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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

AARON W. COLLIER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001738

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF GREENVILLE

4
5 STATE OF SOUTH CAROLINA :

6 :

7 -vs-

: TRANSCRIPT OF RECORD

8 : (Excerpt of Proceedings)

9 AARON COLLIER :

10
11 November 9, 2010

12 Greenville, South Carolina

13
14 B E F O R E:

15 HONORABLE ROBIN B. STILWELL, Judge.

16
17 A P P E A R A N C E S:

18 LISA BENTLEY, ESQ.

19 Attorney for the Plaintiff

20 CARLYLE STEELE, ESQ.

21 Attorney for the Defendant

22
23
24 MARY E. DIGIROLAMO

25 Court Reporter

1	<u>I N D E X</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	N/A				
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9					
10	<u>EXHIBITS</u>	<u>MARKED</u>	<u>FILED</u>		
11	N/A				
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20	CHARGE OF THE COURT	N/A			
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1 THE COURT: All right. Can we bring the defendant
2 forward for sentencing?

3 MR. STEELE: Yes, sir.

4 THE COURT: All right. All right. Ms. Bentley,
5 anything further from the State?

6 MS. BENTLEY: There's a prior record, Your Honor.

7 THE COURT: All right. Be happy to hear the prior
8 record.

9 MS. BENTLEY: 1993, driving under suspension; 1994,
10 aiding a prisoner to escape; 1994, disorderly conduct,
11 disorderly conduct, driving under suspension; 1995,
12 fraudulent check; 2005, PWID crack cocaine -- pardon me,
13 it's methamphetamine; 2006, failure to stop for blue
14 lights, possession of stolen vehicle, driving under
15 suspension; and 2007, driving under suspension. There
16 are additionally pending charges, Your Honor, but ---

17 THE COURT: What are those pending charges?

18 MS. BENTLEY: It is a possession with intent to
19 distribute methamphetamine, second offense, and resisting
20 arrest.

21 THE COURT: Okay. I wanted that for information
22 purposes but I will not consider those in sentencing.
23 And I may have just heard this anecdotally, and I didn't
24 ask additionally, is Mr. Collier currently in detention
25 on a probation violation or a warrant stemming from a ---

1 MR. STEELE: He's in detention on a violation of
2 home detention.

3 THE COURT: Home detention.

4 MR. STEELE: Yes, sir. And he does have a
5 pending -- to answer your question -- go ahead.

6 MS. BENTLEY: Go ahead.

7 MR. STEELE: I was just going to say he has a
8 pending probation violation if that's what Your Honor was
9 asking.

10 THE COURT: Okay. All right. All right.

11 MS. BENTLEY: And he was on probation at the time
12 this happened.

13 THE COURT: Okay. Good enough. Now, are we going
14 to handle the probation violation today?

15 MR. STEELE: Well, we're willing to do that and
16 prepared to do that. I will tell Your Honor for the
17 Court's information it's currently set for the 22nd of
18 November. That's when the agent said do it, but I think
19 both Mr. Collier and I, he can correct me if I'm wrong,
20 we would prefer to handle it right now.

21 MR. COLLIER: Do it all right now.

22 THE COURT: All right. Let's see. I don't know if
23 we have anybody from probation down here right now.
24 They're on their way, okay. All right. Good enough.
25 All right.

1 MS. BENTLEY: Did you want to handle the pending
2 charges as well?

3 MR. STEELE: Yes.

4 THE COURT: Okay. Well, while we're waiting let's
5 go ahead and make a little bit of use of your time. And
6 let's make sure I am -- that I am clear on the maximum
7 possible penalty. Failure to stop for a blue light
8 second or subsequent offense, what's the maximum possible
9 penalty?

10 MS. BENTLEY: Five years, Your Honor.

11 THE COURT: Reckless driving?

12 MS. BENTLEY: Thirty days.

13 THE COURT: And DUS, third or subsequent?

14 MS. BENTLEY: It is 90 days to six months, Your
15 Honor, and \$1,000.

16 THE COURT: Okay.

17 MR. STEELE: If Your Honor, please? Mr. Collier has
18 just indicated and I think it's acceptable to the
19 solicitor's office a willingness to enter a plea to the
20 pending drug charge. And I think the solicitor's office
21 is going to dismiss the pending resisting arrest charge.

22 MS. BENTLEY: That's correct, Your Honor.

23 THE COURT: Is that correct? Okay. All right.

24 MS. BENTLEY: One moment.

25 THE COURT: I appreciate y'all staying. And y'all

1 just make yourselves comfortable. What's happening right
2 now is I'm waiting for probation to get down here so that
3 we can handle a probation violation as well, and I can
4 make essentially a global sentence on everything that's
5 outstanding. There's also additional charges to which
6 Mr. Collier intends to plead guilty and I'll go through a
7 colloquy, a series of questions related to that guilty
8 plea as well. So -- and he's going to sign certain
9 documents demonstrating his willingness to enter a plea
10 of guilty to those offenses. So we'll probably take a
11 about few minutes. Okay.

12 MR. COLLIER: Thank you for doing all these, Your
13 Honor.

14 THE COURT: Hey, no problem. It's helpful to
15 everybody, Mr. Collier.

16 MR. COLLIER: I'd rather get it all over with now.

17 THE COURT: All right. Mr. Collier, do you need to
18 serve Mr. Collier with the warrants, or have you already
19 done that?

20 MR. STEELE: I think he's already been served.

21 MR. COLLIER: Yeah, I believe he has. He's already
22 been served. He has a pending hearing on November 22nd.

23 MR. STEELE: That's right.

24 THE COURT: All right. Good enough. All right.
25 Now, realize that Mr. Collier, probation officer, has

1 indicated that there are victims on the possession of
2 stolen vehicle and has brought that to the Court's
3 attention. I'm going to go forward with the probation
4 revocation hearing. If the -- if the victims wish to
5 come before this Court then they may do so on the 22nd
6 and Mr. Collier can be transported at that time to attend
7 that hearing. But anticipating that they won't have an
8 issue with us going forward today I'm going to go ahead
9 and move along so -- as a matter of judicial and
10 practical economy. Okay. Thank you very much.

11 Okay. Mr. Collier, with respect to the -- to the
12 indictment 2009-GS-23-6290, distribution of -- is it
13 crack cocaine, I'm not looking ---

14 MS. BENTLEY: It's methamphetamine.

15 THE COURT: Methamphetamine, second offense. And is
16 it your intention to enter a plea of guilty, is that
17 correct, sir?

18 MR. COLLIER: Yes, sir.

19 THE COURT: All right, sir. You previously today
20 swore in under oath and swore to tell the truth. You
21 continue under that oath. Do you understand that, sir?

22 MR. COLLIER: Yes, sir.

23 THE COURT: Mr. Steele, you had the opportunity to
24 discuss with Mr. Collier his Constitutional rights and
25 the possible ramifications of his plea to indictment

1 2009-6290, sir?

2 MR. STEELE: Yes, Your Honor.

3 THE COURT: And you in fact represent him on that
4 charge as well?

5 MR. STEELE: Yes, Your Honor, I do.

6 THE COURT: And is it your understanding that he
7 wishes to waive all of his Constitutional rights and
8 proceed with a plea of guilty this afternoon?

9 MR. STEELE: Yes, Your Honor.

10 THE COURT: Do you agree with that decision?

11 MR. STEELE: Yes, sir.

12 THE COURT: Mr. Collier, you recognize, sir, you
13 have a right to a jury trial on this charge?

14 MR. COLLIER: Yes, sir, I do.

15 THE COURT: You recognize that if you had a jury
16 trial the State would have the burden of proving you
17 guilty beyond a reasonable doubt?

18 MR. COLLIER: Yes, sir.

19 THE COURT: And you understand in that proceeding
20 you would not have the burden of proving yourself
21 innocent. You have a right to remain silent, which means
22 you wouldn't have to say, do or prove anything to that
23 jury?

24 MR. COLLIER: Yes, sir.

25 THE COURT: And you understand that even though you

1 have that right to remain silent you could in that
2 proceeding take the stand and testify and tell your side
3 of the story, present evidence, present witnesses. You
4 could present legal defenses. You could make motions
5 before the Court to protect your legal interests. You
6 could also cross-examine any of the State's witnesses.
7 Do you understand that, sir?

8 MR. COLLIER: Yes, sir.

9 THE COURT: Has the indictment been true billed?

10 MS. BENTLEY: Yes, Your Honor, it has.

11 THE COURT: Okay. All right. And, sir, do you want
12 to give up these Constitutional rights, sir, and enter a
13 plea of guilty to this charge?

14 MR. COLLIER: Yes.

15 THE COURT: All right. And in indictment
16 2009-GS-23-6290, you're pleading guilty to distribution
17 of methamphetamine, second offense?

18 MS. BENTLEY: PWID meth., second offense, Your
19 Honor.

20 THE COURT: What's the maximum possible penalty
21 under the law?

22 MS. BENTLEY: Five to 30 years, Your Honor.

23 THE COURT: You understand, sir, that under the law
24 you could receive between five and 30 years incarceration
25 on that offense?

1 MR. COLLIER: Yes.

2 THE COURT: All right, sir. And how do you wish to
3 plead to that, sir?

4 MR. COLLIER: Guilty.

5 THE COURT: All right. Is that classified as a
6 serious offense?

7 MS. BENTLEY: No, Your Honor, it is not.

8 THE COURT: Okay. All right, sir. And are you
9 pleading guilty, sir, because you are guilty?

10 MR. COLLIER: I want to get it behind me.

11 MR. STEELE: One moment, Your Honor.

12 MS. BENTLEY: Your Honor, I'd like to change the CDR
13 code on that.

14 MR. COLLIER: Yes, sir.

15 THE COURT: Okay. I'm going to ask you that again,
16 Mr. Collier. And I recognize the position that you have
17 found yourself in. And I appreciate that. But my job is
18 to make sure that if you in fact are going to plead
19 guilty that you acknowledge your guilt and that there are
20 sufficient factual basis for you to enter a plea and for
21 you to be convicted of potentially at trial. So I'm
22 going to ask you again, are you pleading guilty of your
23 own freewill because you are guilty, sir?

24 MR. COLLIER: Yes.

25 THE COURT: Has anyone forced, threatened, or made

1 you enter into the plea?

2 MR. COLLIER: No.

3 THE COURT: Has anyone promised you anything in
4 exchange for your plea?

5 MR. COLLIER: No.

6 THE COURT: Are you under the influence of any drugs
7 or alcohol today, sir?

8 MR. COLLIER: No, sir.

9 THE COURT: Do you suffer from any mental sickness
10 that would affect your ability to understand and
11 appreciate what's going on today?

12 MR. COLLIER: No, sir.

13 THE COURT: And have you had the opportunity to
14 discuss this case with Mr. Steele as much as you've
15 needed to?

16 MR. COLLIER: Yes.

17 THE COURT: And has he answered all of your
18 questions and done everything you've asked him to do?

19 MR. COLLIER: Yes.

20 THE COURT: All right. And are you satisfied with
21 his services?

22 MR. COLLIER: Very much so.

23 THE COURT: And you recognize that by pleading
24 guilty to this offense that it is a violation of your
25 previously imposed probation?

1 MR. COLLIER: Yes, sir, I do.

2 THE COURT: Okay. And you understand that -- and
3 again, understanding and appreciating the circumstances
4 that you find yourself in you may think that's not a big
5 deal, but let's say hypothetically that you were to go up
6 on appeal and the conviction was overturned. You
7 recognize that even if it were overturned this would
8 still be a violation of your probation because you
9 entered a plea of guilty?

10 MR. COLLIER: Yes, sir, I do.

11 THE COURT: Okay. All right. And want to proceed
12 on that basis, sir?

13 MR. COLLIER: Yes, sir, I do.

14 THE COURT: Okay. And I'll ask you again, have you
15 understood all the questions I've asked you today, sir?

16 MR. COLLIER: Yes, I have.

17 THE COURT: Do you have any questions that you would
18 like to ask me or Mr. Steele regarding your rights, or
19 this proceeding before we move forward?

20 MR. COLLIER: Any questions? No, sir.

21 THE COURT: Okay. All right. Ms. Bentley, with
22 respect to the offense to which he's pleading guilty, I'd
23 be happy to hear the facts.

24 MS. BENTLEY: Yes, Your Honor. On December 2, 2008
25 members of the Greenville County Sheriff's Office and

1 Fountain Inn Police Department were conducting
2 surveillance at 1006 Autumn Leaf Lane in Fountain Inn.
3 There they observed this defendant in the garage at the
4 residence. The officers had active arrest warrants for
5 this defendant and entered that residence. This
6 defendant was found hiding in the master bedroom bathtub.
7 A syringe was located on his person and others were found
8 in plain view. Based on this a search warrant for the
9 residence was obtained. Inside a dresser drawer in the
10 master bedroom there were four baggies containing a white
11 powder substance. That powder lab tested positive as 1.7
12 grams of methamphetamine. And this occurred in
13 Greenville County.

14 THE COURT: Okay. Mr. Collier, you heard those
15 facts, sir, is that what happened?

16 MR. COLLIER: Yes, sir.

17 THE COURT: All right. I do find that there is a
18 substantial factual basis for the plea. It's been
19 entered freely and voluntarily with the advice of counsel
20 with whom Mr. Collier indicates that he is satisfied.
21 You've recited into the record the prior record. Mr.
22 Collier, you heard that. Do you think that's a fair and
23 accurate recitation of your prior record?

24 MR. COLLIER: Yes.

25 THE COURT: Okay. All right. Mr. Collier,

1 probation officer, is there anything you need to put on
2 the record, sir?

3 MR. COLLIER: No, sir. You have the violation
4 reports which -- I don't know if you want to put those on
5 the record. We have all the present violations on there,
6 besides the offense that he's pleading to.

7 THE COURT: Okay. All right. Good enough. All
8 right. Mr. Steele, I'd be happy to hear from you, sir.

9 MR. STEELE: And I thank the Court for that
10 opportunity. I would point out that on the charges that
11 he was convicted on by the jury, convicted of by the jury
12 that there was an extensive deliberation, which I would
13 submit gives some justification to his decision to go to
14 trial.

15 Secondly, I would tell you about Mr. Collier
16 personally. Next month, the first week in December,
17 he'll turn 37 years old. He was born in 1973. He has
18 worked most recently as a diesel mechanic and he -- the
19 name of his last employer was a company called After
20 Hours, and he was working there. And I don't think he
21 would mind me telling you, it's quite honestly the truth,
22 that he's had some trouble with drugs. He has had some
23 trouble staying sober. And I'm respectfully asking you
24 and whatever decision -- whatever sentence you choose to
25 impose that you give him the benefit of some drug

1 treatment and put him in the ATU program while he's
2 serving his sentence.

3 Furthermore, I agree with his decision to go ahead
4 and plead guilty to the outstanding charge, and I think
5 he's doing the right thing. And to be very honest with
6 the Court we have a lot of confidence in this Court.
7 He's been before you, he tells me, for both of his trials
8 as well for one of his house arrest violations, and
9 perhaps for other things as well. But he's been before
10 this particular Court at least three times that I'm aware
11 of. And we have absolute confidence in Your Honor to
12 impose a fair, fair to everybody, sentence that
13 encompasses all the things that he's appearing before you
14 today. So I think part of his decision to plead guilty
15 was because he wanted to do it now in front of you. Am I
16 correct?

17 MR. COLLIER: Yes, sir.

18 THE COURT: I appreciate that. Mr. Collier, I'd be
19 happy to hear from you, sir, if there's anything you'd
20 like to tell me.

21 MR. COLLIER: I just beg for the mercy, that's all.

22 THE COURT: All right, Mr. Collier.

23 MR. COLLIER: You're a very fair man.

24 THE COURT: Well, I appreciate you saying that, you
25 know, and I don't -- you say that before ---

1 MR. COLLIER: I don't expect to get off scott free,
2 I understand.

3 THE COURT: Well, I'm going to tell you something.

4 MR. COLLIER: I expect fairness.

5 THE COURT: You -- I'm going to treat you fairly
6 but, you know, the most significant thing that you're
7 looking at obviously is not what you were convicted of by
8 this jury.

9 MR. COLLIER: Yes, sir.

10 THE COURT: That's almost incidental but for the
11 fact that it violated your probation. You do have
12 obviously a drug problem, and that's unfortunate. I do
13 intend to enter a sentence that gives you the opportunity
14 to address that drug problem. And I certainly hope that
15 you do take advantage of that opportunity.

16 MR. COLLIER: I will do that. I greatly appreciate
17 that. I willfully acknowledge my drug habit.

18 THE COURT: How much time have you served on this?

19 MS. BENTLEY: Between the probation violations and
20 the time he spent in jail on all those charges
21 approximately 340 days, Your Honor.

22 THE COURT: 340 days. Okay. I'm going to give you
23 credit for time served of 340 days on all of those.
24 Okay. Okay. Does that sound right, Mr. Collier?

25 MR. COLLIER: Yes, sir, it does.

1 THE COURT: All right. Everything can be
2 concurrent, Mr. Collier.

3 MR. COLLIER: Thank you.

4 THE COURT: The sentence of the Court is on the
5 reckless driving 30 days, time served, credit for your
6 340. On the driving under suspension third, six months,
7 time served, credit for your 340 days. On the failure to
8 stop for a blue light second, that's five years,
9 concurrent with all other sentence, 340 days credit time
10 served. On the manufacture of crack cocaine second, the
11 sentence of the Court is you be committed to the State
12 Department of Corrections for a period of 15 years,
13 provided upon the service of eight years the balance is
14 suspended to probation for five years, concurrent, credit
15 for 340 days. During your period of incarceration I'm
16 recommending ATU which is the Addiction Treatment Unit so
17 you can get that inhouse treatment. And when you get out
18 during probation, substance abuse counseling, random drug
19 and alcohol testing. So when you do get out you will
20 have a resource that you can lean on if you begin to have
21 problems and a potential relapse. With respect to your
22 probation, partial revocation of eight years and
23 terminate it.

24 MR. STEELE: Your Honor, that eight year probation
25 sentence is concurrent, am I correct?

1 THE COURT: Yes, sir, everything is concurrent.
2 Eight years and terminate on the warrant 2105, case 1540.
3 And then on the other one I believe it's three years
4 suspended and that's a partial revocation of two years
5 and terminate, concurrent.

6 MR. COLLIER: Thank you, Your Honor.

7 THE COURT: All right. Mr. Collier, good luck to
8 you, sir.

9 MR. COLLIER: Thanks.

10 MS. BENTLEY: May I change that CDR code, Your
11 Honor?

12 THE COURT: Yes, ma'am.

13 - - -END OF TRANSCRIPT OF RECORD- - -
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C E R T I F I C A T E

I, the undersigned Mary E. DiGirolamo, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 9th day of November, 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 20, 2011



Mary E. DiGirolamo

Official Court Reporter

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF GREENVILLE

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15 HONORABLE ROBIN B. STILWELL, Judge.

16
17 A P P E A R A N C E S:

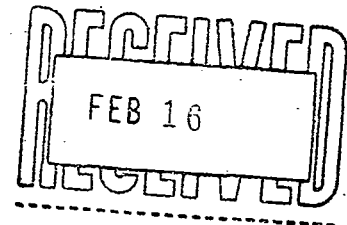
18 LISA BENTLEY, ESQ.

