we go into cross-examination, Ms.  
18 Pierce, we're going to -- the video was a little long --  
19 we're just going to take a short break for about five  
20 minutes.

21 Ladies and gentlemen, if you'll go into your jury room  
22 for about five minutes and we'll come back in and finish with  
23 the cross-examination.

24 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**  
25 **JURY.)**

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## JURY OUT/JURY IN

1 THE COURT: All right, we're going to take a break for  
2 five minutes and then we'll come back.

3 Mr. Dale, you may step down, but you may not talk to the  
4 Solicitor during the -- during the break. Thank you, sir.

5 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE  
6 THE PRESENCE OF THE JURY.)

7 THE COURT: All right, is the State ready for the jury  
8 to come back in?

9 MR. GRAUSTEIN: Yes, I am, Your Honor.

10 THE COURT: And the Defense?

11 MS. PIERCE: Yes, Your Honor.

12 THE COURT: Thank you, Ma'am.

13 All right, ask the jury to come in, and I will just  
14 remind you, Ma'am, this is the cross-examination part where  
15 you get to ask questions that pertain to this matter of the  
16 witness. Just remember it's not testimony. You are to ask  
17 questions, but, you know, I'm going to leave it to you. I'm  
18 just reminding you to frame it as a question, all right?  
19 Thank you, Ma'am.

20 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE  
21 JURY.)

22 THE COURT: All right, Ma'am, we'll proceed with the  
23 cross-examination now, and can I remind you, Ma'am, can you  
24 stand next to one of the microphones. That's just so that  
25 everybody -- everybody can hear. There's a microphone right

ROBERT WESLEY DALE, JR. - CROSS BY PIERCE

1 there if you want to stand right next to that, that would be  
2 great. Thank you, Ma'am.

3 **CROSS-EXAMINATION BY MS. PIERCE:**

4 Q. Good afternoon, Mr. Dale.

5 A. Good afternoon, Ma'am.

6 Q. I heard you say that your occupation is what now?  
7 What is your occupation?

8 A. I work at the unemployment office. I'm a veteran work  
9 study.

10 Q. What are your duties, to the Court?

11 A. I help people file claims on unemployment, assist them  
12 in job searches, and also help them create -- create resumes.

13 Q. On the night of December 25th, 2007, you were an  
14 officer with the Horry County Police Department, is that  
15 correct?

16 A. Yes Ma'am.

17 Q. While a policeman, would you say you recorded things  
18 accurately as they happened?

19 A. Recorded things accurately, yes Ma'am.

20 Q. Would you say you have a vivid memory of what happened  
21 that evening?

22 A. Yes Ma'am.

23 Q. On the evening of December 25th, 2007, what is your  
24 recollection of when you put your light on?

25 A. The lights, as soon as I observed the violation, soon

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ROBERT WESLEY DALE, JR. - CROSS BY PIERCE

1 after.

2 Q. At what point was that?

3 A. After the -- I observed you swerving from lane to lane  
4 and the vehicles having to, you know, maneuver out of the  
5 way, then that's when shortly after I conducted a traffic  
6 stop, at which point I felt it was a safe location to do so.

7 Q. Before you gave a certain number of miles you followed  
8 the defendant. Could you remember what those miles were you  
9 said?

10 A. I do not recall.

11 Q. Do you remember if the defendant was at a light when  
12 you put your light on?

13 A. At a red light, no. I do recall that you were not at  
14 a red light.

15 Q. The defendant was not at the light leading to  
16 Horseshoe Road?

17 A. No.

18 Q. For what reason did you leave the Police Department?

19 A. I resigned.

20 Q. So there's no validity to you were dismissed?

21 A. No.

22 Q. Do you believe that every accused is innocent until  
23 proven guilty?

24 **MR. GRAUSTEIN:** Objection, Your Honor.

25 **THE COURT:** All right. That's asking for a legal

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ROBERT WESLEY DALE, JR. - CROSS BY PIERCE

1 question or a legal standard from this witness who is not  
2 qualified. That is the Court's job. Thank you, Ma'am.

3 MS. PIERCE: Thank you, Your Honor.

4 Q. Mr. Dale, have you ever been accused of a crime?

5 MR. GRAUSTEIN: Objection, Your Honor.

6 THE COURT: Under the Rules of Evidence, based on the  
7 information presented to the Court, I find the question not  
8 to be proper and I will not allow you to proceed with that  
9 question, Ma'am. Thank you.

10 Q. Getting back to December 25th, 2007, you said, did I  
11 hear correctly, that there was a lot of swerving the reason  
12 you stopped the defendant, ---

13 A. There was.

14 Q. --- correct?

15 A. Your vehicle was swerving, yes.

16 Q. You also said that -- am I correct, that there was  
17 nothing in your car on that night, correct?

18 A. Yes.

19 Q. You mentioned, did you not, that you took the  
20 defendant to the North Myrtle Beach Police Department?

21 A. Yes; yes Ma'am.

22 Q. Is that the only place you took the defendant?

23 A. No Ma'am.

24 Q. Where else did you take the defendant?

25 A. She went -- took the defendant to Seacoast Medical

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ROBERT WESLEY DALE, JR. - CROSS BY PIERCE

1 Center and then after that to J. Reuben Long.

2 Q. For what reason did you take the defendant to  
3 Seacoast?

4 MR. GRAUSTEIN: Objection, Your Honor.

5 THE COURT: I'm going to allow that particular  
6 question.

7 Answer the question if you know, sir.

8 A. It was a -- you were taken to the Seacoast Medical  
9 Center upon your request.

10 Q. For what reason did I request it?

11 A. You said that you were in pain if I recall correctly.

12 Q. When at the North Myrtle Beach Police Department, did  
13 the lady officer there or the lady there make a comment  
14 relative to why she did not want the defendant to sit in  
15 their good chairs, quote, good chairs, unquote, or a good  
16 chair?