19 ELIZABETH MAJOR, ESQ.

20 Attorneys for the Plaintiff

21 CARLYLE STEELE, ESQ.

22 Attorney for the Defendant



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25 MARY E. DIGIROLAMO

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Court Reporter

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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MARIE WARING

Ms. Bentley	36			
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Mr. Steele		N/A		
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CHRIS McBEE

Ms. Major	42			
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Mr. Steele		62		
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Ms. Bentley			68	
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JOHN GARRETT

Ms. Bentley	70			
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Mr. Steele		79		
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RHONDA PRICE

Mr. Steele	89			
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Ms. Bentley		93		
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AARON COLLIER

Mr. Steele	104		102	
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Mr. Bentley		108		
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	<u>EXHIBITS</u>	<u>MARKED</u>	<u>FILED</u>
1			
2	S1 - Map	4	53
3	S2 - DVD	4	62
4	S3 - Driving Record	4	N/A
5	D4 - Notice of Suspension	4	39
6	D5 - Cert. of Mailing	4	39
7	D6 - Photo	4	79
8	D7 - Photo	4	79
9	D8 - Photo	4	79
10	D9 - Photo	4	52
11			
12	C1 - Question	157	157
13	C2 - Question	157	157
14			
15			
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20	CHARGE OF THE COURT	142	
21			
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1 (State's Exhibit Numbers 1 through 8 were marked for
2 identification.)

3 THE COURT: All right. On the next case, State
4 versus Jeremy Spencer, I just received word from Judge
5 Welmaker's office, or from his court room that they need
6 the entire jury pool, so -- because there are three
7 victims and he anticipates a pretty significant voir dire
8 process. So they have asked us to delay our jury
9 selection until after lunch, so that we can make sure
10 that we have -- they have enough jurors and we have
11 enough jurors. And -- so what we can do now is we can
12 hear motions, if you have any motions that we need to
13 hear in limine in anticipation of drawing a jury.

14 MR. STEELE: Your Honor, please. On behalf of Mr.
15 Collier I do have about three things to take up with the
16 Court.

17 THE COURT: All right, sir.

18 MR. STEELE: As to number one, I would respectfully
19 ask that the witnesses be sequestered. I have one
20 witness, one potential witness in addition to Mr. Collier
21 being a potential witness. And needless to say that
22 would pertain to her as well to the State's witnesses.
23 That would be the first thing, Your Honor.

24 THE COURT: Okay. All right. Any objection to
25 that?

1 MS. BENTLEY: No, Your Honor.

2 THE COURT: All right. Without objection the
3 witnesses are under a sequestration order.

4 MR. STEELE: Number two, he's charged -- as I
5 understand it we're going to trial today on two offenses,
6 number one would be failure to stop for a blue light and
7 number two would be driving under suspension third
8 offense. I am trying to keep reference to the number of
9 offenses out of the purview of the jury and hence I am
10 offering to stipulate to jurisdiction of the Court.

11 THE COURT: Yes, sir.

12 MR. STEELE: And I would also respectfully ask the
13 Court, I had asked for a redaction of the indictment if
14 it were to go back, and I think Ms. ---

15 THE COURT: Just so you know, I don't send
16 indictments back.

17 MR. STEELE: Yeah, I think the prosecutor suggested
18 we not send it back and that certainly ---

19 THE COURT: I'm not going to.

20 MR. STEELE: --- would satisfy that. And I think
21 that's it, Your Honor.

22 THE COURT: Okay. All right. Anything from the
23 State?

24 MS. BENTLEY: I don't believe that we have anything
25 from the State, Your Honor.

1 MR. STEELE: Well, there was one thing, but she and
2 I can talk about that.

3 THE COURT: Okay. All right. Good enough.

4 MR. STEELE: I think that's it, Your Honor. What
5 time do you want us back?

6 THE COURT: Well, let's be back at 1:00. And we'll
7 bring up our pool out or about that time. The -- it
8 looks like on the indictment, I don't know if y'all have
9 had the opportunity to review the indictments but it
10 would appear that the only thing that I should exclude
11 when I read the indictments to them is the subsequent
12 offense for DUS. Am I correct?

13 MR. STEELE: Yes, Your Honor. I think we would be
14 satisfied with that, sir.

15 MS. BENTLEY: And I don't know if the failure to
16 stop mentions that it's a second offense failure to stop
17 as well, but it should also not be mentioned.

18 THE COURT: Okay. All right. Yeah, and I
19 don't think it says that on the indictment. Okay.

20 MS. BENTLEY: Okay.

21 THE COURT: Okay. All right. Good enough. All
22 right. Then we'll go back on the record at one o'clock
23 and draw our jury then.

24 MR. STEELE: Yes, Your Honor.

25 THE COURT: All right. Y'all have a great lunch.

1 (A lunch recess was taken, after which, the trial
2 continued as follows:)

3 THE COURT: All right. We have a jury pool ready
4 for us downstairs?

5 THE CLERK: Supposedly.

6 THE COURT: Well, let's call them up.

7 MR. STEELE: Your Honor, how many strikes?

8 THE COURT: Five and five unless there's something
9 that I'm not aware of.

10 MR. STEELE: No, sir, I'd just like to make sure
11 we're thinking the same way.

12 THE COURT: Yes, sir. Were we thinking the same way
13 this time?

14 MR. STEELE: Well, whatever you say is ---

15 THE COURT: I appreciate that. I know that you're
16 always willing to defer to me when what I say strikes you
17 as being right.

18 MR. STEELE: Yes, sir.

19 (The jury panel entered the courtroom at 2:05 p.m.)

20 THE COURT: Good afternoon, ladies and gentlemen.
21 Welcome. I'm Rob Stilwell. I know that you met at least
22 one circuit judge downstairs, and I'm another. And I'm
23 proud to have you in my courtroom. I'm looking forward
24 to working this case with you.

25 As you know downstairs this morning you were asked a

1 series of questions which related to your qualifications
2 to serve generally as jurors in a trial in the State of
3 South Carolina. Well, I'm going to ask you a few more
4 questions, but these questions are designed to determine
5 whether it's appropriate for you to serve on a jury in
6 the trial of the case which we are calling to bar right
7 now. And I'm going to ask you several questions just as
8 you were asked downstairs. And I'll remind you that you
9 continue under the oath that you took downstairs to
10 answer truly all the questions that I pose to you.

11 Now, ladies and gentlemen, the first thing that I'm
12 going to do is I'm going to read the indictments, the
13 relevant portions of the indictments to you. And the
14 reason I read these indictments to you is because I have
15 to give you at least a threshold understanding of what
16 the allegations are in this case so that you can answer
17 the questions that I pose to you.

18 Now, the thing that I need to stress to you is that
19 even though I'm reading these -- these allegations to you
20 on the -- from the indictments, they are just that,
21 simply allegations. They're not evidence and they're not
22 facts to be -- to be taken by you as the truth. They're
23 simply the allegations that the State is lodging against
24 the defendant. It is in fact the charging paper. You
25 ultimately will determine what the facts in this case

1 are, that is the 12 of you are picked to preside in this
2 jury.

3 Before I read the indictment what I need to remind
4 you of as well is that in the State of South Carolina and
5 in the United States of America each and every defendant
6 is innocent until proven guilty beyond a reasonable
7 doubt. That is a guarantee under our Constitution. And
8 I'll say that again for you. Each defendant is innocent
9 until proven guilty beyond a reasonable doubt.

10 Therefore, in this case, the defendant, Mr. Aaron
11 Winford Collier, as we sit here is presumed to be
12 innocent and will maintain that presumption of innocence
13 until such time as the jury in this case, 12 of those
14 among you, decide that the State has met its burden of
15 proving each and every element of the offense beyond a
16 reasonable doubt.

17 All right. I will read the indictments for you now,
18 ladies and gentlemen. And in the first -- in the first
19 indictment is indictment 2009-GS-23-002703. It is the
20 State versus Aaron Winford Collier. And he has been
21 indicted and charged with driving under suspension. And
22 the State would allege that Mr. Collier, did, in
23 Greenville County, on or about November 11, 2008, drive a
24 motor vehicle on a public highway of this state when his
25 license to drive was suspended.

1 In addition, ladies and gentlemen, the second
2 indictment is indictment number 009-GS-23-2704. The
3 State versus Aaron Winford Collier, who is indicted for
4 reckless driving. And the State would allege that Mr.
5 Collier, did, in Greenville County on or about November
6 11, 2008, drive a motor vehicle on the highways of this
7 state in such a manner as to indicate either a willful or
8 wanton disregard for the safety of persons or property.

9 Ladies and gentlemen, the third and last indictment
10 is indictment number 2009-GS-23-1719, the State versus
11 Aaron Winford Collier. And he is indicted and alleged to
12 have committed the crime of failure to stop for a blue
13 light. And the State would allege that Mr. Collier, did,
14 in Greenville, on or about November 11, 2008, willfully,
15 knowingly and unlawfully commit the offense of failure to
16 stop for a police vehicle, and that the said defendant,
17 while driving on a road, street or highway of the state
18 did fail to stop when signaled to do so by a police
19 vehicle using blue lights and/or a siren.

20 Now, ladies and gentlemen, the reason I read that to
21 you is so you can answer this question. Is there anyone
22 among you who has any knowledge, any opinion about the
23 allegations that have been lodged by the State against
24 this defendant?

25 All right. Let the record reflect there was no

1 affirmative response. Ladies and gentlemen, the
2 defendant in this case is Mr. Aaron Winford Collier. I
3 would ask you, is there anyone on the jury who has a
4 personal, professional, or family relationship with Mr.
5 Collier?

6 All right. Let the record reflect no affirmative
7 response. Ladies and gentlemen, Mr. Carlyle Steele with
8 the Greenville Bar is the attorney who will be
9 representing Mr. Collier in this case. Is there anyone
10 on the jury panel who has a personal, professional, or
11 family relationship with Mr. Steele?

12 (No response from the jury panel.)

13 THE COURT: Ladies and gentlemen, the State of South
14 Carolina will be represented by Ms. Lisa Bentley of the
15 3th circuit solicitor's office. Is there anyone on the
16 jury panel who has a personal, professional or family
17 relationship with Mr. Bentley?

18 All right. Let the record reflect no affirmative
19 response. Is there anyone else that you would like to
20 introduce to the jury who will be a part of your either
21 defense or prosecution team?

22 MS. BENTLEY: Yes, Your Honor.

23 THE COURT: Yes, ma'am.

24 MS. BENTLEY: Elizabeth Major also with the 13th
25 Circuit solicitor's Office will be presenting this case

1 with me today.

2 THE COURT: Okay. Is there anyone on the jury panel
3 who has a personal, professional relationship with Ms.
4 Major?

5 (No response from the jury panel.)

6 THE COURT: All right. Mr. Steele, anyone you'd
7 like to introduce, sir?

8 MR. STEELE: No, sir.

9 THE COURT: Okay. All right. Ladies and gentlemen,
10 I'm going to read to you a list of potential witnesses,
11 perspective witnesses. Now, we don't always know on the
12 front end who is going to testify. We may have a long
13 list of people who may, and only a portion of them may
14 testify, or there may be additional people who ultimately
15 testify just because of the way a trial unfolds. But
16 this is a list of prospective and potential witnesses in
17 this case. Investigator Kurt Jacobsen with the
18 Greenville County Sheriff's Office, Investigator John
19 Garrett of the Greenville County Sheriff's Office,
20 Detective Scott Hawkins of the Fountain Inn Police
21 Department, Deputy Chris McBee of the Greenville County
22 Sheriff's Office, Marie Waring of the South Carolina
23 Department of Public Safety. Any additional witnesses
24 that I need to announce?

25 MR. STEELE: Your Honor, please? Rhonda Lynn Price,

1 P-r-i-c-e.

2 THE COURT: All right. And Rhonda Lynn Price.
3 Ladies and gentlemen, among those witnesses, those
4 perspective witnesses that I just called out, is there
5 anyone with whom you have a personal, professional or
6 family relationship?

7 All right. Let the record reflect no affirmative
8 response. Ladies and gentlemen, is there anyone among
9 who you served on the grand jury for which this
10 indictment was handed down?

11 All right. No affirmative response. Ladies and
12 gentlemen, I'll ask you this, is there anyone among you
13 who for any reason believes that you could not serve as a
14 fair and impartial juror on the trial of this case?

15 (No response from the jury panel.)

16 THE COURT: Ladies and gentlemen, is there anyone
17 among you who is a member, or donor, or contributor to an
18 organization which advocates for criminal prosecution, or
19 victim's rights? And when say that I mean an
20 organization such as MADD, mother's against drunk
21 driving, and SADD, or any like organization?

22 All right. Let the record reflect no affirmative
23 response. Ladies and gentlemen, is there anyone among
24 you who has a close relative who is employed by law
25 enforcement? All right. All right. Let the record

1 reflect -- yes, ma'am.

2 MS. ARMBRUSTER: I do. I have a son-in-law.

3 THE COURT: Okay. And what is your name and juror
4 number, please?

5 MS. ARMBRUSTER: Judy Armbruster, number 6.

6 THE COURT: Six, okay. Good. All right. Do you
7 think -- your son-in-law is in law enforcement?

8 MS. ARMBRUSTER: Yes, sir, he is.

9 THE COURT: Okay.

10 MS. ARMBRUSTER: He's lives in Ohio.

11 THE COURT: In Ohio. Okay. Thank you very much for
12 letting me know. Do you think that that would affect
13 your ability to be fair and impartial in this trial?

14 MS. ARMBRUSTER: No.

15 THE COURT: Okay. Good enough. All right. Any
16 additional questions in voir dire that the parties would
17 have me ask?

18 MS. BENTLEY: None from the State, Your Honor.

19 MR. STEELE: None from Mr. Collier, Your Honor.

20 THE COURT: All right. Good enough. All right,
21 ladies and gentlemen. At this time what we're going to
22 do is we're going to pick the jury for this case. And we
23 have kind of a time honored tradition of picking jurors
24 in a general session case. And sometimes you feel a
25 little bit conspicuous when you're going through the

1 process but please don't. What I'm going to ask you to
2 do is when your name is called out I'm going to ask you
3 to come forward. And I'm going to ask you to stand right
4 here in the middle of the courtroom right in front of the
5 lectern and face the clock. Just face out towards the
6 parties, towards -- towards the clock.

7 And what's going to happen is the attorneys are
8 going to make preemptory challenges, strikes. And they
9 can strike for just about any reason with a few
10 exceptions... And what you're going to hear is one of
11 about four things. You're going to hear, please excuse
12 the juror, or please strike the juror. If you hear
13 either one of those from either side then just have a
14 seat back down in the pews. On the other hand, if you
15 hear twice, please swear the juror, or please seat the
16 juror, then you will have been selected to preside, or
17 sit in this trial. And what I'd ask you to do is just
18 have a seat in the jury box.

19 And we're going to pick 12 jurors and if we have
20 enough jurors we're going to pick two alternates as well.
21 So when your name is called what I'd ask you to do is
22 pick up everything that you have with you, your
23 backpacks, your purses, your man purses, whatever you may
24 have with you, pick it up and bring it up because you may
25 be going straight into the jury box.

1 So without further ado we'll proceed to jury
2 strikes.

3 THE CLERK: Okay. Juror 44, Connie Douglas. What
4 says the State?

5 MS. BENTLEY: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. STEELE: If Your Honor please, excuse Ms.
8 Douglas.

9 THE CLERK: All right. Ms. Douglas, you may be
10 seated, you're excused. Juror number 7, Joseph
11 Augustine.

12 MR. STEELE: Did you say juror number 7?

13 THE CLERK: Number 7, yes, sir.

14 MR. STEELE: Mr. Augustine, is that right?
15 Augustine, I'm sorry.

16 THE CLERK: What says the State?

17 MS. BENTLEY: Please present the juror.

18 THE CLERK: What says the defendant?

19 MR. STEELE: Swear Mr. Augustine.

20 THE CLERK: All right. Please have a seat in the
21 jury box.

22 THE COURT: Ms. Douglas, I noticed as soon as you
23 got stricken you went as far away from those perspective
24 jurors as you could.. There's like another foot between
25 you and the wall if want to scoot over a little bit more.

1 Go ahead.

2 THE CLERK: Juror 147, John Sellers. Mr. Sellers,
3 all right. Your Honor, that's the one. All right.
4 Juror number 166, Bryan, is it Vanbecelare?

5 MR. VANBECELARE: Yes.

6 THE CLERK: All right. What says the state?

7 MS. BENTLEY: Please present the juror.

8 THE CLERK: What says the defendant?

9 MR. STEELE: Excuse the juror.

10 THE CLERK: All right, sir. You may be seated. You
11 have been excused from this case. Juror 95, William
12 Kirkpatrick. What says the State?

13 MS. BENTLEY: Please present the juror.

14 THE CLERK: What says the defendant?

15 MR. STEELE: Swear Mr. Kirkpatrick.

16 THE CLERK: Mr. Kirkpatrick, please have a seat in
17 the jury box. Juror 135, John Rainwater. What says the
18 State?

19 MS. BENTLEY: One moment, please.

20 THE CLERK: Sure.

21 MS. BENTLEY: Please excuse the juror from the trial
22 of this case.

23 THE CLERK: All right. Sir, you may be seated. You
24 have been excused from this case. Juror 80, Melissa
25 Honeycutt. What says the State?

1 MS. BENTLEY: Please excuse Ms. Honeycutt.

2 THE CLERK: All right. Ms. Honeycutt, you may be
3 seated. Juror 61, Emilie Gilbert. What says the State?

4 MS. BENTLEY: Please present Ms. Gilbert.

5 MR. STEELE: Excuse Ms. Gilbert.

6 THE CLERK: All right. Ms. Gilbert, you may be
7 seated. Juror 148, Cynthia Serra. What says the State?

8 MS. BENTLEY: Please present the juror.

9 THE CLERK: What says the defendant?

10 MR. STEELE: Swear Ms. Serra.

11 THE COURT: Ma'am, please have a seat in the jury
12 box. Juror 23, Earle Carter. What says the State?

13 MS. BENTLEY: Please excuse the juror from the trial
14 of this case.

15 THE CLERK: All right, sir, you may be seated.
16 Juror number 6, Judith Armbruster. What says the State?

17 MS. BENTLEY: Please present the juror.

18 THE CLERK: What says the defendant?

19 MR. STEELE: Swear Ms. Armbuster.

20 THE CLERK: Ma'am, please have a seat in the jury
21 box. Juror 78, David Hill. What says the State?

22 MS. BENTLEY: Please present the juror.

23 THE CLERK: What says the defendant?

24 MR. STEELE: Swear Mr. Hill.

25 THE CLERK: Sir, please have a seat in the jury box.

1 Juror 11, Javores Blakley. What says the State?

2 MS. BENTLEY: Please excuse the juror from the trial
3 of this case.

4 THE CLERK: All right, sir. You may be seated.

5 Juror 142, Samuel Rixie. What says the State?

6 MS. BENTLEY: Please excuse the juror from the trial
7 of this case.

8 THE CLERK: All right, sir. You may be excused.

9 THE COURT: That's five for the State.

10 THE CLERK: Juror 188, Joseph Ramirez. What says
11 the State?

12 MS. BENTLEY: Please present the juror.

13 THE CLERK: What says the defendant?

14 MR. STEELE: What was that number again, Madam
15 Clerk?

16 THE CLERK: 188.

17 MR. STEELE: Your Honor, I seem to have lost my note
18 on that juror. Would the Court be good enough to ask him
19 where he works again?