17 A. I do not recall.

18 Q. Do you recall the officer, the male officer there,  
19 offering the defendant clean clothes to put on, dry clothes?  
20 You do not recall that either?

21 A. If you will let me answer, I do not recall.

22 Q. After leaving the Seacoast Medical Center, where did  
23 you take the defendant?

24 A. After Seacoast, J. Reuben Long.

25 Q. Why do you think at J. Reuben Long they would wash the

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1 clothes of the defendant that night?

2 **MR. GRAUSTEIN:** Objection, Your Honor.

3 **THE COURT:** I'm going to allow the question. This  
4 witness may or may not know the answer, but I'll allow the  
5 question.

6 A. Could you repeat the question, please.

7 Q. Why do you think the folks at J. Reuben Long washed  
8 the clothes of the defendant that night?

9 A. It could be that that's their procedure on booking  
10 inmates.

11 Q. And could you not think they -- because they were wet?

12 A. You could think that, I believe. You would be able to  
13 think that.

14 Q. For what reason did you make two phone calls on the  
15 cell phone while transporting the defendant that night?

16 **MR. GRAUSTEIN:** Objection, Your Honor.

17 **THE COURT:** Why don't you be more specific as to what  
18 you're asking the witness, please Ma'am.

19 Q. On the way to J. Reuben Long to deposit the defendant  
20 on December 25th, 2007, you made two phone calls on your cell  
21 phone, did you not?

22 A. I don't recall making two phone calls. I remember one  
23 -- one phone call definitely.

24 Q. As a police officer, would you consider yourself with  
25 a good memory?

ROBERT WESLEY DALE, JR. - CROSS BY PIERCE

1 A. Yes.

2 Q. A creditable memory? Would you consider yourself  
3 having a creditable memory?

4 A. A credible?

5 MR. GRAUSTEIN: Objection, Your Honor.

6 THE COURT: I appreciate it, Ma'am. That is for the  
7 jury to decide. That's invading their province, so just --  
8 let's ---

9 MS. PIERCE: Thank you, Your Honor.

10 THE COURT: Thank you, Ma'am.

11 Q. Officer Dale, on the night that you arrested me for  
12 what you call resisting arrest, would you say that a person  
13 is resisting arrest if you've never told them that they are  
14 going to be under arrest, if they asked you to go to the  
15 bathroom?

16 MR. GRAUSTEIN: Objection, Your Honor, calls for a  
17 legal conclusion.

18 THE COURT: I'm going to allow -- I find it to a  
19 question on the -- on the facts, and so I'm going to allow  
20 the witness to respond as a question on the facts.

21 You may proceed.

22 A. Can you repeat the question again.

23 Q. The question is would you call it resisting arrest if  
24 whoever you stop has not been told that they are under arrest  
25 or they're going to be under arrest if they are asking you to

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1 go to the bathroom?

2 A. You have to advise them that they're under arrest.

3 Q. Did you advise the defendant that night before you  
4 threw her up against the car that she would be under arrest  
5 if she proceeded to go to the bathroom when she was telling  
6 you that she needed to go to the bathroom?

7 A. I did not tell you that you were under arrest.

8 Q. Would you repeat that, please. Did you tell the  
9 defendant ---

10 A. While you were leaving did I tell you that?

11 Q. When I was tell- -- when the defendant was saying to  
12 you that she had to go to the bathroom?

13 A. When you said you had to go to the bathroom, I did not  
14 say you were under arrest for that, no.

15 Q. Nor before that time or after, until later, is that  
16 correct?

17 A. Later, I did tell you you were under arrest.

18 Q. Is it safe to assume that the regular person who  
19 doesn't know segments of law if they have a bladder problem  
20 and have been experiencing accidents would not think that  
21 they're doing anything wrong if they're trying to go to the  
22 bathroom and then come back to accommodate you?

23 **MR. GRAUSTEIN:** Objection, Your Honor.

24 **THE COURT:** I'm going to allow the question.

25 A. I've always been told that ignorance of the law is not

ROBERT WESLEY DALE, JR. - CROSS BY PIERCE

1 a defense.

2 Q. But would you say that in a case of where one is  
3 genuinely not aware of a situation that you would call them  
4 guilty of a situation?

5 A. I don't understand ---

6 THE COURT: That's calling for a legal conclusion. I'm  
7 not going to allow that question. Thank you, Ma'am.

8 Q. On the night of December 25th, 2007, was I a threat to  
9 you? Was the defendant a threat to you?

10 A. I consider everyone a threat on a traffic stop,  
11 potential threat.

12 Q. Would you think that a woman of my size would have  
13 been a threat by continuing to ask you to go to the bathroom?

14 A. I don't believe the basis of gender is a deciding --  
15 on threat or not.

16 Q. Mr. Dale, what is your relationship to the former  
17 mayor of Atlantic Beach?

18 A. No relationship whatsoever.

19 Q. For what reason were you seen on 32nd Street  
20 constantly before this happened that night?

21 MR. GRAUSTEIN: Objection, Your Honor.

22 THE COURT: Sustained.

23 Q. In your capacity as Horry County Police, did you have  
24 an occasion to be in Atlantic Beach lots of times?

25 MR. GRAUSTEIN: Objection, Your Honor.

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ROBERT WESLEY DALE, JR. - CROSS BY PIERCE

1 A. I would say yes, Atlantic Beach.

2 THE COURT: I am going -- I'm sorry, Ma'am, there was  
3 an objection.

4 I'm going to allow that particular question. You may  
5 answer that particular question.

6 A. Yes, I did patrol Atlantic Beach.

7 Q. Do you recall which street you were predominantly on?

8 A. No.

9 Q. Do you recall many of the people you spoke to when you  
10 patrolled?

11 A. No.

12 Q. And you have a vivid memory? You don't ---

13 A. Is that a question?

14 Q. Yes.

15 A. I ---

16 Q. You have a vivid memory you said earlier?

17 THE COURT: Do not -- Ma'am, I'm sorry.

18 Sir, you do not ask questions of the person asking the  
19 question.

20 A. Okay.

21 THE COURT: If you do not understand, you may ask for  
22 them to repeat the question, all right?

23 Proceed, Ma'am.

24 Q. Did I understand you earlier to say that you had a  
25 vivid memory?

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ROBERT WESLEY DALE, JR. - CROSS BY PIERCE

1 A. I believe I do, yes.

2 Q. You do not remember me using the bathroom in your  
3 patrol car?

4 A. No, I do not.

5 Q. You do not remember the police lady telling me she did  
6 not want me to sit in her good chair at ---

7 A. No, I do not.

8 Q. You do not remember the officer offering me clothes,  
9 blue clothes or green? You do not remember that?

10 A. I believe I do remember him offering you jail --  
11 whatever. I'm not sure what they call them, the uniforms for  
12 prisoners.

13 Q. Do you remember me refusing because I said I was  
14 humiliated already and I might as well stay wet at the Horry  
15 County Police -- the Horry County jail? Do you remember  
16 that?

17 A. The Horry County jail?

18 Q. To the J. Reuben Long Detention Center. Do you  
19 remember me refusing the clothes he offered me because I said  
20 I was already humiliated?

21 A. Not in Horry County. At North Myrtle Beach, I do.  
22 North Myrtle Beach, I remember that.

23 Q. Well, that's what -- okay. That's the question. Do  
24 you remember in North Myrtle Beach before I went to ---

25 A. North Myrtle Beach, yes.

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ROBERT WESLEY DALE, JR. - CROSS BY PIERCE

1 Q. So you do remember that?

2 A. That you refused the clothing that they -- yes.

3 Q. So -- so would it not be proper to surmise that if he  
4 offered me the clothes because I'm wet, that I'm wet?

5 MR. GRAUSTEIN: Objection, Your Honor.

6 THE COURT: It's calling for speculation on the part of  
7 the witness. I will not allow it.

8 Q. Mr. Dale, would you consider a person resisting arrest  
9 when they don't know that they're being arrested?

10 A. If they don't know they're being arrested?

11 Q. Right.

12 A. Yes. I don't understand the question. Could ---

13 Q. Would you as an officer consider a person resisting  
14 arrest when they don't know they're being arrested?

15 A. No. They need to know that they're under arrest.

16 Q. And how can a person know that they're being under  
17 arrest if the officer does not tell them that they're under  
18 arrest?

19 A. They wouldn't know.

20 MS. PIERCE: Thank you.

21 THE COURT: Any redirect?

22 MR. GRAUSTEIN: No, Your Honor.

23 THE COURT: All right, very good.

24 You may step down, sir.

25 Further witnesses on behalf of the State?

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## THE STATE RESTS/JURY OUT/MOTIONS

1           **MR. GRAUSTEIN:**   None from the State, Your Honor. The  
2 State would rest at this time.

3           **THE COURT:**   All right, the State rests. All right,  
4 very good.

5           All right, ladies and gentlemen of the jury, there's --  
6 at this stage of the proceedings, there are some matters of  
7 law the Court must take up with the State and the Defense  
8 outside the presence of the jury. I may or may not decide  
9 based on that to continue today. We may stop for the  
10 evening, but I need to communicate with the State and the  
11 Defense at this point in time, so if you would go to your  
12 jury room for a few moments. I won't keep you long in making  
13 that decision, so if you would just go to your jury room for  
14 a few moments. Thank you very much.

15           **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**  
16 **JURY.)**

17           **THE COURT:**   All right, at this point in time -- do you  
18 want me to refer to you by Ms. Pierce or Ms. Sturdivant,  
19 Ma'am, or both?

20           **MS. PIERCE:**   Ms. Pierce.

21           **THE COURT:**   All right, Ms. Pierce. At this point in  
22 time it's proper for the Defense to make any motions that  
23 they feel would be appropriate or proper at this point in  
24 time. Are there any motions that the Defense would like to  
25 make at this time?

## JURY OUT/MOTIONS

1           **MS. PIERCE:**   The only motion I want to make, Your  
2 Honor, was the one I had earlier to dismiss the case.

3           **THE COURT:**   All right. That was to dismiss. All  
4 right, Ma'am. Well, the Court is going to take your -- your  
5 statement to me as a proper motion for a directed verdict,  
6 and that's what the motion would be at this point in time, a  
7 motion by the defendant for a directed verdict.

8           A defendant is entitled to a directed verdict when the  
9 State fails to produce evidence of the offense charged. My  
10 job is only to see whether or not evidence exists. It's not  
11 my job to judge credibility or believability, or to weigh the  
12 evidence. That's the jury's job. If there's any kind of  
13 direct evidence or substantial circumstantial evidence  
14 reasonably tending to prove the guilt of the accused, then  
15 the case properly goes to the jury for their decision.

16           Only if the trial judge would find that the evidence  
17 merely raises a suspicion that the defendant is guilty would  
18 I grant the directed verdict motion, or if I would find that  
19 the jury would be speculating as to the guilt of the  
20 defendant.

21           In this particular matter, again not judging the  
22 credibility or believability or the weight of the evidence,  
23 but whether or not evidence exists to sustain a jury's  
24 verdict on the charge of resisting arrest, I would  
25 respectfully decline to grant your motion for a directed

JURY OUT/MOTIONS  
COURT TO DEFENDANT

1 verdict, again leaving it to the jury to decide credibility  
2 and believability and the weight of the evidence, but I do  
3 find that there is sufficient evidence for the matter to go  
4 to the jury at this point in time.