20 THE COURT: Yeah, hold on a second. Mr. Ramirez,
21 where do you work, sir?

22 MR. RAMIREZ: I work for Sealed Air.

23 THE COURT: Sealed Air. Okay. Good enough.

24 MR. RAMIREZ: In Duncan.

25 THE COURT: Any other questions you need about Mr.

1 Ramirez.

2 MR. STEELE: No, sir. Swear the juror.

3 THE CLERK: All right, sir. Please have a seat in
4 the jury box.

5 THE COURT: Thank you, Mr. Ramirez. I appreciate
6 that, sir.

7 THE CLERK: Juror 190, Bobby Smith. What says the
8 State?

9 MS. BENTLEY: Please present the juror.

10 MR. STEELE: Swear the juror.

11 THE CLERK: Thank you. Mr. Smith, please have a
12 seat in the jury box. Juror 58, Misty Geiyer.

13 MR. STEELE: What's the number, Madam Clerk?

14 THE CLERK: 58. What says the State?

15 MS. BENTLEY: Please present the juror.

16 THE CLERK: What says the defendant?

17 MR. STEELE: Swear Ms. Geiyer.

18 THE CLERK: All right, ma'am. Please have a seat in
19 the jury box. Juror 137, Samuel Redding. What says the
20 State?

21 MS. BENTLEY: Please present the juror.

22 MR. STEELE: Swear the juror.

23 THE CLERK: Thank you. Please have a seat in the
24 jury box, Mr. Redding. Juror 189, Melinda Robinson.
25 What says the State?

1 MS. BENTLEY: Please present the juror.

2 THE CLERK: What says the defendant?

3 MR. STEELE: Swear the juror.

4 THE CLERK: Ma'am, please have a seat in the jury
5 box. Juror 158, Jeffrey Stover. What says the State?

6 MS. BENTLEY: Please present the juror.

7 THE CLERK: What says the defendant?

8 MR. STEELE: Swear Mr. Stover.

9 THE COURT: Sir, please have a seat in the jury box.
10 Juror 18, Robert Bullard. What says the State?

11 MS. BENTLEY: Please present the juror.

12 THE CLERK: What says the defendant?

13 MR. STEELE: Swear Mr. Bullard.

14 THE CLERK: Mr. Bullard, please have a seat in the
15 jury box.

16 THE COURT: All right. That is 12 jurors, ladies
17 and gentlemen. We'll pick two alternates. Strikes are
18 one and two on each alternate.

19 THE CLERK: Juror 115, Somiyah Merza. What says the
20 State?

21 MS. BENTLEY: Please present the juror.

22 THE CLERK: What says the defendant?

23 MR. STEELE: Swear Ms. Merza.

24 THE CLERK: Thank you. Ma'am, please have a seat in
25 the jury box. Juror 123, Cynthia Naylor. What says the

1 State?

2 MS. BENTLEY: Please present the juror.

3 THE CLERK: What says the defendant?

4 MR. STEELE: Swear Ms. Naylor.

5 THE CLERK: Ms. Naylor, please have a seat in the
6 jury box.

7 THE COURT: All right. Are there any matters of law
8 or issues to take up with respect to the qualification or
9 striking of this jury? Anything from the State?

10 MS. BENTLEY: Nothing, Your Honor.

11 THE COURT: From the defense?

12 MR. STEELE: Nothing from Mr. Collier, Your Honor.

13 THE COURT: Okay. Good enough. All right, ladies
14 and gentlemen, thank you for coming up. If you would,
15 please, go back downstairs and you can speak to Ms. Olson
16 about what they may need from you further today. And I
17 appreciate your having come up this afternoon. I hope
18 you have a good week on jury duty.

19 (The jury panel exited the courtroom at 2:25 p.m.)

20 THE COURT: All right. Any matters we need to take
21 up before we roll into opening charge and opening
22 statements?

23 MS. BENTLEY: Nothing from the State.

24 MR. STEELE: Nothing from Mr. Collier, Your Honor.

25 THE COURT: Okay. Okay. All right, ladies and

1 gentlemen. We're about to begin the trial of the case
2 that I have just announced, which is the State versus
3 Aaron Winford Collier. And it's always helpful for me
4 before we get started to give you a little heads up,
5 give some advisement of the process that we'll follow so
6 that -- and the procedure so that you won't be wondering
7 what's next and you won't be looking for the light at the
8 end of tunnel without any direction or clue when that
9 light may come. So I'm going to give you a short
10 advisement of the procedure that we'll follow in this
11 trial. I'm also going to give you an opening charge on
12 the law which will be a very fundamental and short charge
13 on the law, just advising you of some important things to
14 keep in mind as we go forward.

15 The first thing that I want to tell you is this,
16 this case is probably going to run through the rest of
17 today. We'll try to end at about 5:00 or 5:30, depending
18 on where the witnesses conclude. There maybe a witness
19 who is up and that witness may be done at 4:50 and it
20 doesn't make sense to go to the next witness because that
21 witness is going to last an hour. In that event we'll
22 quit at 4:50, but then again we may go to 5:15, but know
23 that at about five o'clock I'm going to be thinking when
24 are we going to adjourn for the evening. Then we're
25 going to adjourn. Tomorrow morning we'll start back

1 again at 9:00 in the morning.

2 We'll take a break about mid-morning, that is about
3 10:30, 11:00, then we'll go through lunch to about 12:30
4 or so. And then when we come back from lunch I'm hoping
5 that at about that time we'll be ready to go toward
6 closing arguments and charge. It may happen before then,
7 it may happen after then.

8 The reason I am not telling you definitely is
9 because I don't know. I don't know what's going to be
10 put up on the stand. Everything that's put on the stand
11 here in this trial today and tomorrow I'll be seeing for
12 the first time just like you will. So I don't know
13 anything about the case right now other than the number
14 of witnesses that I have called out to you and the
15 allegations that I have read on the indictment.

16 Understand again, the allegations that I have read
17 on the indictment are just that. You're role in this
18 case is as the judge of the facts. You will determine
19 what the facts are in this case. You will look at the
20 all evidence that is presented in this case and you will
21 determine whether the State has met its burden of proving
22 the defendant guilty beyond a reasonable doubt.

23 As I told you, each and every criminal defendant has
24 a presumption of innocence. And Mr. Collier retains that
25 presumption of innocence, and in fact is presumed

1 innocent right now as he sits here in this courtroom,
2 until such time as the State proves each and every
3 element of the offense beyond a reasonable doubt. You
4 will determine at the close of the case whether the State
5 has met that burden of proof. And you will do that by
6 applying the facts as you determine them to be to the
7 law as I give it to you, because I am the judge of the
8 law which means that I'm going to tell you what the law
9 is. And you are required to take the law as I give it to
10 you, not try to divine what the law is or to take heed of
11 what you think the law should be, but to take it as I
12 give it to you.

13 Now, in determining what the fact are, as I
14 indicated, you're going to hear evidence. You're going
15 to see evidence in many forms. You're going to see
16 testimony from witnesses. You may have physical objects
17 which are introduced into the record. You may have
18 documents. You may have video tapes. You may have audio
19 tapes. Evidence can take many forms. And you'll take
20 all that evidence and you'll weigh it and you'll
21 determine based on your weighing of the evidence what the
22 facts are. You'll determine what's important and what's
23 not important. You may take a portion of someone's
24 testimony and determine that it is important and you
25 should give it great weight or credibility, or on the

1 contrary you may decide that the -- that that portion
2 really has no weight and take another portion of that
3 testimony and give it great weight or credibility.
4 You'll make that determination and determine what the
5 facts are.

6 The way we'll start out today is after I finish
7 giving you this short charge on the law, the attorneys
8 will have the opportunity to make short opening arguments
9 to you. Now, understand that the attorneys' arguments
10 are just that, they are arguments. They are -- they are
11 arguments designed to advocate for their respective
12 position. It's not evidence to be presented by you.
13 It's simply an argument. And you should consider it as
14 such. Also the questions that are asked by the attorneys
15 are not evidence. The answers which are elicited from
16 those questions are in fact evidence. But the attorneys'
17 questions themselves are not.

18 You will hear opening arguments from each side.
19 After you heard that argument then the State will go into
20 its case in chief, meaning they will begin to present
21 witnesses and testimony and evidence. They go first,
22 because as I told you, they have the burden of proof.
23 Because they have the burden of proof they go first.

24 After having heard from the State then the defense
25 will have the opportunity to put evidence into the record

1 should they elect to. After having heard from the
2 defense under some circumstances the State will have the
3 opportunity to put up evidence in reply.

4 Now, after you've heard all of the evidence put into
5 the record then you're going to hear closing arguments
6 from the attorneys. And again, those just are simply
7 arguments from the attorneys. After having heard closing
8 arguments from the attorneys then I will give you a
9 charge on the law. And I will tell you what the specific
10 law is as it relates to the charges. So that you can
11 apply the law as I give it to you to the facts as you
12 determine -- to the facts as you determine them to be.

13 Now, please don't begin discussing your case, this
14 case, or considering the case, or deliberating about the
15 facts of this case until I tell you to. And that will be
16 at the end of the trial, after you've heard everything.
17 And there's a very important reason for that, and it
18 makes very good logical sense. And you already know what
19 it is. And that is this, it's not fair for you to
20 consider half of the story. It's just like in your every
21 day lives, if you have children, you have friends, and
22 someone comes to you and they tell you a story and you
23 hear half of it and you form an opinion based on that
24 version of the story, once you hear the rest of that
25 story you may change your opinion, and you will have come

1 to an un-informed decision in that case. And the same is
2 true here. It's only fair that you listen to the entire
3 case before you begin any deliberations.

4 So when we go out and take breaks from time to time,
5 or when we adjourn for the evening and you go home, and
6 you're with your family and your friends, please don't
7 discuss the case with them, because the only people who
8 should be considering this case and deliberating about
9 the facts of this case are the 12 people who ultimately
10 go into the jury room to deliberate on the case. If
11 anybody else's opinion comes into it, if anybody else's
12 deliberations comes into it then your deliberations have
13 been tainted. And the remedy to that is we just have to
14 try the case again, and your time will have been
15 essentially invalidated. It would have been a waste of
16 your time to have sat on the jury. And I don't want that
17 to happen and I suspect that all of you are considerate
18 enough of each other that you wouldn't want that to
19 happen to each other.

20 Now, during the course of the trial as well you will
21 hear objections lodged by the respective attorneys. Now,
22 understand that it is their job to pose objections.
23 Please don't hold it against them when they hold
24 objections -- when they -- when they make objections.
25 Because what they are doing is trying to represent their

1 client's respectful position. And from time to time they
2 will object to the admission of certain evidence. And
3 when they do that it's up to me to make a determination
4 as to whether what they have objected to is legally
5 admissible, whether it's permissible, whether it's fair.
6 As I told you, you're the judge and the -- you're the
7 judge of the facts, I'm the judge of the law. And my
8 only concern in this entire case is to make sure that
9 it's fair. That's my only concern. I don't have a dog
10 in the fight. And the end of the day all I want to make
11 sure of is that everybody walks away and said, this was a
12 fair trial. So what I'm going to do when they make
13 objections is I'm going to make a very clinical, legal
14 determination of whether that objection should be
15 obtained -- excuse me, sustained or whether it should be
16 overruled. And know that when I make that decision it is
17 based on the law. And I don't have any preference or
18 bias, or prejudice one way or the other toward or against
19 either side.

20 And when I rule I'm going to rule in favor of one
21 side and against one side. But understand, that's only
22 on that one legal point. It's not on the case. I don't
23 have a preference one way the other. I don't have a
24 bias. If at any point during this trial you hear me say
25 anything that would suggest to you that I have an opinion

1 about the facts or bias about this case, then disregard
2 it, because I truly and honestly do not. I can assure
3 you of that.

4 Now, from time to time, ladies and gentlemen, we may
5 get to a point where we're running on a little, I'm going
6 to try to take very even measured breaks. If you need to
7 take a break at any time then just raise your hand and
8 get my attention, or get the bailiff's attention, and let
9 us know, and we'll take a break. Because it is true that
10 the most important people in this courtroom are y'all.
11 And it's very important that y'all are listening to the
12 testimony that's being presented, and that you're paying
13 attention to the case. And if you got something else on
14 your mind, such as, boy, I wish these people would shut
15 up so I can go back and use the rest room, then that's
16 bad. Okay. So you let me know. I understand. Okay.
17 Because I can assure you that when I need to take a break
18 I'm going to take a break, and it's only fair that y'all
19 do the same. And I can -- I promise you no one will be
20 offended. We're in this together. Okay.

21 So with out any further ado I'm going to ask the
22 Clerk of Court to swear you in. This is a different oath
23 that you will take. And this oath is to listen to the
24 case and to make a determination and come to a verdict
25 based on the law as I give it to you.

1 THE CLERK: Please stand and raise your right hand.
2 The proper response is I will.

3 (The jury was duly sworn to well and truly try this
4 case at 2:37 p.m.)

5 THE CLERK: Thank you. Please be seated.

6 THE COURT: All right. Ms. Bentley.

7 MS. MAJOR: May it please the Court? Ladies and
8 gentlemen, good afternoon. Ladies and gentlemen, my name
9 is Elizabeth Major, and my co-counsel is Lisa Bentley.
10 We're here of behalf of the Solicitor's office, and our
11 job today is to prove to you that the defendant, Aaron
12 Collier, is guilty of three crimes, driving under a
13 suspended license, reckless driving and failure to stop
14 for a blue light.

15 This case isn't extremely complicated or convoluted.
16 It's pretty straight forward. On Tuesday, November 11,
17 2008, the police were out looking for the defendant.
18 They see him driving. They turn on their blue lights,
19 activate their sirens in an attempt to pull him over. The
20 defendant speeds off and fails to stop.

21 You're going to hear from the two officers who
22 encountered Aaron Collier that day, Investigatory Garrett
23 and Deputy McBee. Investigator Garrett will tell you
24 that he was out that day specifically looking for this
25 defendant. He received information that the defendant

1 would be either in a white truck or a red Camaro. He
2 goes out to the location and he sees the defendant
3 driving the red Camaro.

4 You'll hear from Deputy McBee. He will tell you
5 that Investigator Garrett radios to him and says, I see
6 the red Camaro. Deputy McBee will tell you that he
7 crosses paths with the defendant. Comes very close to
8 the defendant. Deputy McBee will tell you that he had
9 two color pictures of the defendant in his car. Deputy
10 McBee will testify that he activated his blue lights and
11 siren and attempted to pull Mr. Collier over, and Mr.
12 Collier took off, failing to stop and nearly running one
13 car off the side of the road. You'll get to hear from
14 the two officers and you'll also get to see the video of
15 this encounter because Deputy McBee's dash camera was
16 activated.

17 Investigator Garrett and Deputy McBee weren't able
18 to apprehend that defendant that day, because it may have
19 been physically impossible, but you'll hear that they had
20 to call off the chase pursuant to the sheriff's
21 department's policy. Deputy McBee will testify that it
22 was simply too dangerous to pursue the defendant. You
23 will get to see the decision he faced that day in calling
24 off the chase in the video.

25 Ladies and gentlemen, it's our burden to prove

1 beyond a reasonable doubt that Aaron Collier was driving
2 the two lane road and failed to stop for police. He
3 can't do that today. He's not going to be able to stop
4 (sic). We ask that you listen to the evidence and that
5 at the end of the case we'll prove to you beyond a
6 reasonable doubt that Mr. Collier is guilty of these
7 crimes.

8 MR. STEELE: May it please the Court?

9 THE COURT: Yes, sir, absolutely.

10 MR. STEELE: May it please you, ladies and gentlemen
11 of the jury. My name is Carlyle Steele. And I'm seated
12 over here at the counsel table with Aaron Collier. He's
13 the man in the white shirt. His family and friends all
14 call him Pumpkin Collier.

15 The judge has done an excellent job of telling you,
16 ladies and gentlemen, about your responsibilities here
17 today. And one of the most critical responsibilities
18 that you have in a case of this type, in any criminal
19 case, that you maintain an open mind. And the reason
20 that you are required to maintain an open mind is because
21 every criminal defendant in every criminal case is
22 presumed to be innocent unless and until the State proves
23 every element of the offense that they've charged Mr.
24 Collier with.

25 And they have charged him with three offenses here

1 and they've got to prove every element of those three
2 offenses for you, ladies and gentlemen, to come back with
3 a verdict of guilty. Y'all may be sitting on civil cases
4 this week along with your criminal responsibilities. If
5 you were sitting on a civil case you would be told that
6 only the greater weight of the evidence is required for
7 you to come back one way or the other, the plaintiff or
8 the defendant. But this is a criminal case. We in
9 America set such a high store on freedom from conviction
10 of a criminal offense that we have said merely tipping
11 the scales slightly, or merely the greater weight of the
12 evidence is not enough. And between the citizen accused
13 of a crime, such as Mr. Collier here today, and
14 conviction we have erected the highest burden of proof in
15 our law. And that, ladies and gentlemen, is proof of
16 guilt beyond a reasonable doubt. So unless every
17 reasonable doubt is removed from every juror's minds you
18 are, under your oath, required to come back with a
19 verdict of not guilty.

20 One of the critical elements of all three of the
21 offenses that Pumpkin Collier is charged with is that he
22 was driving an automobile on the public roads of
23 Greenville County. If that element is not proven beyond
24 a reasonable doubt he can't be guilty of reckless
25 driving. If that element is not proven beyond a

1 reasonable doubt he can't be found guilty of failure to
2 stop for a police vehicle. If that element is not proven
3 beyond a reasonable doubt, ladies and gentlemen, he can't
4 be found guilty of driving under suspension. It's not
5 enough to prove some of the elements of an offense,
6 they've got to prove every element of the offense
7 including that he was driving an automobile.

8 You are today by your verdicts going to make a very
9 important decision in the life of another person, Aaron
10 Pumpkin Collier over here. You'll be on other juries
11 this week and after it's all over you may have trouble
12 remembering one jury from another. But I can tell you
13 that the decision you make in Mr. Collier's case, he's
14 going to remember for the rest of his life. So on behalf
15 of Mr. Collier, and on behalf of this system of justice
16 that we have in South Carolina and in America, I thank
17 you for your service on this case. I thank you for your
18 attention to the evidence in this case. And most
19 importantly of all, ladies and gentlemen, I thank you for
20 using your common sense in this case, because that is the
21 most important tool that a juror can have in the deciding
22 of a case. You listen to the testimony. You listen to
23 the witnesses. And you decide based upon your common
24 sense if you have a reasonable doubt. And if you have
25 that reasonable doubts as to one of the elements of any

1 of these offenses, you are required as the lawyer has
2 said, and as His Honor has told you, you're required to
3 come back with a verdict of not guilty.

4 And I call your attention specifically to that
5 critical element of this offense, that he was driving an
6 automobile. I would submit on that particular question
7 the evidence is going to fall short. And if you conclude
8 that along with me I would ask you to come back with a
9 verdict of not guilty. Thank you.

10 THE COURT: All right. All right. Ms. Major, Ms.
11 Bentley, you may call your first witness.

12 MS. BENTLEY: The State calls Marie Waring.

13 THE CLERK: Ms. Waring, if you'll please come
14 forward. Please place your left hand on the Bible and
15 raise your right hand.