5 All right, there's one other matter -- I'm sorry. Are  
6 there any other motions that you would like to make, Ms.  
7 Pierce?

8 MS. PIERCE: I would like to move that the State's  
9 witness not be the one to totally cause my demise because  
10 he's not creditable.

11 THE COURT: Well, and I appreciate that, but that's --  
12 that's an argument to the jury maybe in the closing argument  
13 some comment of that nature. I'm not sure that would be a  
14 proper comment, but some comment as to whether the jury  
15 should believe the witness. Obviously you can ask them, you  
16 know, because their job is to judge credibility and  
17 believability, but however you frame the motion, I don't find  
18 that to be a proper motion and respectfully deny it, so are  
19 there any other motions, anything else, any other motions  
20 like that?

21 MS. PIERCE: That's it, Your Honor.

22 THE COURT: All right, very good.

23 Now, at this point in time it's proper for you to  
24 present a defense if you choose to do so, all right? There  
25 are certain rights that I need to talk to you about at this

RETHA PIERCE STURDIVANT - DIRECT BY PIERCE

1                   **RETHA PIERCE**, being first duly sworn, states  
2 as follows:

3           **MS. PIERCE:** My name is Retha Pierce, Atlantic Beach,  
4 South Carolina.

5           **THE COURT:** You may be seated, Ma'am.

6 **DIRECT EXAMINATION PRO SE:**

7 A. I am a former teacher administrator, with thirty years  
8 credit.

9           The facts of the case of December 25th, 2005 -- or  
10 pardon me, 2007, are as follows: I first want to tell what I  
11 did during the day. That was Christmas Day. I fed the  
12 people, as I usually do, cooked dinner. I am a cook in a  
13 restaurant sometimes, and I delivered the gifts to the kids,  
14 and I was on my way to see a friend whose mother had passed.

15           I went first to the place that she was supposed to live,  
16 I thought she lived, and I was redirected, and that's why I  
17 was traveling 17 North. I was on my way to visit some folks  
18 to show me the new place where these people lived, my friends  
19 whose mother passed.

20           I was sitting at the stop light. No light of a  
21 policeman came on before the stop light. I didn't even know  
22 it was a policeman behind me, because as testified before, I  
23 was looking in the rearview mirror and as I was taking the  
24 left turn, I then noticed as I was beginning to make the left  
25 turn onto Horseshoe Road off of 17 that the light went on on

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RETHA PIERCE STURDIVANT - DIRECT BY PIERCE

1 a police car, and I remember saying, oh, I didn't know that  
2 was a policeman sitting behind me, so I completed the turn,  
3 and I stopped.

4 I put on my -- I had my left signal on to make that  
5 turn. I completed the turn and then because I saw the police  
6 light come on at the stop light, I made the right turn and  
7 stopped near the place that you're calling the fireworks.  
8 It's a fireworks now place, but it used to be a furniture  
9 place at the time you stopped me.

10 I stopped to the right after putting on a right signal  
11 at the furniture place to the right, and it was not that I  
12 told the policeman that I wobbled or went across some lines,  
13 because I had to use the bathroom then. I did later tell him  
14 that I needed to use the bathroom.

15 I discovered it after I stopped because I was having a  
16 -- at that time a major bladder situation, and I knew at home  
17 as close as I am to the bathroom, the accidents I usually  
18 have. Nobody wants to talk about these things, but I've been  
19 forced to put it out there, so that's the unadulterated  
20 facts.

21 Immediately when I stopped it was then I realized I  
22 had to use the bathroom, and by then when I realized I've got  
23 to use the bathroom, I'd better be there, so I -- I knew that  
24 the policeman would want to talk to me. I didn't know why,  
25 but I knew he wanted to talk to me, so I was trying to get

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RETHA PIERCE STURDIVANT - DIRECT BY PIERCE

1 out real fast, and I just have a habit of locking my car  
2 because I usually have the little -- I leave my purse and  
3 have a little bit of money, but not much, but anyway, it's  
4 just a habit, so I jumped out and I was kind of locking it,  
5 and I was telling him at the same time, I need to go to the  
6 bathroom.

7 And as the video played out, I made probably about a  
8 step toward -- after he was asking me again or saying  
9 whatever he did say in there, but he never said if you move  
10 in this direction or that direction, or if you go you're  
11 under arrest, or I'm going to arrest you if you move or  
12 whatever, so I mean, you know, I'm thinking, I know my  
13 situation, so I'm trying to get where I need to get to so I  
14 can get back and hear what he's got to say, because I have no  
15 rea- -- I have no earthly reason why I have been stopped.

16 And so you saw what transpired on the video. I'm saying  
17 I didn't reach but -- made about a step and he throws me  
18 against the car and hurts me, and really, I am not proud of  
19 myself at all when I look back at the video, because I was  
20 just so traumatized that I really didn't even know the  
21 babbling that I really did do until I looked back because I  
22 couldn't understand what was happening to me, and it ran  
23 through my head even is this a real policeman. I was  
24 thinking is he going to throw me down and start kicking me or  
25 something after a while. Is this somebody who stole the

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RETHA PIERCE STURDIVANT - DIRECT BY PIERCE

1 police car, you know, this weird stuff you see on T.V., even  
2 though I don't look at T.V. that much.

3 That was what was running through me, and then when he  
4 put the cuffs on so tight, I don't hear a lot on the tape  
5 that actually went down, so I don't know when I overheard the  
6 phone call, one of the -- the one that he forgot perhaps when  
7 he said I want to know what time are you going to leave so I  
8 can look at the top of it, of the tape.

9 I don't know what went down with the tape, but I know  
10 this is high technology now, but I do know a lot of things  
11 are missing on that tape, because there was a time I thought  
12 I was going to die, and I guess why I kept babbling, there's  
13 a lot of pauses on that video, and maybe some of that stuff  
14 is missing, but I don't see at the top of the tape where I --  
15 he kept telling me something about stop resisting arrest. I  
16 couldn't understand what that meant until now after the fact.

17 It's building a case of maybe this is arrest, because he  
18 kept jerking on me, telling me to stop resisting arrest, and  
19 I was not resisting arrest. I didn't even understand it  
20 until after all this time had passed by and I'm looking at  
21 the video, and then knowing some things that I'm not going to  
22 go into about political stuff.

23 It all was to put me in a position, I mean, so I'm not  
24 going that route, but the facts of the case are when I was  
25 thinking I was doing all right by letting him know I was

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RETHA PIERCE STURDIVANT - DIRECT BY PIERCE

1 going to the bathroom, so I could come back, he just re-  
2 started and threw me up against that car, and if you look at  
3 the video, you see him slam me up against that car, but he  
4 hurt me, and when he put the handcuffs around me, I mean  
5 there was a time I had to pray. I literally had to pray,  
6 because I thought I was really going to die. I thought my  
7 blood was going to cut off any minute.

8 And I know I heard in the video -- it's still in the  
9 video where he said, you know, that they are tight on  
10 everybody. I said something about them again in the car, but  
11 it's not on the top of the tape when he first put the  
12 handcuffs on me. I literally had to pray to keep from  
13 passing out. God helped me.

14 And since this ordeal, this is the first of four  
15 different things to get to where they need to get to, but  
16 I've had a heart attack and a stroke, but God is good. He  
17 was good to me that night.

18 Those are the facts of the case. I didn't know what was  
19 really going on. He kept telling me I'm resisting arrest.  
20 That had to be built that way, but those are the facts. I  
21 just was going to the bathroom so I could come back, and I  
22 didn't know why he had stopped me until we started to the  
23 car, and then I asked him, and that's not on the tape, so  
24 that's another thing that's missing.

25 I asked him going to the car, well, why did you stop me

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RETHA PIERCE STURDIVANT - DIRECT BY PIERCE

1 anyway? I didn't hear that on the tape either today, and he  
2 said -- well, he did say something about I was across the  
3 road, and I said something about running slow, but the part  
4 that's not on the tape is about where I explained to him, I  
5 said, well, I don't remember doing that, and I said, I saw  
6 you sitting behind me as I was getting ready to make the  
7 turn. Your light came on.

8 I said I wondered why you were stopping me, I said,  
9 because I knew I had a left signal on, and it was then that  
10 he told me, oh, no, you didn't have a left signal on either,  
11 but in the video that we saw on the internet, different ones  
12 could see the left signal, but for a long time in the  
13 beginning after this ordeal in the first trial, he said there  
14 was no left signal, but there was a left signal, and he  
15 didn't say that I didn't give a left signal until I told him  
16 I put on my left signal.

17 I didn't realize you were behind me. I saw the car  
18 sitting behind me, and other cars, too, but as I was getting  
19 ready to make the turn, you put on your light on the car, and  
20 I said, oh, I didn't know that was a policeman behind me.  
21 Those are the unadulterated facts. Those -- those are the  
22 facts, and the rest we saw on the video, except some things  
23 are missing out of the video, and I have learned to not --  
24 with dealing with all these set-ups that eight -- one tape  
25 alone was spliced eight times to make it look like you want

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RETHA PIERCE STURDIVANT - DIRECT BY PIERCE  
CROSS BY GRAUSTEIN

1 it to look, so I have nobody on my side but God Almighty, but  
2 those are the facts.

3 THE COURT: I'm sorry, Ma'am. You need to stay there.

4 MS. PIERCE: Oh, he's got to cross-examine.

5 THE COURT: Yes Ma'am.

6 MS. PIERCE: Sorry.

7 THE COURT: That's all right. That's all right, so you  
8 are ready to be cross-examined ---

9 MS. PIERCE: Yes.

10 THE COURT: --- by the Solicitor then?

11 MS. PIERCE: Yes sir.

12 THE COURT: All right, yes Ma'am.

13 All right, Solicitor, cross-examination.

14 MR. GRAUSTEIN: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MR. GRAUSTEIN:

16 Q. Okay, Ms. Pierce, you -- you saw the blue light  
17 behind you, right?

18 A. As I was making the left turn ---

19 Q. Right. You saw the blue lights behind you and -- and  
20 -- now, you said you were pulling in to go to the bathroom or  
21 find a place to go to the bathroom?

22 A. No, that's not what I said.

23 Q. Oh, okay. I missed that.

24 A. I said I completed the left turn. I was on my way to  
25 get some help to get to the home of the deceased member of a

RETHA PIERCE STURDIVANT - CROSS BY GRAUSTEIN

1 friend of mine, her mother.

2 Q. Okay.

3 A. I made the left turn and it was as I was beginning to  
4 make the left turn, I looked in my rearview mirror and the  
5 car sitting behind me -- I had seen that car earlier behind  
6 me because you check out, but as I was making the turn, the  
7 light came on and I realized it was a policeman's car.

8 Q. Okay, so -- so you pulled over because you saw the  
9 police car behind you?

10 A. I made the complete turn and then I put the right  
11 signal on and I stopped on the right side.

12 Q. Okay. Now, where were you going to go to the  
13 bathroom?

14 A. There was a hotel to the left of me. Once I parked  
15 the car over there where he said it was a fireworks, and I  
16 think it is a fireworks place now, there was a furniture  
17 store. I pulled to the right and I stopped there, but I had  
18 been used to going to the bathroom at that hotel when I would  
19 visit those friends if I couldn't make it to their home, so  
20 immediately having the urgency to go to the bathroom, I went  
21 to head to the bathroom and it was right there, right there  
22 at the hotel where I was pointing out to him. That's where I  
23 was going and I was going to come right back.