16 MARIE WARING

17 Having been first duly sworn, testified as follows:

18 THE CLERK: Thank you. Please be seated. Please
19 state your full name for the record.

20 THE WITNESS: Marie Waring.

21 DIRECT EXAMINATION

22 BY MS. BENTLEY:

23 Q Good afternoon, Marie. How are you doing?

24 A I'm fine.

25 Q Will you please tell us where you work?

1 A South Carolina Department of Motor Vehicles.

2 Q And what is your position there?

3 A A supervisor of drivers' records.

4 Q And what -- I beg your pardon?

5 A A supervisor of drivers' records.

6 Q Okay. And as supervisor of drivers' records, what
7 do you do on a daily basis?

8 A I'm a custodian of drivers's records.

9 Q And how long have you held that position?

10 A For 21 years.

11 Q So among your duties do you preserve driver's
12 records?

13 A Yes.

14 Q Do you keep copies of records?

15 A Yes.

16 Q Do you updates records?

17 A Yes.

18 Q Okay. And I'm handing you what's been marked as
19 State's Exhibit 3. Do you recognize what this is?

20 A Yes.

21 Q What is it?

22 A It's a copy of a driver's record.

23 Q How do you know that?

24 A It's the DMV policy.

25 Q The DMV policy to keep it?

1 A Yes.

2 Q Has it been altered in any way?

3 A No.

4 Q And whose driving record is it?

5 A It's Aaron Collier's.

6 Q Okay. And does that document tell you whether or
7 not Mr. Collier's license was active on November 11,
8 2008?

9 A Yes.

10 Q What does it tell you in regard to his license
11 status?

12 A That it was suspended.

13 Q I'm handing you what's been marked as State's
14 Exhibits 4 and 5. Do you recognize these two documents?

15 A Yes.

16 Q What is State's Exhibit 4?

17 A A suspension notice.

18 Q And what is State's Exhibit 5?

19 A A certificate of mailing.

20 Q And how do you know what these are?

21 A Because these are our documents, DMV documents.

22 Q And you work with these documents on daily basis?

23 A Yes.

24 MS. BENTLEY: Your Honor, at this time the State
25 requests to submit Exhibits 4 and 5 into evidence at this

1 time.

2 MR. STEELE: Your Honor, I looked at them, but may I
3 look at them again?

4 THE COURT: Absolutely.

5 MR. STEELE: If Your Honor, please. There would be
6 no objection to and.

7 THE COURT: All right. Without objection the same
8 are admitted into evidence as with Plaintiff's Exhibits
9 Number 4 and 5 (sic).

10 (State's Exhibit Number 4 and 5 were filed.)

11 MS. BENTLEY: Thank you, Your Honor.

12 BY MS. BENTLEY:

13 Q Ms. Waring, looking back at State's Exhibit 4, what
14 exactly does this document do?

15 A This is the official notice of suspension.

16 Q And so what does that tell the recipient?

17 A Notifying that its driving privileges are
18 suspended.

19 Q And who was that notice sent to?

20 A Aaron Collier.

21 Q On what date was it mailed?

22 A June 11, 2007.

23 Q To what address was it mailed?

24 A [REDACTED] Simpsonville, South Carolina.

25 Q Looking back at State's Exhibit 3, his driving

1 record, what address did he have on file with the DMV on
2 the date that was mailed?

3 A [REDACTED]

4 Q All right.

5 A Simpsonville, South Carolina.

6 Q Thank you. How was the defendant's notice of
7 suspension mailed?

8 A By US mailing.

9 Q Is that the method required by the statute?

10 A Yes.

11 Q Do drivers have a duty to update any time they
12 move?

13 A Yes.

14 Q If Mr. Collier had updated his driving record
15 address, would you have had a record of that?

16 A Yes.

17 Q Did he do so?

18 A No.

19 Q And when was the effective date of Mr. Collier's
20 license suspension?

21 A July 1, 2007.

22 Q And when did that suspension end?

23 A It's indefinite.

24 Q What does that mean?

25 A It has -- he has not cleared it up yet.

1 Q So was his license suspended on November 11, 2008?

2 A Yes.

3 MS. BENTLEY: Thank you. I have no further
4 questions, Ms. Waring. Please answer any questions Mr.
5 Steele may have.

6 MR. STEELE: I have none.

7 THE COURT: All right. Thank you, ma'am. I
8 appreciate you being here.

9 MS. WARING: Thank you.

10 MS. BENTLEY: Your Honor, may we excuse Ms. Waring?
11 She needs to get back to Columbia.

12 THE COURT: Any objection?

13 MR. STEELE: No, sir.

14 THE COURT: All right. Ms. Waring, be safe. All
15 right. You may call your next witness.

16 MS. MAJOR: The State calls Deputy Chris McGee,
17 McBee, excuse me.

18 THE CLERK: Sir, please come forward. Please
19 place your left hand on the Bible and raise your right
20 hand.

21 CHRISTOPHER MCBEE

22 Having been first duly sworn, testified as follows:

23 THE CLERK: Thank you. Please be seated. Please
24 state your full name for the record.

25 THE WITNESS: It's Christopher Thomas McBee.

DIRECT EXAMINATION

BY MS. MAJOR:

Q Good afternoon. Deputy McBee, where do you work?

A I work for the Greenville County Sheriff's Office.

Q And in what capacity are you employed?

A I'm currently assigned to the administrative services division as a K-9 handler, K-9 services unit.

Q Could you describe some of your duties to us, please?

A We're responsible for any obviously K-9 related calls. These include any calls for service, for any in-progress calls, like alarm calls, burglaries in progress. We also assist warrant services, searches for suspects on tracks, searches for suspects in buildings, and any other way we can supplement the law enforcement services with a K-9.

Q How long have you worked at the sheriff's office?

A Sixteen years.

Q Okay. Were you working on November 11, 2008?

A Yes, ma'am.

Q Okay. What were you doing that day?

A I was assigned to, again, the K-9 services unit and was actually on shift, on the morning shift.

Q Is serving warrants part of your routine duties?

A It is. And not just with the warrant office but any

1 unit that has or is obtaining active warrants for a
2 person; they often utilize a K-9 for security for law
3 enforcement on scene and for preventative action.

4 Q Where did you respond to serve the warrants on
5 November 11?

6 A I was contacted by Investigator John Garrett. He
7 advised he had some active warrants on an individual, and
8 I was to meet him on the southern end of the county near
9 McKelvey Road and Cedar Falls Road, southern portion of
10 Greenville County.

11 Q In Greenville County?

12 A Yes, ma'am.

13 Q And who were you looking for on November 11?

14 A We were looking for, I'll give you his entire name,
15 I'll read it, Aaron Collier. He advised me at that time
16 that he had some active warrants for Mr. Collier.

17 MR. STEELE: Your Honor, I would have an objection
18 and a motion at this time.

19 THE COURT: All right. Ladies and gentlemen, what
20 I'm going to ask you to do is retire to your jury room.
21 The bailiff will show you where to go. I need to take up
22 a quick matter of law outside of your presence and
23 hopefully I'll bring you in very shortly.

24 (The jury exited courtroom at 2:50 p.m.)

25 MR. STEELE: Your Honor, I would object to the

1 testimony about the warrants that he just gave in
2 response to a question. I would submit that that is
3 highly prejudicial. I would submit that the prejudice to
4 Mr. Collier far outweighs any possible probative value.
5 And furthermore, I would ask for a mistrial based upon
6 that. We're not here to try whatever warrants he had for
7 him today, and I would submit the mere mention of them is
8 sufficiently prejudicial that Mr. Collier's right to a
9 fair trial has been affected. And I would respectfully
10 ask you to disallow the testimony and grant a mistrial.

11 THE COURT: All right. Ms. Major?

12 MS. MAJOR: Your Honor, the State asserts that we
13 need the evidence in about the warrants to complete a
14 full case, to let the jury know why they were out there,
15 and why they were looking for him. It maybe slightly
16 prejudicial but it's -- we believe it's probative
17 evidence that goes to the relevancy of why they were out
18 at this that location.

19 THE COURT: Okay. All right. You know, I've dealt
20 with this issue before, in this case as a matter of fact,
21 and what we elected to do was, and I say we, I suppose I
22 have a mouse in my pocket, but what I elected to do is
23 give a curative instruction which is what I intend to do
24 now. And the substance of that instruction will
25 essentially be that -- that the fact there may have been

1 outstanding warrants is completely irrelevant to the
2 facts to be proven in this case by the State, that that
3 was simply introduced as to demonstrate, or to suggest
4 why the State -- or the police officer may have been
5 looking for the gentleman, but it should not enter into
6 their deliberations in any way, shape, or form in
7 determining whether the State has met its burden of proof
8 as to three indictments which are before them this
9 afternoon.

10 MR. STEELE: I understand Your Honor's ruling.
11 Reserving all my rights I would make an inquiry and that
12 is this, do we need to go any further into this than
13 we've gone already, that is into the existence of the
14 warrants?

15 THE COURT: No, unless -- what in addition do you
16 need to put into the record regarding those warrants?

17 MS. BENTLEY: Nothing, Your Honor. We don't want to
18 get into the substance of the warrants, just merely the
19 fact to explain the police presence in that area. So
20 McBee basically his testimony on that issue is done.
21 We'll be asking Investigator Garrett the same questions,
22 since all the witnesses are sequestered, just why he was
23 there that day, why they were looking for him that day.

24 THE COURT: Okay. And the substance of all that
25 line of questioning is why were you there?

1 MS. BENTLEY: Why were you there.

2 THE COURT: All right.

3 MR. STEELE: Your Honor, they have -- I think what
4 Ms. Bentley said was that they're not going any further
5 into that. Subject to my objection I understand that,
6 and understand Your Honor's ruling. Could we also, just
7 to avoid my objecting, making this same motion when
8 subsequent officers testify, since it's -- we've got it
9 from this officer, can we disallow it altogether from the
10 other officers? Because every time it's heard I would
11 submit it's difficult to overcome the prejudice.

12 THE COURT: I understand. I understand. I will
13 tell you what, you may continue to lodge that objection.
14 It's very difficult for me to anticipate exactly how they
15 will set the foundation from each and every witness, so
16 I'm reluctant to just make a blanket preclusion from them
17 asking that specific question, but I can tell you that
18 certainly you'll be able to object to it and certainly
19 I'm going -- not going to let them go beyond that. And
20 to the extent that it continues to come up I will
21 continue to give a curative instruction, and will give
22 one as well in closing instructions should you request
23 that I give one at that time as well.

24 MR. STEELE: All right, sir.

25 MS. BENTLEY: Your Honor, one quick thing with

1 regard to that issue. Because he's serving warrants,
2 Deputy McBee was working from photographs. We're not
3 seeking to introduce those photographs assuming they're
4 probably booking photos, but he did have photographs in
5 the car because that's what he was doing that day, just
6 looking to serve warrants based on photographs.

7 THE COURT: Okay.

8 MR. STEELE: Does he have them with him?

9 MS. BENTLEY: I might have one. And that goes to
10 the identification issue, as to how he knew it was him.

11 (A discussion was held off the record.)

12 MR. STEELE: Okay. Was that the only one he had?

13 THE WITNESS: I had two.

14 MR. STEELE: Was that one of them?

15 THE WITNESS: That was one of them.

16 THE COURT: Okay. All right. Are you ready to
17 bring the jury back in? All right. Can you bring the
18 jury back in, please.

19 THE BAILIFF: Some of them are using the restroom.

20 THE COURT: Okay. All right. Good enough. We'll
21 take a five minute break in case anyone else needs to.
22 Officer, you can step down from the stand. Please don't
23 discuss your testimony with anyone. You remain under
24 oath.

25 THE WITNESS: Yes, sir.

1 (A short recess was taken, after which, the trial
2 continued as follows:)

3 (The jury entered the courtroom at 3:05 p.m.)

4 THE COURT: All right. Do me this favor. There are
5 no assigned seats with the exception of the two
6 alternates. Okay. So I know that one of you wasn't an
7 alternate. So if y'all will trade seats, please. That
8 keeps it clear for me. There's just something -- just so
9 you'll know, the reason why we pick alternates is because
10 from time to time it happens that one of the initial 12
11 jurors, for whatever reason, cannot go back in
12 deliberation. Sometimes you get phone calls from family
13 members and you had an emergency and you just have to go
14 home. Sometimes people get sick. Any number of -- of
15 potentialities occurs. And I've had jurors -- juries
16 where I've had 14 and within -- within literally a half
17 an hour I'm down to 12. So that's the reason why we pick
18 alternates. And also, I'm going to send y'all home
19 tonight before we begin any deliberations, or we're going
20 to conclude some portion of the testimony. So that's the
21 reason why we have alternates.

22 Now, understand that the alternates' service is just
23 as important as the primary 12 jurors, because it may be
24 that you end up deliberating as well. So your service on
25 this jury is just as important as anybody else's. No

1 questions asked. But it's good for me to be able to see
2 that you two are the alternates and you are the initial
3 12, and then if it occurs that I have to replace I'll
4 have it straight in my mind. Okay.

5 Now, ladies and gentlemen, I'm sorry we had to go
6 into a brief break. I apologize I sent you back for a
7 little bit. I don't have any secrets to keep from you in
8 this trial. And I didn't send you back because I didn't
9 want you to hear something. It was because sometimes
10 when I'm making a determination on the law sometimes I
11 have to hear more than is admissible in the trial. And
12 so I have to be very careful about that, because I don't
13 always know what the lawyers are going to need to argue
14 to make their legal point. So I asked you to leave so
15 that I could listen to a full argument on the law
16 regarding the admissibility of some testimony that you
17 heard.

18 And the defense objected to testimony that was
19 elicited from Officer McBee of the existence of
20 outstanding warrants. And that objection was proper.
21 And what I will tell you is that the fact that there may
22 or may not have been outstanding warrants against the
23 defendant is not relevant in any way, shape, or form to
24 your determination, your ultimate determination in this
25 case. What you are asked to determine is whether the

1 State meets its burden of proof with respect to the three
2 indictments that have been presented for trial today.
3 The fact that there may have been other warrants
4 outstanding is not relevant. The only reason that
5 question was posed was just to give you some
6 understanding of why Officer McBee was there, and put it
7 in context. But you are not to consider those
8 outstanding warrants, if any there were, in your
9 consideration on the trial of -- through these three
10 indictments. All right. You may proceed.

11 BY MS. MAJOR:

12 Q Deputy McBee, please tell us again who were you
13 looking for on November 11?

14 A Aaron Collier.

15 Q What information did you have to locate Mr. Collier?

16 A I had been contacted by Investigator John Garrett
17 from our vice and narcotics unit on that date.

18 Q Did you know what Mr. Collier looked like?

19 A Not until I was contacted by Investigator John
20 Garrett.

21 Q Okay. What information -- or how did you know what
22 he looked like? What did you have to help you determine
23 what he looked like?

24 A Yeah, provided me with a hard copy paper picture,
25 mug shot as it's called. And also once he gave me ---

1 MR. STEELE: Objection, Your Honor. The term mug
2 shot is highly prejudicial and I don't know if you want
3 to send the jury out again or not.

4 THE COURT: All right. I'll overrule your
5 objection. Thank you, sir. You may proceed.

6 BY MS. MAJOR:

7 Q Let's see. I'm handing you what's been marked as
8 State's Exhibit 9.

9 (State's Exhibit Number 9 was marked for
10 identification.)

11 BY MS. MAJOR:

12 Q Handing you what has been marked as State's Exhibit
13 9. Do you recognize this?

14 A I do.

15 Q Okay. Is this what you had with you on November 11?

16 A That's correct, yes.

17 Q Okay. What is that?

18 A This is a picture of Aaron Collier with his
19 pertinent information, date of birth, name, driver's
20 license information. Based on that I actually looked up
21 on my MPT, or computer in my vehicle, another digital
22 picture of Mr. Collier on that same day.

23 Q Okay. So that's the picture from what
24 identification of his?

25 A -- This would be from --- through the DMV.

1 Q Okay. Is that the same size picture that you had in
2 your car, had with you?

3 A On paper, yes. On the screen of my computer
4 obviously it's going to be smaller.

5 MS MAJOR: Okay. At this time the State moves to
6 introduce Exhibit 9 into evidence.

7 THE COURT: Any objection.

8 MR. STEELE: I would object, Your Honor, based upon
9 the fact that prejudice outweighs the probative value.

10 THE COURT: Okay. All right. I respectfully
11 overrule the objection and admit the same as State's
12 Exhibit Number what?

13 MS. MAJOR: Nine.

14 THE COURT: Nine, okay.

15 (State's Exhibit Number 9 was filed.)

16 BY MS. MAJOR:

17 Q Deputy McBee, I'm going to show you what's been
18 marked as State's Exhibit 1. Do you know what this is?

19 A It's an overhead map shot of the area that I was in
20 that day.

21 Q Okay. Does it fairly and accurately represent the
22 area that you were in on November 11?

23 A It does.

24 MS. MAJOR: Okay. At this time the State moves to
25 introduce Exhibit 1 into evidence and request to publish

1 it to the jury.

2 THE COURT: Any objection?

3 MR. STEELE: I haven't seen it, Your Honor. No
4 objection.

5 THE COURT: All right. Without objection the same
6 is introduced into evidence as State's Exhibit Number 1.

7 (State's Exhibit Number 1 was filed.)

8 BY MS. MAJOR:

9 Q Deputy McBee, if you'd come down here and step
10 around there. Please point to us where you were sitting
11 on November 11.

12 A This is a reserve fire department. It's at the
13 corner -- it's actually at the corner of Berry Road,
14 McKelvey. But the parking lot from the reserve fire
15 department is directly across from Cedar Falls Road.
16 Cedar Falls Road Ts and ends at McKelvey Road. I was
17 parked in the parking lot facing Cedar Falls Road.

18 Q What kind of car were you driving?

19 A I'm in a marked 2006 Chevrolet Tahoe, blue and gold
20 stripe.

21 Q Did it have the lights on top of the car?

22 A It did.

23 Q Okay. What time of day was it?

24 A It was 11 o'clock or so in the afternoon.

25 Q How ---

1 A Well light, sunny-shiny day.

2 MR. STEELE: I didn't understand, 11 o'clock in the
3 afternoon, Your Honor. Could we have that clarified?

4 THE COURT: Yes, sir. You may clarify that time.

5 THE WITNESS: It was in the morning time on that
6 date.

7 BY MS. MAJOR:

8 Q Approximately at what time?

9 A Approximately 11 o'clock.

10 Q Okay. What was the weather like?

11 A It was clear.

12 Q Okay. So how long were you at the reserve fire
13 department before hearing from Investigator Garrett?

14 A I had met with him prior to this to receive a
15 picture of Mr. Collier. And as I got there I pulled up a
16 picture on my computer. And I had just been there just a
17 couple minutes before I heard from Investigator Garrett.

18 Q How did he contact you?

19 A He called me via radio.

20 Q Okay. And what did he say?

21 A He told me that he had located a -- or had passed a
22 red Camaro on the roadway.

23 MR. STEELE: Objection, hearsay, Your Honor.

24 MS. MAJOR: Your Honor, it's not for the truth of
25 the matter asserted.

1 THE COURT: All right. Overruled.

2 THE WITNESS: That he had passed the Camaro on Cedar
3 Falls Road. He had given me this information because the
4 red Camaro possibly was being driven by Aaron Collier.

5 MS. MAJOR: Okay.

6 MR. STEELE: Objection, hearsay. What could it
7 possibly be offered for if not for the truth of the
8 matter asserted?

9 MS. MAJOR: Your Honor, if I may? It's to show why
10 he responded to that location. And where we'll get to in
11 a minute is why he was there in the location.

12 THE COURT: I understand. I understand. I'm going
13 to -- with respect to that, with respect to the
14 identification I'll sustain the objection.

15 BY MS. MAJOR:

16 Q Okay. So you were -- explain to us where you were
17 again?

18 A Parked in the front parking lot of the reserve fire
19 department on McKelvey Road.

20 Q And what did you do after Investigator Garrett
21 radioed in to you?

22 A I maintained and observed a red Camaro pull to the
23 intersection of Cedar Falls Road and McKelvey Road in his
24 lane and stop at the stop sign that's located in the
25 corner of Cedar Falls and McKelvey.

1 Q How did you position yourself after you saw the red
2 Camaro right there?

3 A I wanted to see who was driving this car. So I
4 actually pulled across McKelvey Road, straight across and
5 angled into the what would be my lane of travel on Cedar
6 Falls Road and pulled up to the front driver's window of
7 the red Camaro, where actually driver's side window to
8 driver's side window, about two or three feet apart. It
9 was a red Camaro. It was untinted. The windows were
10 untinted. You could see through them.