24 Q. This urge hit you before you got out of the car or  
25 after you got out of the car?

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RETHA PIERCE STURDIVANT - CROSS BY GRAUSTEIN

1 A. It hit me once I stopped, not before. I didn't give a  
2 reason that I was swerving or anything because I had to use  
3 the bathroom, as he has reported. It hit me when I stopped.  
4 I stopped with the intention of getting -- of not getting out  
5 of the car. I stopped with the intention of waiting for the  
6 officer to come up and let me know why he was stopping me,  
7 but because of my condition, my bladder situation, once I  
8 stopped and it hit me, I needed to be where I needed to be  
9 even as it hit me, but as I pointed out to him, even when I  
10 kept talking to him in the car. God is good.

11 You know, you can be so traumatized that the reverse  
12 will happen, because I was surprised that I held out as long  
13 as I did before I actually used the bathroom in his car, when  
14 I kept telling him I just wanted to go to the bathroom, and  
15 it would be like it was going to come and then it didn't  
16 come, but that was God helping me, until it finally did come.

17 Q. Okay. Why didn't you just pull around to the front  
18 entrance to that hotel?

19 A. I'm already stopped and I'm right there. The front --  
20 like I was at the front. The front of the hotel is right  
21 there where I'm -- when I immediately stopped because I saw  
22 an officer. Once I'm making the turn, I saw him put the  
23 light on, so I know he's stopping me for something, but I  
24 needed -- I was going to find out what it was once I stopped,  
25 but once I stopped I had the medical situation, and I knew my

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RETHA PIERCE STURDIVANT - CROSS BY GRAUSTEIN

1 situation, so I was getting out, and I just have a habit of  
2 just locking the car, but I was talking to him at the same  
3 time, letting him know I had to go to the bathroom, so I  
4 just ---

5 Q. And you said you were a teacher?

6 A. I said I am a teacher administrator, thirty years  
7 credit.

8 Q. So you are an educator?

9 A. Former.

10 Q. Okay, former, but thirty years, you spent thirty  
11 years ---

12 A. Thirty years credit.

13 Q. You know you can't walk away from a traffic stop,  
14 don't you?

15 A. I wasn't thinking about a traffic stop. I was  
16 thinking about the times I wet my britches at home and I  
17 didn't want to be embarrassed in front of an officer or  
18 anybody out in the public, and I don't like talking about  
19 wetting my britches, but if you want to talk about, you know,  
20 you don't want -- walk away from a traffic stop. I'm  
21 innocent. I did not resist arrest. I did not ever say I'm  
22 going to defy the policeman.

23 I was thinking about not wetting my britches, and with  
24 him knowing that I was the mayor, it had to be part of the  
25 conspiracy for him to treat me that way, because we know some

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RETHA PIERCE STURDIVANT - CROSS BY GRAUSTEIN  
THE DEFENSE RESTS/COURT TO JURY

1 details we won't go into. I defeated an over three term  
2 mayor, and I've had trouble ever since. The Solicitor's  
3 Office know the building of a criminal record.

4 **THE COURT:** Anything else, Solicitor?

5 **MR. GRAUSTEIN:** No, Your Honor.

6 **THE COURT:** All right.

7 Thank you, Ma'am. You may step down. Thank you.

8 All right, Ms. Pierce, is there any other witnesses or  
9 evidence on behalf of the Defense at this time, or does the  
10 Defense rest?

11 **MS. PIERCE:** The Defense rests, Your Honor.

12 **THE COURT:** All right. Thank you very much.

13 All right, ladies and gentlemen, understanding that you  
14 have lives outside this Courthouse, we're not going to keep  
15 you here any longer because once I give the case to you for  
16 your deliberations and it's yours until you reach a decision,  
17 so we're not going to do that tonight.

18 I want you to come back tomorrow morning. There are  
19 some -- I am the Administrative Judge, besides your Resident  
20 Judge, so I've got some other motions and matters of other  
21 criminal cases that have to be done tomorrow morning, so I'm  
22 going to have you back -- y'all come back at 9:15 tomorrow  
23 morning, all right?

24 Be back in your jury room at 9:15 tomorrow morning, and  
25 hopefully I'll be done with all those other matters and we'll

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## COURT TO JURY

1 be able to proceed right into the remainder of this case  
2 which is the arguments of the State and Defense, and after  
3 that I'll give you the law that you are going to apply to the  
4 facts that you find to be true, and then I'm going to give  
5 you the case for your deliberations and your unanimous  
6 decision in this matter.

7 So when you go home tonight and you see your husband,  
8 wife, boyfriend, girlfriend, neighbor down the street,  
9 whatever, if they know you've been on a jury, you can  
10 acknowledge that, and other than that, you can't talk about  
11 the case because unintentionally they'll give you their  
12 opinion about it. They don't have one. Y'all shouldn't have  
13 one at this point in time because we're not done yet, so  
14 don't talk about the case. Don't allow anybody to talk to  
15 you about it. Obviously that's improper, and the final thing  
16 is you have to decide this case solely and completely on what  
17 you hear in this courtroom and from no other source.

18 That means you can't go home and look up anything on the  
19 Internet, or do some research on your own, or think you want  
20 to go up to Little River and drive around and see where this  
21 might have happened, or whatever. You can't do anything.  
22 The evidence is what you hear in this courtroom and nothing  
23 else.

24 So with those admonitions, I'll see you back tomorrow  
25 morning in your jury room at 9:15. Thank you very much.

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## JURY OUT/ON RECORD

1            (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE  
2 JURY.)

3            THE COURT:    Now, Solicitor and Ms. Pierce, I told the  
4 jury to be back at 9:15. I would appreciate it if y'all  
5 would be ready and back in the courtroom at nine o'clock.  
6 Now, I will -- you might have to have a seat to the side  
7 because I will have already probably started a motion in  
8 another matter at that point in time, another case that I  
9 have to resolve tomorrow morning before we continue on with  
10 this, but I would like y'all to make sure you're here by 9:00  
11 so that when we're done with that other matter the Court has,  
12 then we can go right into this and finish this up.