11 Q Were your windows up or down?

12 A On my patrol car?

13 Q On your patrol car?

14 A My windows were down.

15 Q Were the Camaro's windows up or down?

16 A I don't recall.

17 Q Okay. How many people were in the car, the Camaro?

18 A Just one in the Camaro at that time, the driver.

19 Q Did the driver look at you?

20 A The driver made eye contact with him. I made eye
21 contact with the driver.

22 Q How long were you positioned right there?

23 A Just a few seconds.

24 Q Okay. How far away were you from the driver? Would
25 you say as far away as you and I are?

1 A Approximately two feet.

2 Q Okay. What did the driver look like?

3 A The driver looked like Aaron Collier.

4 Q All right. Did you have any trouble identifying the
5 driver?

6 A No, I immediately recognized him as Aaron Collier.
7 I had gone from this position, looking at two pictures,
8 immediately this position, made eye contact with the
9 driver. And I can tell you without a doubt it was Aaron
10 Collier.

11 Q Okay. What did you do after that?

12 A Actually yelled out the window to cut the car off.

13 THE COURT: Hey, I'm going to stop y'all for two
14 seconds. The court reporter is just having a difficult
15 time hearing y'all and taking everything down. So I'm
16 going to ask you to do two things, speak a little bit
17 more slowly and a little bit more clearly.

18 MS. MAJOR: Sure.

19 THE COURT: All right.

20 BY MS. MAJOR:

21 Q Okay. Tell us again, what did you do after you
22 positioned yourself next to the Camaro?

23 A I come window to window with the car. Saw it was
24 Aaron Collier.

25 MR. STEELE: That's been asked and answered. That

1 will be the third time and I would object.

2 THE COURT: Okay. I'll overrule at this point. You
3 may proceed.

4 THE WITNESS: Saw that it was Aaron Collier driving
5 the car, at which time I yelled out the window to cut the
6 car off.

7 BY MS. MAJOR:

8 Q Did he ever indicate -- or what did he do after
9 that?

10 A He broke contact, eye contact with me, looked
11 forward and began to pull onto McKelvey.

12 Q Did he turn right or left?

13 A He turned right on McKelvey, driving this direction.

14 Q Okay. What did you do after he turned right?

15 A I was again in my lane of travel, angled slightly
16 into the oncoming lane slightly. I turned around by
17 using the shoulder and I began to follow the vehicle as
18 it moved down McKelvey Road.

19 Q Were your lights activated at this point?

20 A I initially, just as the car began to pull away I
21 turned my blue lights on. As I came behind the vehicle
22 the blue lights were on. And then a short time later I
23 activated the siren.

24 Q Okay. What did the driver of the Camaro do
25 after you activated ---

1 A As he -- as he pulled onto McKelvey away from me, he
2 continued to gain speed, and it was obvious at that point
3 that the car was not going to stop, was not going to
4 yield to my blue lights, was not going to yield to my
5 blue lights and siren. As we began traveling down
6 McKelvey there was oncoming traffic, to include a very
7 large dump truck of some sort. It was obvious the car
8 was attempting to evade me, actually pulled into the
9 opposite lane of traffic to pass a car in front of him,
10 almost causing a collision with the dump truck. At that
11 point I decided that his immediate apprehension was not
12 worth the safety of the public right there. Cut my blue
13 lights, backed down, he continued to speed away from me
14 on McKelvey road out of my site.

15 Q Did he ever indicate that he was going to pull over?

16 A No.

17 Q Did he ever turn on a turn signal?

18 A No.

19 Q Did he ever indicate that he was pulling off to the
20 side of the road in any manner?

21 A No.

22 Q Were there other drivers on the road?

23 A There was. And by this time my vehicle camera had
24 activated. And they were -- like I said, there was a car
25 in front of the car, the red Camaro, and also a dump

1 truck coming in the opposite direction that he had
2 passed.

3 Q So is this a public road?

4 A It is a public road.

5 Q Okay. All right. Thank you. Have a seat back on
6 the stand, please. Deputy McBee, do you recognize
7 State's Exhibit 2?

8 A I do.

9 Q What is it?

10 A This is a DVD copy that was made from the original
11 tape that I gave to the solicitor's office.

12 Q How do you recognize that?

13 A It has my initials on it.

14 Q Okay. Does it fairly and accurately depict the
15 events of November 11, 2008?

16 A It does.

17 Q And have there been any changes, or modifications to
18 it?

19 A No, this was taken from my in-car camera.

20 MS. MAJOR: Okay. At this time the State moves to
21 introduce Exhibit 2 into evidence and requests permission
22 to publish it to the jury.

23 THE COURT: Any objections?

24 MR. STEELE: Well, I can't really respond until I
25 see it, Your Honor.

1 THE COURT: All right.

2 MR. STEELE: They can play it.

3 THE COURT: All right. Do you want to play it
4 in-camera, sir?

5 MR. STEELE: Sir?

6 THE COURT: Do you want to play it in-camera?

7 MR. STEELE: Yes, sir.

8 THE COURT: All right. Ladies and gentlemen, I'm
9 going to ask you to please retire to your jury room.
10 Please do not discuss the case.

11 (The jury exited the courtroom at 3:23 p.m.)

12 MS. BENTLEY: Your Honor, just so the Court is
13 aware. This was provided in discovery.

14 MR. STEELE: That's true. I've looked at, but not
15 today. I don't know what they're going to play.

16 (A discussion was held off the record.)

17 (The video tape was played.)

18 THE COURT: All right. Is that it? All right. Any
19 objections, Mr. Steele?

20 MR. STEELE: No, sir.

21 THE COURT: All right. Good enough. Bring the jury
22 back in.

23 THE BAILIFF: Yes, sir.

24 (The jury entered the courtroom at 3:27 p.m.)

25 THE COURT: All right. Ms. Major, you may proceed.

1 (The video was played.)

2 (State's Exhibit Number 2 was filed.)

3 BY MS. MAJOR:

4 Q Deputy McBee, why did you discontinue the pursuit?

5 MR. STEELE: That was asked and answered, I know
6 that.

7 THE COURT: I understand. Overruled. You may
8 continue.

9 BY MS MAJOR:

10 Q Is the person that you saw driving the Camaro
11 present in this courtroom today?

12 A He is.

13 Q Please point him out.

14 A That's Aaron Collier.

15 Q And is there any doubt in your mind that Aaron
16 Collier was driving the red Camaro?

17 A No, there was no doubt.

18 MS. MAJOR: No further questions.

19 THE COURT: All right. Mr. Steele.

20 MR. STEELE: May it please the Court?

21 CROSS-EXAMINATION

22 By MR. STEELE:

23 Q Deputy McBee, is -- is this the picture you were
24 shown that day, sir, State's Exhibit 9 I believe it is?

25 A That's correct.

1 Q Now, did you get it in a hard copy or did it come
2 over some sort of screen?

3 A That I got as a hard copy. It was the second
4 picture that was digital.

5 Q And did you -- did you keep that picture?

6 A I did not.

7 Q I'm going to ask you to read right there, what that
8 says, issue date. What does that say, sir?

9 A 11/22/2010, and that's referring to the driver's
10 license not the picture.

11 Q And the date that you stopped him out there?

12 A It's in '08, November of '08.

13 Q November 11, '08?

14 A That's correct.

15 Q Does that sound right?

16 A That's correct.

17 Q And this picture wasn't issued until 7/11/22, 2010?

18 A I think you're mistaking that. That actually was
19 speaking to the driver's license.

20 Q Where does it say that, sir?

21 A When it -- when you get this information on the DMV
22 it's not talking about the picture. They keep the same
23 pictures. It's speaking to when the driver's license was
24 reissued as far as the correct number.

25 Q So if this picture wasn't issued until 11/22/2010,

1 how did you have it on ---

2 A That's not what I said.

3 MS. MAJOR: Objection.

4 MR. STEELE: Well, I can't finish my ---

5 THE COURT: Overruled. Overruled. You may
6 continue.

7 MR. STEELE: He starts talking and she starts
8 objecting.

9 BY MR. STEELE:

10 Q My question is, if this picture was issued like it
11 says here on 11/22/2010, how did you have it on
12 11/11/2008?

13 A Counsel, I've answered that twice. That is not
14 speaking to the picture. When you have your driver's
15 license number reissued it re-dates it.

16 Q Where does it say that on there?

17 A It's standard practice with the DMV.

18 Q Doesn't say that, does it?

19 A It does not.

20 Q It says issue date, 11/22/2010, is that ---

21 A For the DL, yeah.

22 Q Where did it say that it's for the DL?

23 A Because it's standard practice, sir.

24 Q It doesn't say that, does it?

25 A It's standard practice.

1 Q Now, the -- you say you discontinued the pursuit
2 because you didn't want to hurt anybody, is that right?

3 A No, I didn't want Aaron Collier to hurt anybody.

4 Q And in fact, there were no other cars on the road
5 other than one dump truck and one car in front of that
6 red Camaro?

7 A That's a misnomer, you said there were no other
8 cars, but there were two other cars.

9 MR. STEELE: Why is he arguing with me, Your Honor?
10 And I would object to that. I would object to the
11 argumentative nature of his answer.

12 THE COURT: I will tell you this, I don't get
13 between attorneys and witnesses. You may ask the
14 questions and you may answer the question. The jury will
15 hear what is said by both, and they will draw whatever
16 inference is appropriate from that.

17 BY MR. STEELE:

18 Q The -- there only two other cars on the road, is
19 that right?

20 A There were two other cars, that's correct.

21 Q One was a truck, I believe?

22 A Yes, sir.

23 Q And your testimony before we saw the film was that
24 he almost ran the truck off the road?

25 A That's correct.

1 Q Let me finish.

2 A I'm sorry. I thought you were done asking. I
3 apologize.

4 Q I'm not done yet. Having seen the tape, you've seen
5 it of course?

6 A Absolutely.

7 Q And you were in the vehicle that made it?

8 A Um-hm.

9 Q Why did you say it almost ran the truck off the
10 road?

11 A Because the truck was actually in the grass on the
12 side of the road.

13 Q But the vehicle, whoever was driving that red Camaro
14 had already gotten back over in their lane, had there not
15 (sic)?

16 A Aaron Collier drove the vehicle and the dump truck
17 saw it and to avoid any collision he moved into the
18 grass.

19 Q And when you discontinued the pursuit there were no
20 other cars in sight, were there?

21 A It's policy, sir.

22 MR. STEELE: Your Honor, could I have an answer?

23 THE COURT: If in fact the officer is evading the
24 question, which I take no position on, then the jury
25 hears that answer. I don't come between attorneys and

1 witnesses.

2 BY MR. STEELE:

3 Q When you discontinued surveillance -- excuse me,
4 discontinued pursuit, there were no other cars on the
5 road, were there?

6 A I had him. I couldn't tell you. I have no idea.

7 Q Sir?

8 A I have no idea what was ahead of him.

9 Q I'm just talking about what was in the movie.

10 A I've answered, sir. There were two cars that he
11 almost ran off the road.

12 MR. STEELE: All right. Let's play it again, Your
13 Honor.

14 THE COURT: Certainly.

15 MR. STEELE: Could the witness come down here, Your
16 Honor?

17 THE COURT: Certainly. You may come down.

18 (The video was played.)

19 BY MR. STEELE:

20 Q I'm not asking you anything.

21 A I thought you were. I'm sorry.

22 Q Let's stop it there. Is this approximately -- is
23 that at the end there, is that approximately where you
24 discontinued pursuit?

25 A -- That's correct.

1 Q Were there any other cars on the side?

2 A Between he and I, no.

3 Q Or anywhere else?

4 A I don't know what's in front of him, sir.

5 Q But you didn't see any, did you?

6 A I don't know what's in front of him.

7 Q Did you see any other cars?

8 A I don't know what's in front of him.

9 Q All right. Let me make it clear. I'm not asking
10 you whether you know what's in front of him or not.

11 A Sure you are.

12 Q I'm not asking you that. Sir?

13 A Yes, you are. I don't know what's in front of him.
14 I can't answer that.

15 Q I'm asking you, did you see any other cars?

16 A I don't know what's in front of him, sir.

17 MR. STEELE: That's all I have of this witness, Your
18 Honor.

19 THE COURT: Thank you, sir.

20 MS. BENTLEY: Brief redirect, Your Honor.

21 THE COURT: All right.

22 REDIRECT-EXAMINATION

23 BY MS. BENTLEY:

24 Q Deputy McBee, you said you discontinued the stop
25 why?

1 A Because there were numerous vehicles in that area,
2 to include the truck that had to run off the road on the
3 right into the grass to avoid a collision.

4 Q And what is the sheriff's office policy regarding
5 that?

6 A The policy, our pursuit policy regarding any vehicle
7 pursuit is if the need for apprehension becomes
8 outweighed by personal safety of the public we have to
9 discontinue it.

10 Q And I know there was a little bit of contention
11 between the questions. On the last part of the video,
12 could you see any cars between yourself and that red
13 Camaro?

14 A No.

15 Q Do you have x-ray vision?

16 A No.

17 Q Could you see over the hill?

18 A No.

19 Q Okay. I'm showing you again what's been marked as
20 State's Exhibit 9. Could you please read the top line of
21 that?

22 A Sure. It says DL number, which means driver's
23 license number.

24 Q Okay. And what's the line below it?

25 A Issue date.

1 Q And what is that date?

2 A The issue date of the driver's license number is
3 1/12/2010.

4 Q And what is today's date?

5 A Today is 11/8 of 2010.

6 Q So that is the future?

7 A That's correct.

8 Q Is this the picture that you were looking at on
9 November 11, 2008?

10 A That's correct.

11 MS. BENTLEY: Okay.. No further questions.

12 THE COURT: Any recross, Mr. Steele?

13 MR. STEELE: No, Your Honor.

14 THE COURT: All right. Thank you, Officer. You may
15 step down. Thank you for being here.

16 MS. BENTLEY: Your Honor, Deputy McBee is on duty
17 today, and is needed in the field with his K-9, can we
18 excuse him?

19 THE COURT: Any objection, Mr. Steele?

20 MR. STEELE: No, sir.

21 THE COURT: All right. Yes, sir, you're excused.
22 Thank you. All right. You may call your next witness,
23 ma'am.

24 MS. BENTLEY: The State calls Investigator John
25 Garrett to the stand.

1 THE CLERK: Sir, if you'd please come forward.
2 Place your left hand on the Bible, raise your right hand.

3 JONATHAN GARRETT

4 Having been first duly sworn, testified as follows:

5 THE CLERK: Thank you. Please be seated. State
6 your full name for the record.

7 THE WITNESS: Jonathan Garrett.

8 DIRECT EXAMINATION

9 BY MS. BENTLEY:

10 Q Investigator Garrett, where are you employed?

11 A Greenville County Sheriff's Office.

12 Q In what capacity?

13 A I'm a narcotics investigator.

14 Q And how long have you been with the sheriff's
15 office?

16 A Since 2001.

17 Q And how long have you been an investigator?

18 A Since 2002.

19 Q Okay. And how -- what were -- were you working on
20 November 11, 2008?

21 A I was.

22 Q What were you doing that day?

23 A I was in narcotics investigation, but we were
24 attempting to serve a warrant on Aaron Collier.

25 Q Okay. And where did you look for him that day?

1 Where was the first place you looked?

2 A Initially 525 Scuffle Town Road, at the residence of
3 Chris Howard.

4 Q Okay. Did you find him that day?

5 A Did not, not there.

6 Q Not there. Did you find out if he had previously
7 been there?

8 A He had just recently been evicted from that location
9 and we received information that he was in the area of
10 Cedar Falls Road in southern Greenville County.

11 Q And so did you respond to Cedar Falls Road?

12 A We did.

13 Q Approximately what time was that?

14 A It was probably 11 o'clock, around noon.

15 Q Okay. And how soon after -- at what time did you
16 get that information that he might be there?

17 A Probably 30, 40 minutes before we went to that
18 location.

19 Q Okay. And what information did you have generally
20 that might have helped you locate Mr. Collier?

21 A The information I received from a source was he was
22 driving a red Camaro and he was staying with someone at a
23 residence ---

24 MR. STEELE: All that's hearsay, Your Honor, and I
25 would object.

1 THE COURT: All right. I'll sustain that objection.

2 BY MS. BENTLEY:

3 Q Okay. So you received information that he was
4 around Cedar Falls Road?

5 A That's correct.

6 MR. STEELE: That's hearsay also, and also leading,
7 and I would object.

8 THE COURT: All right. I will overrule that
9 objection. You may continue.

10 MS. BENTLEY: It's just for purpose of why he ---

11 THE COURT: I understand.

12 BY MS. BENTLEY:

13 Q Did you know what Mr. Collier looked like before you
14 arrived at that location?

15 A I did.

16 Q And had you spoken to him in the past?

17 A I have.

18 Q Had you been in close proximity to him in the past?

19 A Approximately two or three feet.

20 Q Okay. And were there any characteristics you
21 remember about Mr. Collier?

22 A His red hair at the time and the features of his
23 face. I road with him in a vehicle for about 20 minutes
24 one time.

25 Q -- Okay. -- And when you arrived at the area of Cedar

1 Falls Road what did you do?

2 A I went to the 400 block to look for Mr. Collier.

3 Q What were you driving?

4 A I was driving an unmarked undercover vehicle, Chevy
5 Blazer.

6 Q Did it have standard police equipment, like lights
7 and sirens?

8 A It did not.

9 Q Okay. And did you observe anything as you were
10 driving down Cedar Falls Road?

11 A I did. Being my vehicle didn't have the standard
12 equipment as most uniform vehicles I had met with other
13 officers, Officer McBee, to get a uniformed officer so
14 if -- in the event we did make contact with Mr. Collier
15 he would know we were police officers. And several other
16 investigators went to a nearby fire station to brief.
17 And I gave them the information on Mr. Collier, a
18 photograph and where I thought he may be.

19 Q Okay. I'm going to show you what's marked as
20 State's Exhibit 9. Is this what you gave individuals
21 that day?

22 A Very similar to it. It's a color photo of him.

23 Q Okay. And you gave them -- was the photo you gave
24 them on November 11th a color photo?

25 A It was.

1 Q Okay. As you were driving down Cedar Falls Road,
2 did you observe anything?

3 A Can I correct that last part?

4 Q Yes.

5 A I know that Investigator -- Deputy McBee had an MDT
6 computer in his car, because I went over to confirm on
7 his computer that he had retrieved earlier. And that one
8 was color, and I don't recall if the one I actually had
9 in my hand was color or black and white.

10 Q Okay. Now, so as you're going down Cedar Falls --
11 pardon me, you said you were at the fire station giving
12 them photos. What happened next?

13 A I drove down Cedar Falls Road, away from McKelvey
14 Road, and about the time I got to the 400 block I
15 encountered a red Camaro driving toward me.

16 Q So what -- were y'all driving the same direction?

17 A No, I was driving toward him. So we were facing
18 each other as I passed him.

19 Q Okay. Could you identify the driver?

20 A Not immediately I did not. I obviously suspected it
21 was Mr. Collier, so I radioed back to the officers that
22 were at the intersection of McKelvey and Cedar Falls
23 standing by the fire department, that I was turning
24 around and following him and to be prepared that the car
25 was approaching that location.