13            Anything else from the State at this point in time?

14            MR. GRAUSTEIN:    No, Your Honor.

15            THE COURT:    Anything else from the Defense at this  
16 point in time?

17            MS. PIERCE:        No, Your Honor.

18            THE COURT:    All right. Before you go, let me just talk  
19 very briefly to you about the charge on the law, what I  
20 intend to tell the jury about the law so that y'all will know  
21 about that.

22            I'll tell them things that we normally talk to them  
23 about in any criminal case, and that is credibility and  
24 believability, that's their job and responsibility. How they  
25 do that, I'll tell them the difference between direct and

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## JURY OUT/ON RECORD

1 circumstantial evidence, and basically that the State -- the  
2 law of this State is that a greater degree of certainty is  
3 not required of one over the other. You look at all the  
4 evidence, find the evidence which convinces you of its truth,  
5 and then you weigh that evidence against the State's burden  
6 to prove the defendant guilty beyond a reasonable doubt.

7 I'll talk about the presumption of innocence. The  
8 defendant pled not guilty and the State's job is, if it can,  
9 to prove the defendant guilty of the crime charged beyond a  
10 reasonable doubt. I will define reasonable doubt to them.  
11 The basic definition is reasonable doubt is the kind of doubt  
12 that would cause an ordinary, reasonable person to hesitate  
13 to act.

14 Then at that point in time, I will read to them the law  
15 of resisting arrest, and I'm also going to read to them one  
16 of our traffic laws that the State of South Carolina has, and  
17 that's 23-6-145, and that law of our State is a commissioned  
18 officer or a uniformed officer of the department may upon  
19 reasonable belief that any vehicle is being operated in  
20 violation of any provision of statutory or state law require  
21 the driver thereof to stop and exhibit the registration card  
22 issued for the vehicle, the individual's driver's license,  
23 and submit to an inspection of such vehicle and license.

24 And then I'll go over the basic verdict form with the --  
25 with the jury. It's going to be very straightforward. It

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## JURY OUT/ON RECORD

1 has the caption of the case, State of South Carolina versus  
2 Retha Pierce Sturdivant. It has the docket number, 2008-GS-  
3 26-1027 on it, and then it just has resisting arrest.

4 On the charge of resisting arrest, we, the jury, by  
5 unanimous consent, find the defendant, and it's got two  
6 choices, and I'll tell them I put one before the other and  
7 don't assign anything to that, not guilty or guilty, they've  
8 got to check one of the blocks, and the Foreperson has got to  
9 sign it, and I will remind them again -- I've told them a  
10 bunch of times, but I will remind them again it's got to be  
11 unanimous. Everybody has got to agree. Whatever the verdict  
12 is, everybody has got to agree to it.

13 So any questions on that, Solicitor?

14 MR. GRAUSTEIN: No, Your Honor.

15 THE COURT: Any questions on that, Ms. Pierce?

16 MS. PIERCE: No, Your Honor.

17 THE COURT: All right, very good. We'll see y'all back  
18 tomorrow morning at nine o'clock then, all right? Thank you  
19 very much. We'll continue on with the trial.

20 (THE FOLLOWING TAKES PLACE ON JULY 13, 2011, AND OUTSIDE  
21 THE PRESENCE OF THE JURY.)

22 THE COURT: All right, Ms. Pierce, we had a little  
23 difficulty getting to Court this morning?

24 MS. PIERCE: Yes, Your Honor. I am permanently  
25 disabled and some mornings I just don't do well, ---

1           **THE COURT:**   All right.

2           **MS. PIERCE:**   --- and this morning was one.

3           **THE COURT:**   All right.

4           **MS. PIERCE:**   I apologize.   Thank you.

5           **THE COURT:**   Before we call the jury in to get started  
6 with the closing arguments, the Defense rested its case  
7 yesterday after your -- of course, your testimony, Ms.  
8 Pierce.

9           Do you want to at this point in time for the record  
10 renew your motions that you made at the end of the State's  
11 case?  Do you want those renewed at this point in time?

12          **MS. PIERCE:**   Yes, I want to renew them.

13          **THE COURT:**   All right, very good.

14          **MS. PIERCE:**   Do you need -- is there any other  
15 arguments in addition to the ones you've already made,  
16 anything else that you need to say regarding those motions?

17          **MS. PIERCE:**   No, just that I move that this be  
18 dismissed because of what I said.

19          **THE COURT:**   Yes Ma'am, I appreciate that.

20           All right, regarding the matter at hand and the  
21 defendant's prior motion made initially to dismiss the case  
22 and then her motion again at the end of the State's case to  
23 dismiss, which the Court took as a directed verdict motion, I  
24 again -- taking it again as the defendant's motion for a  
25 directed verdict.

1 I don't feel it's necessary to re-state the law that I  
2 did, and I am using the same law that I stated at the end of  
3 the State's case regarding the directed verdict motion.

4 Regarding the charge of resisting arrest, the statute,  
5 of course, is that it is unlawful for a person knowingly and  
6 wilfully to oppose or resist a law enforcement officer in  
7 serving, executing, or attempting to serve or execute a legal  
8 writ, or process, or to resist an arrest being made by one  
9 whom the person knows or reasonably should know as a law  
10 enforcement officer, whether under process or not.

11 Now, the defendant's -- the essence of the defendant's  
12 testimony from the Court's perspective is that she did not  
13 know or did not believe at any point in time that she was  
14 under arrest and, therefore, did not knowingly and wilfully  
15 oppose being arrested by the officer.