1 Q Okay.

2 A As I got closer he stopped at the intersection and I
3 recognized him.

4 Q Okay. Did you turn around?

5 A I did.

6 Q And were you able to catch up to Mr. Collier?

7 A I was.

8 Q You --

9 A I caught up briefly right before I got to the
10 intersection.

11 Q Were you able to get him to pull over?

12 A No. I notified Investigator -- I mean Deputy McBee
13 that we were approaching that location.

14 Q Okay. So did Deputy McBee apprehend Mr. Collier on
15 November 11th?

16 A We attempted to. When we pulled up, as I was
17 pulling up behind the red Camaro, and Aaron in the car,
18 Deputy McBee activated his blue lights and Mr. Collier
19 turned right and left the location at a high rate of
20 speed up McKelvey road.

21 Q Okay. When did you apprehend Mr. Collier?

22 A It was about a week later, several days later.

23 Q Do you know the date?

24 A Oh, I want to say the first of December, December
25 2nd, around there.

1 Q Okay. And where did you find him?

2 A On Autumn Leaf Drive in Fountain Inn, in the Country
3 Garden Estates subdivision.

4 Q And whose residence was he at? Whose residence was
5 it?

6 A Nadja Foldes.

7 Q And do you know the relationship between Ms. Foldes
8 and Mr. Collier?

9 A Not specifically. I think there was a relationship
10 there.

11 Q Did you observe a red Camaro at that location?

12 A No, I didn't.

13 Q Did you observe any Camaro at that location?

14 A I did. I observed a black Camaro at that location.

15 Q Could you explain to us -- could you explain what
16 that black Camaro looked like?

17 A Well, I had information -- well, I went to
18 investigate him being at that location.

19 Q Okay.

20 A And me and several other officers went there to
21 investigate. And he was observed in the garage area near
22 a black Camaro.

23 Q Near a black Camaro. And could you tell if the
24 black Camaro was -- had always been black?

25 A -- No, it hadn't.

1 Q Please explain what you mean by that?

2 A Well, once we got to the location and discovered Mr.
3 Collier was there, knocked on door. He fled from the
4 garage and ran to the back of the residence, at which
5 time we apprehended him in the back of the house hiding
6 in the shower, where he was arrested. Upon entering the
7 residence, the garage area, we found a recently, in my
8 experience, Camaro that had red on the under parts like
9 the -- under the hood and places like that that had a
10 very non-professional spray paint -- can spray paint
11 black coat to it.

12 Q Do you recognize what's been marked as State's
13 Exhibits 6 through 8, Investigator?

14 A I do.

15 Q How do you recognize them?

16 A These are photographs that I took at Autumn Leaf
17 Drive the night Mr. Collier was arrested.

18 Q Do they fairly and accurately depict the vehicle
19 that you found in Mr. Collier's possession that night?

20 A It does.

21 MS. BENTLEY: Your Honor, at this time we request to
22 submit Exhibits 6 through 9 into evidence and publish
23 them to the jury.

24 THE COURT: Any objection?

25 MR. STEELE: No, sir.

1 THE COURT: Okay. Without objection the same are
2 admitted as State's Exhibits 6 through 8.

3 (State's Exhibit Numbers 6 through 8 were filed.)

4 BY MS. BENTLEY:

5 Q Investigator Garrett, is the man you observed
6 driving on November 11 in this courtroom today?

7 A He is.

8 Q Could you please point him out?

9 A It's Aaron Collier sitting there beside Mr. Steele.

10 MR. BENTLEY: Thank you so much. Please answer any
11 questions Mr. Steele may have.

12 CROSS-EXAMINATION

13 BY MR. STEELE:

14 Q Mr. Garrett, you say he had red hair. Does he have
15 red hair?

16 A Not now. It looks darker.

17 Q All right, sir. Is that vehicle that you put
18 pictures -- that you identified which has been marked as
19 I think it's State's Exhibit 10, 8, 7, 8, 6, 7 and 8.

20 What -- how many cylinders does that vehicle have?

21 A I'm not sure.

22 Q And I'm looking at them now. From the look -- from
23 the photographs there's no indication that it's got red,
24 is there, or can you see?

25 A -- Can I explain? -- Yes, sir. -- We noticed that after we

1 walked around to the front of the hood, and under the
2 hood part of it is red where the over spray of black did
3 not cover it.

4 Q Let me look at that.

5 A On the day that it fled it was very shiny looking, a
6 pretty nice paint job, red, sort of curious ---

7 Q Did y'all -- excuse me. Did y'all take that into
8 evidence?

9 A What?

10 Q This vehicle?

11 A No, sir, we photographed it.

12 Q Okay. Can you tell me when you say you saw Aaron
13 Collier driving, how far were you from him, sir?

14 A About a car length.

15 Q A car length?

16 A Yes, sir.

17 Q And which way was he facing and which way were you
18 facing?

19 A We were both facing in the same direction at that
20 time, and I had saw him through the rearview mirror.

21 Q Okay. Okay. Both facing in the same direction.
22 Does that mean you were in front of him?

23 A No, I was behind him.

24 Q I thought you said you saw him in rearview mirror?

25 A His rearview mirror, looking at me.

1 Q Oh, okay. So your identification is based upon you
2 being behind him?

3 A Yes, sir.

4 Q And looking straight ahead?

5 A That's correct.

6 Q At his rearview mirror?

7 A Um-hm.

8 Q And how far away were you?

9 A A car length.

10 MR. STEELE: One car length. If Your Honor please,
11 that's all I have for Mr. Garrett.

12 THE COURT: Yes, sir. Any redirect?

13 MS. BENTLEY: Nothing, Your Honor.

14 THE COURT: All right. Thank you, sir. Appreciate
15 it. All right. You may call your next witness.

16 MS. BENTLEY: Your Honor, that concludes the State's
17 case.

18 THE COURT: All right. All right. Ladies and
19 gentlemen, I'm going to ask you to retire to your jury
20 room, if you would, very briefly. We may come out and
21 continue taking of some testimony this afternoon, and we
22 may not, but I need to talk to the attorneys and take up
23 some matters of law before we move to that point. So if
24 you would please retire to your jury room. Please don't
25 discuss the case.

1 (The jury exited the courtroom at 3:47 p.m.)

2 THE COURT: All right. Motions?

3 MR. STEELE: Your Honor please, I would move for a
4 directed verdict of not guilty on the grounds that a
5 conscientiously motivated juror could not conclude beyond a
6 reasonable doubt the guilt of Mr. Collier, and that is
7 taking the evidence in the light most favorable to the
8 State.

9 THE COURT: Okay. All right. Ms. Major, Ms.
10 Bentley?

11 MS. BENTLEY: Your Honor, the State presented two
12 officers that made positive identifications of Mr.
13 Collier out of court and in court. Deputy McBee had two
14 photographs of him. They were looking for him
15 specifically. He made his identification independent of
16 what Investigator Garrett said. Investigator Garrett was
17 familiar with the defendant. He had spoke with him
18 before. He had been in close proximity with him before.
19 He had passed him in the opposite directions and then saw
20 his face clearly in a rearview mirror. And he also
21 identified the defendant.

22 Additionally, the potential destruction of evidence
23 is also -- can consider as an indication of guilt in this
24 case. We've met the burdens regarding the driving under
25 suspension and the reckless driving, and we believe we've

1 given the jury enough to make an identification of the
2 defendant for the failure to stop.

3 THE COURT: Okay. All right. Having heard the
4 testimony in this case, obviously the standard is
5 determining whether there is any evidence upon which the
6 jury could find that the State has met its burden of
7 proof, and based upon that standard I believe there has
8 been evidence presented into the record and I would
9 respectfully deny the motion for a directed verdict.

10 Anything further, Ms. Steele?

11 MR. STEELE: No, Your Honor.

12 THE COURT: Okay. Mr. Steele, do you intend to put
13 any evidence into the record?

14 MR. STEELE: Could I have about 10 seconds on that?

15 THE COURT: Yes, sir, absolutely, as much time as
16 you need.

17 (A discussion was held off the record.)

18 MR. STEELE: Yes, sir, we do. We plan to proffer
19 evidence.

20 THE COURT: Okay. Good enough. All right. And
21 does your client intend to testify?

22 MR. STEELE: Yes, sir, he does.

23 THE COURT: All right. Good enough. Do you need me
24 to ask him any questions in allocution regarding his
25 rights or are you comfortable?

1 MR. STEELE: Well, if Your Honor would conduct the
2 normal voir dire on that issue I would be most grateful.

3 Mr. Collier, would you stand up. He's going to ask
4 if you understand your rights to testify or not to
5 testify.

6 THE COURT: Mr. Collier, just for purposes of this,
7 I want you to raise your right hand.

8 AARON COLLIER

9 Having been first duly sworn, testified as follows:

10 THE COURT: And you understand, sir, you have a
11 right to remain silent, guaranteed under the
12 Constitution?

13 MR. COLLIER: Yes, sir, I do.

14 THE COURT: You understand? And you understand that
15 you have a right against self-incrimination. You
16 understand that, sir?

17 MR. COLLIER: Yes, sir, I do.

18 THE COURT: And you recognize that you do not have
19 to testify in this trial, that regardless of whether you
20 testify or not the burden is on the State to prove you
21 guilty beyond a reasonable doubt and to prove each and
22 every element of the offense beyond a reasonable doubt.
23 If you elect not to testify understand that that cannot
24 be held against you, and I will specifically charge the
25 jury that your failure to testify cannot only not be held

1 against you but it cannot even be considered in the jury
2 room during those deliberations. Do you understand that?

3 MR. COLLIER: Yes, sir, I do.

4 THE COURT: You also understand that if you elect to
5 testify then you would be subject to cross-examination,
6 meaning that the State could ask you questions. After
7 having been questioned on direct examination by Mr.
8 Steele, either Ms. Major or Ms. Bentley would have the
9 opportunity to cross-examine you. And in that they could
10 ask you questions potentially about portions at least of
11 any prior record that you may have. Do you understand
12 that, sir?

13 MR. COLLIER: Yes, sir I do.

14 THE COURT: Okay. And knowing all of that, sir, do
15 you wish to waive your right to remain silent and take
16 the stand and testify in this matter?

17 MR. COLLIER: Yes, sir, I do.

18 THE COURT: Okay. Do you have any additional
19 questions regarding that matter that you'd like to ask
20 either me or Mr. Steele?

21 MR. COLLIER: No, sir, I do not.

22 THE COURT: Okay. All right. Mr. Steele, anything
23 else?

24 MR. STEELE: No, sir.

25 THE COURT: All right. Thank you. Okay. Then what

1 we'll do, ladies and gentlemen, is take a very brief
2 break, about five minutes, and then we'll come back on
3 the record and you can proffer your evidence, sir.

4 MR. STEELE: Thank you, Your Honor.

5 THE COURT: Thank you very much.

6 MS. BENTLEY: Your Honor, do you want to go over his
7 prior record and -- in any way or just ---

8 THE COURT: I will tell you what, you and Mr. Steele
9 can discuss it during the break and you can determine
10 whether there are objections to the admissibility of any
11 of that prior record.

12 MS. BENTLEY: Okay.

13 THE COURT: I suspect that y'all will probably be
14 able to come to some determination as to what is and what
15 isn't.

16 MR. STEELE: Before we go off the record we have --
17 I am now being -- been made aware of what she's going to
18 proffer in the way of impeachment.

19 THE COURT: Yes, sir.

20 MR. STEELE: And at some point before the jury comes
21 in I'd like to put an objection to them on the record.

22 THE COURT: All right. Well, let's do that when we
23 come back from break.

24 MR. STEELE: All right, sir.

25 (A short recess was taken, after which, the trial

1 continued as follows:)

2 THE COURT: All right. Mr. Steele, I believe you
3 had an objection to the admissibility of portions of your
4 client's prior record?

5 MR. STEELE: Yes, sir. She's going to offer three
6 prior convictions. And I guess I'll let her tell what
7 they are and then I'm going to object to all three of
8 them.

9 THE COURT: Okay.

10 MS. BENTLEY: We have had a possession of meth. with
11 intent to distribute a half mile, Your Honor.

12 THE COURT: What year was the conviction?

13 MS. BENTLEY: 2006.

14 THE COURT: Okay.

15 MS. BENTLEY: 2006, possession of a stolen vehicle.
16 And then we have a '94 aiding escape, but we think that
17 goes to honestly and it shouldn't subject to the 10
18 year ---

19 THE COURT: '94, aiding escape.

20 MS. BENTLEY: Yes, aiding escape from jail.

21 THE COURT: Okay. All right.

22 MR. STEELE: Your Honor, taking them in reverse
23 order. I would object to that aiding escape on two
24 grounds. Number one, that it's remote in time, that
25 would be -- that would be 16 years ago. And number two,

1 on that particular one -- I would submit on all three for
2 this -- for that matter that the prejudice outweighs the
3 probative value and I would ask the Court not to allow
4 them for any purpose including that of impeachment.

5 THE COURT: Okay. All right. Thank you. All
6 right. Let me make sure I've got them right in my head.
7 I've got aiding escape in '94. And then what's the
8 middle one?

9 MR. BENTLEY: There are possession of stolen vehicle
10 and possession of meth. with intent to distribute, half
11 mile, both from 2006.

12 THE COURT: Both in 2006, okay. I'm going to allow
13 the 2006, and I will sustain the objection with respect
14 to the 1994. And that's basically on two grounds, and
15 that is because of remoteness in time but the aid of
16 escape, aid in escape and failure to stop for blue light
17 I think could be too similar to -- too similar in
18 substance at this point. So on those two grounds I'll
19 sustain the objection and allow both of the 2006
20 convictions, disallow '94.

21 MR. STEELE: Yes, Your Honor.

22 THE COURT: All right. Ready for the jury?

23 MR. STEELE: Yes, Your Honor.

24 THE COURT: All right. Bring the jury in.

25 (The jury entered the courtroom at 4:08 p.m.)

1 THE COURT: All right. Mr. Steele, your case, sir.

2 MR. STEELE: Call Rhonda Lynn Price.

3 THE CLERK: Ms. Price, please come forward. Place
4 your left hand on the Bible and raise your right hand.

5 RHONDA PRICE

6 Having been first duly sworn, testified as follows:

7 THE CLERK: Thank you. Please be seated. Please
8 state your full name for the record.

9 THE WITNESS: Rhonda Lynn Price.

10 DIRECT EXAMINATION

11 BY MR. STEELE:

12 Q Where did you live, Ms. Price?

13 A I live at [REDACTED] in Grey Court.

14 Q Talk up so they can hear you now.

15 A Okay. How is that?

16 Q Talk into that microphone, if you will, please.

17 A Is that better?

18 Q Yes, ma'am. I'm going to show State's Exhibit 6,
19 State's Exhibit 7 and State's Exhibit 8 and ask if you
20 can identify what's shown in those photos?

21 A It's a Camaro. A Camaro.

22 Q All right. Have you ever seen that Camaro
23 automobile before?

24 A Yes, I believe it was -- it was at my house.

25 Q All right. All I'm asking you now, have you seen it

1 before?

2 A Yes, sir, I have.

3 Q For a period of time was that automobile at your
4 house?

5 A Yes, sir, it was.

6 Q Direct your attention, if you will, please, ma'am,
7 to the first and second week of November of 2008. That
8 would be almost exactly two years ago and would include
9 November 11, 2008. Do you know where that automobile
10 was?

11 A I'm -- I think it was at my house.

12 Q All right. Tell me when you think it was at your
13 house, Ms. Price?

14 A It was the first or second week of November of 2008,
15 that it was parked in my yard.

16 Q All right. Tell me during the first and second week
17 of November of 2008, how that Camaro came to be parked in
18 your yard?

19 A I don't know how it got there but Nadja and ---

20 Q Tell me who Nadja is?

21 A Nadja, it was Pumpkin's, Aaron's girlfriend at the
22 time.

23 Q All right. When you say Pumpkin you mean Aaron
24 Collier?

25 A Yes, sir.

- 1 Q Does everybody call him Pumpkin?
- 2 A Everybody I know calls him that, yes.
- 3 Q All right. Tell me about Nadja, who is Nadja?
- 4 A Nadja, that was his girlfriend at that time.
- 5 Q What is her last name?
- 6 A Foldes.
- 7 Q F-o-l-s?
- 8 A F-o-l-d-e-s.
- 9 Q Okay. F-o-l-d-e-s?
- 10 A I think that's right.
- 11 Q And when did you first see that Camaro in your yard?
- 12 A That -- in November. I can't be exact on the date.
- 13 Q All right. And how long was it in your yard?
- 14 A For four days.
- 15 Q And do you believe that those four days include
- 16 November 11, 2008?
- 17 A I think so, but I'm not 100 percent sure.
- 18 Q All right. And how did it come to leave your yard?
- 19 A It left on a rollback.
- 20 Q Now, when you say rollback, you're talking about one
- 21 of those things that hauls automobile?
- 22 A Yes, sir, like a wrecker truck.
- 23 Q Did you see it leave?
- 24 A Yes, because it woke me up.
- 25 Q Who was it taking it away?

1 A I don't know who was driving it. I don't know what
2 company it was. I didn't see that.

3 Q Okay. Did -- did that Camaro leave your yard in
4 November of 2008 under its steam or being towed away?

5 A No, it was towed on the rollback.

6 Q Okay. Do you know Aaron Pumpkin Collier?

7 A Yes, sir.

8 Q Tell me how you know him?

9 A I met him through, I think it was Andrea -- not
10 Andrea, Nadja.

11 Q His girlfriend at the time?

12 A Yes.

13 Q Did you have any conversation with Mr. Collier about
14 that vehicle?

15 A Well, he had mentioned to me that he wanted the five
16 speed transmission out of my truck I just got, that he
17 was thinking about getting a Camaro that needed work done
18 to it, and I told him that I just got that truck, that he
19 couldn't have it.

20 Q Was that that vehicle that you just identified from
21 those photos?

22 A Yes, sir.

23 Q What color was that vehicle?

24 A It was black.

25 Q Was it ever red?

1 A No.

2 MR. STELE: Answer any questions the solicitor has
3 for you.

4 THE WITNESS: Yes, sir.

5 CROSS-EXAMINATION

6 BY MS. BENTLEY:

7 Q Hi, Ms. Price.

8 A Hey.

9 Q How you doing today?

10 A Fine. How are you?

11 Q I'm all right. Do you want some water or anything?

12 A No, thank you.

13 Q Now, you said that you saw that black Camaro, right?
14 You recognize it?

15 A Yes.

16 Q And you said that it came to your house?

17 A Yes.

18 Q And when did you say that was?

19 A It was in November, the first or second week of
20 November.

21 Q But you don't know when?

22 A No, I don't know the exact date.

23 Q Now, and you said -- how did it get there?

24 A I don't know how it got there.

25 Q Now, you and I met with Ms. Major last week, didn't

1 we?

2 A Yes, we did.

3 Q And we had some conversations?

4 A Yes.

5 Q And didn't you tell us -- when did we meet, was it
6 Thursday afternoon?

7 A I think so.

8 Q And didn't you tell us that -- that you saw Aaron
9 and Nadja bring it down?

10 A No, I did not.

11 Q You didn't tell me that?

12 A No, I told you that she called me.

13 MR. STEELE: Your Honor, unless she has a witness to
14 impeach this, I would object to this line of questioning.

15 THE COURT: All right.

16 MR. STEELE: She's not a witness. She's not under
17 oath.

18 THE COURT: I understand. You need to be very
19 careful not to make yourself a witness.

20 MS. BENTLEY: Okay.

21 THE COURT: Now, I will overrule. I haven't heard a
22 question that is inadmissible, but I would sustain as to
23 your becoming a witness in this case.

24 MS. BENTLEY: Correct.

25 BY MS. BENTLEY:

1 Q Did you -- did you tell me that Aaron and Nadja
2 arrived at your house late one Tuesday with a black
3 Camaro and a green Ford Explorer?

4 A No.

5 Q Okay.

6 A I told you I arrived at my house and they were at my
7 house.

8 Q And they had ---

9 A And they were in the green Explorer.

10 Q And they brought the black Camaro?

11 A The Camaro was there.

12 Q Had it been there before you got to your house?

13 A No.

14 Q No. Okay. And you don't know the exact date?

15 A No.

16 Q Now -- and you're friends with Mr. Collier, aren't
17 you?

18 A I know him.

19 Q You call him Pumpkin?

20 A When I see him, yes.

21 Q And did you see him after he was arrested for this
22 charge?

23 A Once or twice, yes.

24 Q You ---

25 A Last time I was up at court I did.

1 Q Did you visit him when he was in jail?

2 A No, ma'am.

3 Q You didn't?

4 A Well, maybe, yes, I did the first time. Yes, I did.

5 Q Well, let me just show you the jail records right
6 here. Do you see your name on those?

7 MR. STEELE: Objection, relevance, Your Honor.

8 THE COURT: Overruled.

9 THE WITNESS: Yes.

10 BY MS. BENTLEY:

11 Q And what date do those go through?

12 A Which one?

13 Q That one.

14 A December.

15 Q Of?

16 A '09.

17 Q Does it say 2008 or 2009?

18 A 2009. My name is 2009.

19 Q Okay. And what about -- what are the months on this
20 one?

21 A January, 2009.

22 Q Okay. So you were one of the close friends that he
23 included but came to visit him in jail?

24 A Yeah, I came once, yes, that I know of.

25 Q And today do you know how he came to be in those

1 nice clothes that he's wearing today?

2 MR. STEELE: Your Honor, objection, and this is
3 critical. Might need to take a ---

4 THE COURT: Sustained.

5 BY MS. BENTLEY:

6 Q Okay. So you're friends with Mr. Collier?

7 A Yes.

8 Q Yes. Ms. Price, do you have any prior convictions?

9 A Yes.

10 Q And what are they for?

11 A For drugs.

12 Q What kind of drugs?

13 A Meth.

14 Q And in November were you still using
15 methamphetamine? November, 2008, let me correct myself?

16 A I'm sorry?

17 Q Were you still using meth. in November of 2008?

18 A Yes.

19 Q And how you were feeling the first and second weeks
20 of November, do you remember?

21 A No.

22 Q You don't remember?

23 A No.

24 Q If I told you that you purchased one, two, three,
25 four, five, six, seven, eight, if I told you you

1 purchased eight boxes of Sudafed during the first week
2 and a half of November, would that seem right?

3 A Probably.

4 Q Probably. Were you not feeling well or were you
5 using it for something else?

6 A No.

7 Q No what?

8 A Wasn't feeling well.

9 Q So you needed eight boxes of Sudafed at that time in
10 November?

11 A Yes. I don't ---

12 Q You should not look at him, you should look at me.

13 THE COURT: Yeah, I want y'all to come forward real
14 quick. I want to ask you a very short question.

15 (A bench conference was held.)

16 THE COURT: Ladies and gentlemen, please kindly to
17 return to your jury room. I'll bring you back out very
18 briefly. Please do not discuss the case.

19 (The jury exited the courtroom at 4:15 p.m.)

20 THE COURT: All right. Ms. Price, you are being
21 asked a series of questions.

22 THE WITNESS: Yes, sir.

23 THE COURT: And I don't know whether you want to
24 answer those questions or not, but I do need to make
25 certain advisements to you, and that is you have a right

1 under the Constitution to remain silent. And you have
2 the right against self-incrimination, which means if
3 someone asks you a question and by answering that
4 question you would potentially subject yourself to the
5 some criminal penalty ---

6 THE WITNESS: Um-hm.

7 THE COURT: --- then you have a right to invoke the
8 protections under the Constitution, that is you can plead
9 the Fifth Amendment which I'm sure you've heard on TV and
10 in movies any number of times.

11 THE WITNESS: Yes.

12 THE COURT: And if you are asked questions by any of
13 these attorneys, or by any one in this courtroom and you
14 feel like that by answering that question you would
15 subject yourself to potential criminal penalties you can
16 invoke your right to remain silent. That is you can say
17 I plead the Fifth Amendment, or I invoke my rights under
18 the Fifth Amendment to the Constitution.

19 THE WITNESS: Yes, sir.

20 THE COURT: Do you understand that?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. So having said that are you
23 prepared to go forward?

24 THE WITNESS: Yes, sir, I invoke the Fifth.

25 THE COURT: You can say whatever you want and I'm ---

1 not your attorney, but if you are being asked questions
2 which you're not sure and you want to invoke your Fifth
3 Amendment privileges, then you are welcome to do so.
4 Okay?

5 THE WITNESS: Okay.

6 THE COURT: All right. Good enough. Okay. You can
7 bring the jury back in. Now, before you bring them in
8 let me put this on the record. Ms. Bentley, you asked
9 her questions about the Sudafed, and I believe her
10 response was she wasn't feeling well.

11 MS. BENTLEY: Yes.

12 THE COURT: Okay. Yeah, you're done with that line
13 of questioning. You can move on from there, okay.

14 MS. BENTLEY: Okay. Could I ask her about -- okay.
15 I got it.

16 THE COURT: Yeah, I don't want it -- don't want to
17 go back over the same ground we've already covered.

18 MS. BENTLEY: What about other dates and times?

19 THE COURT: If you lay the appropriate foundation
20 and it's otherwise admissible, subject to appropriate
21 objection from the defense, not going to tell you you
22 can't do it in a vacuum.

23 MS. BENTLEY: Okay.

24 THE COURT: All right.

25 THE BAILIFF: Are you ready now, Your Honor?

1 THE COURT: Yes, sir.

2 (The jury entered the courtroom at 4:17 p.m.)

3 THE COURT: Okay. You may proceed.

4 BY MS. BENTLEY:

5 Q All right. Now, Ms. Price, you told us or you told
6 Mr. Steele a few minutes ago that car, that Camaro, left
7 on a rollback, is that correct?

8 A Yes.

9 Q And is that what you told me last week?

10 A I think so.

11 Q Do you know what time that car was picked up?

12 A It was early.

13 Q Early in the morning?

14 A Um-hm, it woke me up.

15 Q Because it woke you up?

16 A Um-hm.

17 Q Did it wake up -- do you have any grandchildren?

18 A Yes.

19 Q How many?

20 A One.

21 Q How old is he?

22 A That lives with me, Michael.

23 Q Did it wake him up too?

24 A No, it didn't wake him up, woke me up. He sleeps in
25 the back bedroom.

1 Q So you're saying that you actually saw that car go
2 back on the rollback?

3 A I heard the rollback.

4 Q You heard the rollback?

5 A Got up, peaked out the window, seen him picking it
6 up.

7 Q Who did you see picking it up?

8 A I don't know it was. I didn't go out there. I just
9 knew they were coming to get it.

10 Q Was it a company car?

11 A I didn't see a company name on it.

12 Q So you just saw some random person taking a car out
13 of your yard and you didn't question it?

14 A I seen a rollback, yes, but they told me they were
15 coming to get it, so I didn't ---

16 Q They, who is they?

17 A Aaron and Nadja.

18 Q So they were getting the car?

19 A Um-hm.

20 Q They were getting it back? And do you remember when
21 that date was?

22 A No, it was four days later from when they dropped it
23 off there.

24 Q Four days. And you don't what date they dropped it
25 of?

1 A No.

2 Q And you weren't feeling well at that time, right?

3 A Yes.

4 Q Okay. Now, you said that you were using
5 methamphetamine in 2006, you were convicted of it,
6 correct?

7 A Yes.

8 Q And were you still using it in 2008 when this was
9 happening?

10 A Yes.

11 Q When did you stop using it? You still using it
12 today?

13 A No.

14 Q Did you stop a couple months ago?

15 A No, it's been about nine months ago.

16 Q About nine months. Where did you get it?

17 A I'd like to plead the Fifth Amendment.

18 MS. BENTLEY: All right. No further questions.

19 THE COURT: All right. Mr. Steele, any redirect,
20 sir?

21 MR. STEELE: No, sir.

22 THE COURT: All right. Thank you for being here,
23 ma'am. You may step down.

24 MR. STEELE: Call Aaron Pumpkin Collier.

25 THE CLERK: Mr. Collier, please place your left hand

1 on the Bible and raise your right hand.

2 AARON COLLIER

3 Having been first duly sworn, testified as follows:

4 THE CLERK: Thank you. Please be seated.

5 DIRECT EXAMINATION

6 BY MR. STEELE:

7 Q What is your name, please, sir?

8 A Aaron Winford Collier.

9 Q What name do you go by most of the time?

10 A My family and friends call me Pumpkin.

11 Q Okay. Mr. Collier, if you will, sir, direct your
12 attention to November 11, 2008. Can you tell me where
13 you were?

14 A I was in Gainesville, Florida.

15 Q Can you tell me what you were doing in Gainesville,
16 Florida?

17 A I was visiting my sick Aunt Rose.

18 Q When did you go to Florida, sir?

19 A It was it -- I believe it about seven or eight
20 o'clock on the 10th, the day before.

21 Q The 10th of what?

22 A November, 2008.

23 Q When did you return from Florida?

24 A I was gone for about five days.

25 Q And so you would have returned around the 15th?

1 A Yes, something like that, 15th, something like that.

2 Q Of November?

3 A Yes, sir.

4 Q 2008?

5 A Yes, sir.

6 Q Was that you driving that car that tried to get away
7 from those you law enforcement officers?

8 A No, sir, it was not.

9 Q And on November the 11th, 2008, did you drive under
10 suspension?

11 A No, I did not.

12 Q Did you drive recklessly?

13 A No, sir, I did not.

14 Q Did you try to out run law enforcement?

15 A No, sir, I did not.

16 Q Now, that vehicle, that Camaro, the one that's the
17 subject of these photos that's been called State's
18 Exhibit 6, 7 and 8, are you familiar with that vehicle?

19 A Yes, sir, I am.

20 Q And what color is that vehicle?

21 A It's black.

22 Q Was that vehicle any other color other than black?

23 A Not to my knowledge.

24 Q And was this vehicle for a period of time at the
25 lady who just testified's house?

1 A Yes, sir, it was.

2 Q Do you know how it got there?

3 A Yes, sir, I do.

4 Q How did it get there?

5 A I had -- a friend of mine was selling it. It had a
6 bad transmission and I was going out of town and so I
7 couldn't take it home. I didn't want nothing to happen
8 to it. I asked her could we leave it over there.

9 Q Asked who now?

10 A I asked Rhonda, could we leave it at her house
11 and ---

12 Q You're talking about Rhonda Price?

13 A Yes, sir, I am.

14 Q And what did -- as a result of what she said, what
15 did you do with that vehicle?

16 A I took it to her house. I did not take her house.
17 Shannon Blanton drove it her house with a rollback.
18 Actually that's wrong. It got picked up by a rollback.
19 It got taken over there on a trailer. Backed into her
20 yard. Me and Nadja came in probably 15 minutes after it
21 got there. Shannon and them had already left. Then Ms.
22 Price pulled in.

23 Q All right. Was that -- would that vehicle run under
24 its own power?

25 A No, sir, it would not.

1 Q Why? What was wrong with it?

2 A It was a six cylinder, and an automatic, and the
3 second gear was gone in the transmission.

4 Q Did you ever see that black Camaro run under its own
5 power?

6 A No, sir, I did not.

7 Q How was it finally removed from Ms. Price's place,
8 if you know?

9 A On a rollback.

10 Q And who was responsible for that?

11 A A friend of mine, Mr. Shannon Blanton.

12 Q All right.

13 A He was going -- he brought it actually.

14 Q Now, did you -- did you ever -- do you know anything
15 about a red Camaro?

16 A No, sir, I do not.

17 Q Did you drive a red Camaro?

18 A No, sir, I do not drive.

19 Q Were you in a red Camaro that tried to out run law
20 enforcement?

21 A No, sir.

22 Q Are you guilty of these offenses?

23 A No, sir, I am not.

24 MR. STEELE: Answer any questions the solicitor has
25 for you.

1 THE WITNESS: Yes, sir.

2 CROSS-EXAMINATION

3 BY MS. BENTLEY:

4 Q Mr. Collier, how you doing today?

5 A I'm fine. How are you?

6 Q I'm all right. I got a couple questions for you.

7 A Yes, ma'am.

8 Q First of all, you said you don't drive, is that
9 correct?

10 A Yes, ma'am, not no more.

11 Q When did you stop driving?

12 A It's been a while.

13 Q Define a while?

14 A A couple years.

15 Q Like how many?

16 MR. STEELE: I would object to that, Your Honor.
17 That's going into an area that is irrelevant to these
18 proceedings.

19 MS. BENTLEY: It's been a couple years since this
20 happened.

21 MR. STEELE: Wait a minute.

22 MS. BENTLEY: Yeah. Come forward. Come forward if
23 you would, please.

24 (A bench conference was held.)

25 THE COURT: Okay. For purposes of the record the

1 objection was sustained. You may proceed.

2 BY MS. BENTLEY:

3 Q So Mr. Collier, tell us again, explain how that
4 black Camaro got to Mr. Price's house? You first said
5 that you brought it down there, didn't you?

6 A I was in a vehicle that was behind that vehicle.
7 That vehicle was on a trailer.

8 Q Okay. What kind of vehicle was it that you were
9 riding in?

10 A The -- me? I was in the Expedition, or an Explorer.
11 It was a Ford. It was a SUV Ford.

12 Q Okay. And whose was it?

13 A Nadja Foldes.

14 Q And she was your girlfriend at the time?

15 A She was an acquaintance of mine.

16 Q Okay. Were you living with her on December 2nd?

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

18 Q Were you staying with her?

19 A No, ma'am.

20 Q But you were at her house on December 2nd?

21 A Yeah, she's a friend of mine.

22 Q Okay. How did you get there?

23 A Well, by her. I rode with her.

24 Q Okay. Was she arrested on December 2nd?

25 A Yes, ma'am, I believe she was.

1 Q Do you know what for?

2 MS. BENTLEY: Objection, Your Honor. Whether she
3 was arrested or not is clearly irrelevant.

4 THE COURT: Sustained.

5 BY MS. BENTLEY:

6 Q All right. Mr. Collier, you know Investigator
7 Garrett, don't you?

8 A I do now, yes.

9 Q And you've spoken to him in the past?

10 A He arrested me.

11 Q In the past?

12 A Yes, ma'am, he arrested me on these charges.

13 Q Okay. Did he arrest you for anything else in the
14 past?

15 MR. STEELE: Objection, Your Honor. That's not how
16 we do this and I would object to any asking about
17 previous arrests.

18 THE COURT: All right. If it's related to those --
19 those convictions for impeachment purposes that we had
20 discussed previously then I overrule.

21 MR. STEELE: Well, I was just thinking she could
22 just ask him were you convicted and that sort of be the
23 inquiry.

24 THE COURT: I understand. I understand. I think
25 there's probably more than one way to skin that cat.

1 MR. STEELE: Yes, Your Honor.

2 THE COURT: All right. I'll let you get around to
3 it. Go ahead.

4 BY MS. BENTLEY:

5 Q Did Investigator Garrett arrest you for possessing a
6 stolen vehicle?

7 A Yes, ma'am, he did.

8 Q And you were convicted of that offense, correct?

9 A Yes, ma'am.

10 Q And you spent about 20 minutes in the car with him
11 that day?

12 A No, ma'am, actually I was not in the car with him at
13 all. I was placed in a vehicle with two other officers.
14 I wasn't driving that day either, I was standing beside
15 the vehicle.

16 Q Oh, okay. But you pled guilty to possessing a
17 stolen vehicle?

18 A Yes, ma'am.

19 Q All right. And you yourself have had some problems
20 with drugs in the past, haven't you?

21 A Yes, ma'am.

22 Q And in 2006, were you found guilty of possession of
23 methamphetamine with intent to distribute?

24 A Yes, ma'am, I was.

25 Q Did you still use any kind of illegal drug?

1 A I had -- I was in possession of it, not -- didn't
2 say I used it.

3 MR. STEELE: Your Honor, that's -- whether he still
4 uses or not is clearly irrelevant and I would object.

5 THE COURT: I sustain.

6 BY MS. BENTLEY:

7 Q So you had just possessed it on ---

8 A Yes, that's what it says.

9 Q And you possessed it with intent to distribute it to
10 others, correct?

11 A Obviously, if that's what it says.

12 MS. BENTLEY: Okay. I have no further questions.

13 MR. STEELE: Redirect, Your Honor?

14 THE COURT: Yes, sir.

15 REDIRECT-EXAMINATION

16 BY MR. STEELE:

17 Q Mr. Collier, those three offenses that you were just
18 asked about, did you plead guilty to those offenses?

19 A Yes, sir, I did. I was guilty.

20 Q When you are guilty do you plead guilty?

21 A Yes, sir, I'm a lot of things but a liar I'm not.

22 MR. STEELE: All right. If Your Honor, please,
23 that's all I would offer on redirect.

24 THE COURT: All right, good enough. All right.
25 Anything in recross limited to the scope of redirect?

1 MS. BENTLEY: No, thank you.

2 THE COURT: Thank you, Mr. Collier. I appreciate
3 it. You may step down.

4 MR. STEELE: Could I have just a moment when he
5 resumes counsel table, Your Honor?

6 THE COURT: Yes, sir. Yes, sir.

7 MR. STEELE: If Your Honor, please? Mr. Collier
8 rests.

9 THE COURT: All right, sir. Anything in reply?

10 MS. BENTLEY: Nothing, Your Honor.

11 THE COURT: Okay. All right. Ladies and gentlemen,
12 we will resume the trial of this case tomorrow morning.
13 If you would please be here at or before nine o'clock and
14 we'll proceed to closing arguments and a charge on the
15 law.

16 Please, while you adjourn this evening, don't
17 discuss the case with your friends, your relatives,
18 spouse, significant others. You'll have time to do that
19 after we finish up tomorrow, then I'll advise you you can
20 discuss it with anybody you want to. But for the time
21 being please don't do it. I would also ask you this,
22 don't go out and attempt to do any self help on this
23 trial. I don't know that this has gotten any media
24 attention at all, and I don't know that you could find
25 any information on it at the library, on the internet, or

1 any other source. But please don't attempt to do so,
2 because the only thing that's appropriate for your
3 consideration is what you hear in this courtroom that's
4 appropriately admitted on the stand.

5 So having said that, y'all have a great evening. I
6 look forward to seeing you again tomorrow.

7 (The jury exited the courtroom at 4:31 p.m.)

8 THE COURT: All right. Motions?

9 MR. STEELE: I'd make that same motion that I made
10 at the conclusion of the State's case, Your Honor. I'd
11 renew it at this time on the same grounds.

12 THE COURT: Yes, sir. Thank you very much. And
13 I'll respectfully deny the same. Any specific requests
14 for charge that you have now that you'd like to give me?

15 MS. BENTLEY: I do.

16 MR. STEELE: Your Honor, we would ask for you to
17 charge in words or substance the usual reasonable doubt.
18 And also you said you were going to give a curative
19 instruction I believe?

20 THE COURT: Yes, sir.

21 MR. STEELE: On -- and I'd respectfully ask for
22 that.

23 THE COURT: Okay. And I will give my standard
24 reasonable doubt charge. I do not had -- I ordinarily do
25 not charge that type of doubt which causes a reasonable

1 personal to hesitate to act. I usually charge the
2 reasonable certainty and firmly convinced language.

3 MR. STEELE: Reasonable certainty and firmly
4 convinced?

5 THE COURT: Yes, sir. Yes, sir. And I'll be
6 happy -- if you want to come to my chambers before nine
7 tomorrow and get a copy of it, you're welcome to. But I
8 believe the State was -- I mean, excuse me, the case is
9 the Nebraska case. In any event -- I may be wrong about
10 that. Anyway, the -- and with respect to the curative
11 charge, I'll certainly give that as well.