16 An arrest does not necessarily terminate the instant a  
17 person is taken into custody. Arrest also includes bringing  
18 the person personally within the custody and control of the  
19 law. An arrest by a peace officer constitutes -- continues,  
20 I'm sorry, so long as the arresting officer has custody and  
21 control of the arrestee's movements for the purpose of  
22 delivering the person arrested into incarceration.

23 An arrest is a continuing process from the time one is  
24 apprehended until they are placed in jail. It is not  
25 necessary that there be an application of actual force; a

## JURY OUT/MOTIONS

1 manual touching of the body, or physical restraint which may  
2 be visible to the eye or a formal declaration of arrest. It  
3 is sufficient if the person arrested understands that he is  
4 in the power of the one arresting and submits in consequence.  
5 The intentions of the parties to the transaction are very  
6 important. There must have been intent on the part of one of  
7 them to arrest the other and the intent on the part of the  
8 such other to submit under the belief and impression that  
9 submission was necessary.

10 There can be no arrest where the person sought to be  
11 arrested is not conscious of any restraint of his liberty.  
12 Police detention constitutes an arrest if a reasonable person  
13 in the suspect's position would understand the situation to  
14 be a restraint on the freedom of the kind that the law  
15 typically associates with a formal arrest.

16 An arrest is the taking, seizing, and detaining of the  
17 person of another by any act which indicates an intention to  
18 take them into custody and subject the person arrested to the  
19 actual control and will of the person making the arrest.

20 In this particular case, the evidence is conflicting as  
21 to that point in time. There is certainly evidence which if  
22 the jury so believes, and again, it's the jury's job to judge  
23 credibility and believability and to weigh the evidence. I  
24 am only looking at whether evidence exists.

25 I do find evidence exists that the defendant resisted

## JURY OUT/MOTIONS

1 arrest. There is evidence from the tape when the defendant  
2 was being placed in the patrol car, that there is an  
3 indication and evidence that the defendant was not submitting  
4 to the police officer, was not entering voluntarily into the  
5 patrol car. That in and of itself would constitute resisting  
6 arrest.

7 Courts have held that even an occasion when a person is  
8 detained and they are at the jail and they are being placed  
9 in the jail cell, the act of placing your foot against the  
10 jail door to prevent from going into the actual jail cell is  
11 resisting arrest.

12 Under the definitions that the Court has read into the  
13 record and understanding the South Carolina Supreme Court  
14 decision in 2010 of State v. Brennan, I do find that there is  
15 sufficient direct evidence and substantial circumstantial  
16 evidence reasonably tending to prove the guilt of the accused  
17 and, therefore, I'm going to submit the case to the jury.  
18 The directed verdict motion is denied.

19 Further motions from the Defense at this time? Ms.  
20 Pierce, anything else before we call the jury in?

21 **MS. PIERCE:** Not at this time.

22 **THE COURT:** All right, very good.

23 All right, in this particular matter, we are now going  
24 into the closing arguments before the jury. Those are the  
25 arguments of the State and the Defense as to their

VERDICT  
JURY POLLED

1 1027, the State of South Carolina, County of Horry, versus  
2 Retha Pierce Sturdivant. On the charge of resisting arrest,  
3 we, the jury, by unanimous consent, find the defendant  
4 guilty. Dated July 13th, 2011, signed by Foreperson, Juror  
5 Number 91, Bradley Dusenbury.

6 Ladies and gentlemen of the jury, if this is your  
7 verdict, so signify by raising your right hand.

8 (All jurors raise their right hand.)

9 **THE COURT:** The jury having affirmed their verdict by  
10 raising their right hand, does the State wish the jury  
11 polled?

12 **MR. GRAUSTEIN:** No, Your Honor.

13 **THE COURT:** Does the Defense wish the jury polled?

14 **MS. PIERCE:** Yes, Your Honor.

15 **THE COURT:** All right, Madam Clerk, by juror number  
16 only, you will poll the jury.

17 **DEPUTY CLERK OF COURT:** When I call your juror number,  
18 if you will please stand.

19 Juror Number 105. Is this your verdict?

20 **JUROR NUMBER 105:** Yes Ma'am.

21 **DEPUTY CLERK OF COURT:** Is it still your verdict?

22 **JUROR NUMBER 105:** Yes Ma'am.

23 **DEPUTY CLERK OF COURT:** Thank you.

24 25. Is this your verdict?

25 **JUROR NUMBER 25:** Yes Ma'am.

## STATEMENT AS TO NON-PAPER EXHIBIT

Pursuant to Rule 210(f), Appellant has motioned the Clerk of the South Carolina Court of Appeals to direct the Clerk of Court for the Fifteenth Judicial Circuit to deliver the non-paper exhibit marked **State's Exhibit 1, C.D. of Traffic Stop (12/15/07)**, entered into evidence at page 39 of the trial transcript.

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Certificate of Counsel

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 26, 2012

A handwritten signature in black ink, appearing to be 'Stuart M. Axelrod', written over a horizontal line.

Stuart M. Axelrod  
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Attorney for Appellant

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Horry County  
Honorable Steven H. John, Circuit Court Judge

THE STATE

Respondent

vs.

RETHA PIERCE STURDIVANT

Appellant

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Record on Appeal in the above referenced case has this day been served upon the following individual via U.S. Mail:

- Alan Wilson, Esquire  
SC Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211
- J. Gregory Hembree, Solicitor  
Horry County Solicitor's Office  
P.O. Box 1276  
Conway, SC 29528

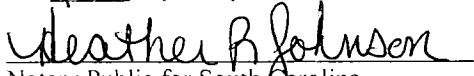
**RECEIVED**

APR 18 2012

**SC Court of Appeals**

  
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Myrtle Beach, SC 29577  
(843) 916-9300  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 13<sup>th</sup> day of April, 2012.

  
Notary Public for South Carolina  
My Commission Expires: 01-04-2020