12 MR. STEELE: Yes, Your Honor.

13 THE COURT: All right. Ms. Bentley?

14 MS. BENTLEY: Some driving language and
15 circumstantial evidence, Your Honor. Here's another copy
16 if you need it.

17 THE COURT: All right.

18 MR. STEELE: Your Honor, I've read these and I don't
19 have any objection to them as such. I would submit that
20 these are usually included in Your Honor's specific
21 instruction as these statutes anyway, I would think.

22 THE COURT: Yeah. Are these the same? Are these
23 two the same, Ms. Bentley?

24 MS. BENTLEY: Those are two of the same, Your Honor.

25 THE COURT: Okay. All right.

1 MR. STEELE: You said reasonable certainty, what was
2 the phrase Your Honor used?

3 THE COURT: Firmly convinced.

4 MR. STEELE: Yes, sir.

5 THE COURT: If you are firmly convinced of the
6 defendant's guilt. Okay. I'll take a look at these.
7 And I'll let you know tomorrow morning before we argue
8 what portions of it I'll charge. With respect to request
9 number one, yeah, that's standard. I give that charge in
10 any event. And in two and three, I know those are
11 specific to this case, and I'll just look and see if it's
12 substantively already covered in the charge that I --
13 that I will give.

14 Now, with -- now, Mr. Steele, if I'm hearing you
15 correctly you don't have an objection to request for
16 charge number two and three.

17 MR. STEELE: No, sir, I don't.

18 THE COURT: Okay.

19 MR. STEELE: Did Your Honor say nine o'clock?

20 THE COURT: Yes, sir.

21 MR. STEELE: Okay.

22 THE COURT: Yeah. Does that suit?

23 MR. STEELE: Yes, sir, it does.

24 THE COURT: All right, good enough. I'll see you
25 then.

1 MR. STEELE: Thank you, Your Honor.

2 (Court adjourned for the evening.)

3 (The following proceedings were held on November 9,
4 2010, as follows:)

5 THE COURT: All right. Anything we need to put on
6 the record before we bring the jury in?

7 MR. STEELE: Nothing from Mr. Collier, Your Honor.

8 MS. BENTLEY: Nothing from the State, Your Honor.

9 THE COURT: Okay. Good enough. All right.

10 MR. STEELE: They're not going to -- I'm just going
11 to go into my arguments whenever Your Honor tells me to.
12 I'm told that the State is not going to open and close.

13 THE COURT: Okay. Good enough. You can bring them
14 in. Have Mr. Ramirez sit in the foreman's seat if you
15 would, please.

16 (The jury entered the courtroom at 9:07 a.m.)

17 THE COURT: If you want to look at the verdict form,
18 they are as simple as they can possibly be. They're
19 general verdict forms.

20 Ladies and gentlemen, welcome back. Thank you for
21 being timely. I do appreciate that. We're going to roll
22 into, as I suggested yesterday, closing arguments and a
23 charge on the law.

24 Mr. Ramirez, I have appointed you the foreman of the
25 jury. All right. Your role is not very well defined,

1 really. What you are responsible for doing is making
2 sure that everyone in the jury room has the opportunity
3 to be heard. I can't tell you in any other -- any other
4 detail or with any more precision what your role should
5 be because I'm not authorized to invade upon the province
6 of the jury deliberations. So I can't tell you how to
7 conduct business. But I can tell you, Mr. Ramirez,
8 you're in charge of making sure that everyone has the
9 opportunity to be heard.

10 Also, and I don't suspect that you will, but from
11 time to time jury's will have questions. And if you have
12 questions you can simply write those down, knock on the
13 door, and give the question to the bailiff and then he
14 can present that question to me. And I may or I may not
15 be able to answer questions that you have during your
16 deliberations. So as I indicated, if we did our jobs
17 right hopefully you won't have any questions.

18 All right. At this point we're going to begin with
19 closing arguments from counsel. I had told you before,
20 closing arguments from counsel is not to be considered
21 evidence. You've heard all the evidence that will be
22 submitted in this case. So please consider closing
23 arguments as just that, that is, the attorney's advocacy
24 of his or her respective client's position. Mr. Steele.

25 MR. STEELE: May it please the Court?

1 THE COURT: Yes, sir.

2 MR. STEELE: May it please you, Mr. Foreperson,
3 ladies and gentlemen of the jury? Let my begin on behalf
4 of Mr. Collier and I myself, thank you, ladies and
5 gentlemen, for your attention in this case. This case
6 has not taken a long time. We started around midday
7 yesterday and we're early in the morning on the second
8 day, but I can tell you, ladies and gentlemen, that the
9 brevity of this case is no indication of its importance
10 to Mr. Collier. And I know that you, ladies and
11 gentlemen, recognize that and that you will give it the
12 deliberation and the consideration that it deserves.

13 After my closing arguments and I sit down, that is
14 the last thing in this courtroom that you men and women
15 will hear on behalf of Mr. Collier. At this -- at that
16 point the State's lawyer, the Assistant Solicitor will
17 get up and she will make her closing argument. The
18 general attitude toward that might be, well, that hardly
19 seems fair. They have the last word. But there's a
20 reason for that. The reason the State has the last word
21 is that they have the burden of proof. So the last thing
22 you're going to hear by way of advocacy before the judge
23 charges you what the law is is going to be the State's
24 argument. And the reason for that is, as the judge has
25 already told you and as he will tell you again in his

1 charge to you, is that Mr. Collier comes into court today
2 presumed to be innocent and that presumption of innocence
3 remains with him. And what that means is that the State
4 has the burden of proof and they have the burden of
5 proving every element of all three of these offenses
6 beyond a reasonable doubt.

7 Let's talk a little bit about the evidence. First
8 of all, ladies and gentlemen, I would say to you
9 unequivocally that Aaron Pumpkin Collier could not have
10 been the driver of that automobile out there on November
11 11, 2008. And the reason it could not have been him is
12 because he was in Florida. You heard his testimony that
13 he was not in South Carolina. He was down in Florida.
14 But the judge is going to tell you that we don't have to
15 prove that. In fact, we don't have to prove anything.
16 All we have to show through the evidence or the lack of
17 evidence is that there is a reasonable doubt about one
18 element of these offenses that Mr. Collier is charged
19 with.

20 First of all, the automobile. And you're going to
21 have photographs of a black Camaro, not a red Camaro, but
22 a black Camaro. And you heard the testimony of Ms. Price
23 who told you under oath that there was a black Camaro at
24 her house. And you, ladies and gentlemen, are good
25 observers, and you have to observe the demeanor of a

1 witness. And of course under the rules of some cases
2 including this one, the witnesses are outside. So Ms.
3 Price was sequestered. She couldn't come in until she
4 testified.

5 And if you looked closely, ladies and gentlemen,
6 when she was asked a question about a red Camaro she
7 looked confused. And I would submit to you the reason
8 Ms. Price was confused was because the only Camaro that
9 she knew anything about was a black Camaro. That car
10 wouldn't run. You heard her testimony, that it came --
11 she doesn't know exactly how it got there but she never
12 saw it run the whole time it was there. You heard the
13 testimony of Mr. Collier that that automobile needed a
14 transmission. It would not operate. And you heard Ms.
15 Price testify that early one morning she heard them come
16 get it and they had to put it on a roll back and haul it
17 away because it wouldn't work. I would submit to you she
18 said that that car was there in non-running condition for
19 most of the first two weeks of November. She didn't say
20 an exact date because she couldn't. And common sense and
21 human nature tells you you don't make notes about dates,
22 about things like that.

23 But if Ms. Price wanted to lie, ladies and
24 gentlemen, she would have come in here and said,
25 absolutely, it was there on the 11th when it was supposed

1 to have been red, when it was supposed to have been
2 driven by Mr. Collier, but she didn't say that. What she
3 did say was about that time it was there, and it wouldn't
4 run, and it had to be hauled away on a roll back. So I
5 would submit to you, ladies and gentlemen, that is very
6 truthful testimony and that car would not run.

7 I have already told you, the judge is going to tell
8 you, the State has the burden of proof. If they have the
9 burden of proof why didn't they present some evidence in
10 here that that black Camaro would even operate on its own
11 steam? I would submit to you the reason they didn't
12 offer any testified of that is because it didn't exist.
13 They've got the burden of proof and they couldn't prove
14 to you, and they offered no evidence to you, ladies and
15 gentlemen, that that automobile would work. The only
16 thing before you, and it is undisputed, that that black
17 Camaro would not operate because it needed a
18 transmission. It's not just that it's the wrong color,
19 more importantly it wouldn't operate. It wouldn't run.

20 They showed you a tape. You know, the operator of
21 that police car could have turned that tape on at any
22 time, but what they showed you, it didn't help you men
23 and women one bit in deciding whether or not that was
24 Aaron Collier driving that automobile. You couldn't tell
25 who was driving the car. All you see is a car going down

1 the road driven by somebody. No identification. I don't
2 think even the State is going to contend that you can
3 identify who's driving the car in the tape.

4 Well, Mr. McBee told you, the first deputy, the
5 deputy who testified, he told you, ladies and gentlemen,
6 that he had seen Mr. Collier in the car even though he
7 admitted, number one, that he'd never seen him before.
8 He admitted, number two, that he didn't know whether Mr.
9 Collier's glass side window was rolled down or up. I
10 would submit to you that's significant. That would tell
11 you whether it was a dirty glass, whether it was a clean
12 glass, or whether the glass was not even rolled up. I
13 don't believe, ladies and gentlemen, that's the kind of
14 thing you would forget when you're making that kind of a
15 positive identification.

16 So anyway, the question should be in your minds, why
17 wasn't the tape turned on earlier? If the tape -- the
18 camera may not have been aimed right at Mr. Collier, or
19 whoever was driving that car, the one they say is Mr.
20 Collier, but I would say to you they could have been
21 aiming at something. They could have indicated that that
22 took place. But I would submit to you that tape does not
23 help one bit because it doesn't show anything that would
24 indicate to you or anybody else that that was Aaron
25 Collier driving that automobile. That I would submit to

1 you is a reasonable doubt. That's the kind of doubt
2 arising out of the evidence that leaves you less than
3 firmly convinced. And His Honor is going to tell you
4 that for you to find Mr. Collier guilty beyond a
5 reasonable doubt you've got to be firmly convinced.
6 Where is the rest of the tape? And what would the rest
7 of the tape show? You don't have it. You need it. And
8 I would submit to you therein is a reasonable doubt.

9 Mr. McBee also told you that he had a photograph.
10 They didn't bring that photograph with him. Instead they
11 put into evidence the photograph marked State's Exhibit
12 9. And you're going to have this back in the jury room
13 to look at. This photograph could not be the photograph
14 that Mr. McBee used to identify Aaron Collier. It's
15 absolutely impossible. And how do we know that? Because
16 it says here, issue date, 1/12/2010. This charge
17 occurred on 11/11/20-- 2008. This was not issued until
18 a year and a half later. That photograph could not have
19 been around when the so-called identification was made by
20 Mr. McBee.

21 And I asked Mr. McBee about that. And you know one
22 of the most important things that you men and women have
23 in deciding who's telling the truth in a case is the
24 demeanor of the witnesses. And His Honor is going to
25 tell you that you can consider the demeanor of witnesses.

1 Ideally in our system witnesses would come in here
2 without bias, without prejudice, without a leaning one
3 way or the other. And they would just tell you what they
4 saw without argument and without any kind of advocacy.
5 But if a witness comes in and shows bias, if a witness
6 comes in and shows hostility toward one questioner or the
7 other, you can consider that in deciding whether that
8 witness has an interest in the outcome of that case. And
9 I would submit to you if there was ever a witness who
10 showed more bias than Mr. McBee I don't know who it is.

11 Let's talk a little bit about that. I would submit
12 he showed that he was determined to get a conviction.
13 Determined to get conviction. And if it meant not
14 answering the questions that I asked him, he was just
15 going to say what he wanted to say. Bias, ladies and
16 gentlemen.

17 First of all, I tried to get him to just simply read
18 the issue date, and he wouldn't do it. I asked him four
19 or five times read the issue date, and he wouldn't do it.
20 Each time he said, that's when it was renewed, that's
21 when it was renewed. Well, first of all, that's wrong,
22 and I'll talk about that in a minute. But the important
23 part of the thing, why didn't he just answer my question?
24 It's not like he's wishing that it didn't say that,
25 didn't make it not say that, because you, ladies and

1 gentlemen, are going to have this picture, and you're
2 going to see when it was issued. Why was he so reluctant
3 to answer my question? Why did he literally refuse to
4 answer my question over and over? I finally had to give
5 up. I would submit the reason he didn't is because he
6 wanted that conviction so bad and that ought to make you
7 question that testimony, and question that identification
8 by Mr. McBee.

9 Another question I asked him had to do with the tape
10 that was shown. A simple question. Stop the tape right
11 at the end of the -- where he was after that red Camaro
12 driven by somebody. We don't know who. And I said how
13 many cars are on the road right now? All he had to do
14 was look and say, I don't see any. You, ladies and
15 gentlemen, looked at it. You didn't see any. Anybody
16 would have said, I don't see any. Not Mr. McBee. Mr.
17 McBee is so anxious to get a conviction, so anxious to
18 make sure his testimony contributes to that conviction,
19 what does he say over and over, four or five times? I
20 didn't know what was over the hill. I wasn't asking him,
21 do you know what was over the hill. I wasn't asking him
22 anything about over the hill. All I asked simply was,
23 how many automobile do you see in this picture when you
24 stop pursuit? And he said over and over again, I didn't
25 know what was over the hill. Why was he so reluctant to

1 answer my question? Why was he refusing to even answer
2 the simplest question? There again, it's not like his
3 refusal to answer meant that you ladies and gentlemen
4 didn't see it. Y'all saw it with your own eyes.

5 An old saying from Will Rogers, who you going to
6 believe, me or your own eyes. Well, I would submit in
7 this instance the significant thing is he was determined
8 to get that conviction. And his refusal to answer my
9 questions, ladies and gentlemen, should make you question
10 that identification. A man he'd never seen before. A
11 picture that hadn't been issued. A window that we don't
12 know whether it was rolled up or down. And his obvious
13 bias on the witness stand. That should make you question
14 his testimony. And when you question the testimony of a
15 critical witness I would submit to you therein lies a
16 reasonable doubt.

17 Well, you saw Mr. Garrett identified him also.
18 Going to Mr. Garrett's testimony, we go from not just
19 reasonable doubt but an insult to your intelligence. How
20 does he tell you that he identified the man driving the
21 automobile as Aaron Collier? Mr. Garrett tells you, I
22 saw him in the rear-view mirror.

23 Now, we're not people who haven't lived in this
24 courtroom (sic). And I told you, ladies and gentlemen,
25 when you came to court the most important instrument and

1 tool you have is your common sense. And we all know
2 about rear-view mirrors. And we all know how big
3 rear-view mirrors are. And we all know that when you're
4 standing behind somebody and looking in a rear-view
5 mirror what part of that person's face do you see? And
6 Mr. Garrett has come into court and told you, accept my
7 identification, convict this man of these very serious
8 offenses because I saw him in the rear-view mirror, and I
9 know it was him. That is not proof beyond a reasonable
10 doubt. Everybody knows that if you look in the rear-view
11 mirror at a person all you're going to see is their eyes.
12 You cannot make a positive identification based upon just
13 looking at somebody's eyes. Therein, again, a reasonable
14 doubt.

15 You know, the answer that Mr. McBee gave when I
16 asked him to read the date, which he refused to do, was
17 that was the date of reissue of the driver's license.
18 Well, that's contradicted by the State's own witness.
19 The lady from the highway department she came in here and
20 she testified about the suspension, and she said it was
21 suspended indefinitely. So I would submit to you, ladies
22 and gentlemen, here's the record of it here, State's
23 Exhibit 4, if it was suspended indefinitely there
24 wouldn't be a reissue on the ---

25 MS. BENTLEY: Objection, misstatement of the

1 evidence, Your Honor. He did not ask her if he had ever
2 been issued ---

3 THE COURT: The jury can make a determination as to
4 whether it is a misstatement of the evidence or not. I
5 overrule the objection. They heard the evidence and
6 they'll make that determination.

7 MR. STEELE: And you rely on your own recollections.
8 You rely on what you remember. And I would submit that
9 it was permanently suspended. And the most important
10 thing is this did not exist on that date. We all go down
11 to the highway department. We all go down to get our
12 license renewed and they take a picture. Well, they
13 didn't take a picture until -- they didn't take this
14 picture until 1/22/2010. You can read it right there.
15 You don't need to take the prosecutor's word for it. You
16 don't even take my word for it. There it is, ladies and
17 gentlemen, in black and white right there.

18 Both of these IDs by these two officers are flawed
19 and both of them are shot through with reasonable doubt.
20 And you don't need multiple reasonable doubts. You don't
21 need the failure to show the rest of the tape. You don't
22 need the aggression shown by Mr. McBee towards me on
23 cross-examination indicating bias. You don't need the
24 fact that the window was either rolled up or it wasn't.
25 You don't need the fact that he wouldn't answer my

1 questions. You don't even need the fact that we don't
2 know what was on the tape other than what they showed in
3 court. All you need is one of those. And I would submit
4 to you on Mr. Garrett's testimony you don't need but one
5 and that one is that you can't identify people based upon
6 looking at them in the rear-view mirror. So take your
7 pick. We've got a case here that doesn't have a
8 reasonable doubt, although a reasonable doubt requires
9 you to come back with a verdict of not guilty. We've got
10 a case here shot through with reasonable doubt. Take
11 your pick.

12 The judge will tell you that the only thing that
13 concerns you, ladies and gentlemen, are these three
14 charges. He will specifically tell you that you are not
15 to consider anything about what warrants they may have
16 been looking for Mr. Collier on. That's not before you.
17 The only thing before you is guilty or not guilty on
18 reckless driving, failure to stop for a police vehicle
19 and driving under suspension. And furthermore, it would
20 be a violation of your oaths to consider anything like
21 that, or to speculate about anything like that. That's
22 just outside of your purview.

23 Furthermore, Mr. Collier was asked about some prior
24 offenses of his. And the judge is going to tell you that
25 you cannot go into the jury room and simply conclude,

1 well, he pled guilty to those he must be guilty of this
2 one too, these two. That's not the way it works. Those
3 offenses are presented to you under our rules only for
4 purposes of impeachment. And the judge is going to tell
5 you when he charges you the law that that's the only
6 thing you can consider them for. And I will point out to
7 you, unlike some of the witnesses that I had to
8 cross-examine, when Aaron Collier was asked about those
9 he readily admitted them. He told the truth about them.
10 He didn't hold back. He didn't try to answer some other
11 question that wasn't answered when the prosecutor asked
12 him about it (sic). He forthrightly admitted them. He
13 said I was guilty then and I pled guilty. I'm not guilty
14 now and I'm pleading not guilty. And I would submit to
15 you that is the fact of this case. When he was guilty he
16 pled guilty. This time he's not guilty and they have
17 clearly not proven his guilt beyond a reasonable doubt.

18 The burden of proof is with the State. If you have
19 a reasonable certainty as to Mr. Collier's guilt then
20 that's what's required, you have to come back with a
21 verdict of guilty. But if on the other hand, all of
22 these things that have arisen out of the evidence
23 indicate to you that somebody -- that you have a
24 reasonable doubt, you have some uncertainty about who was
25 driving that car, you've got to come back with a verdict

1 of not guilty. You've got to be firmly convinced, ladies
2 and gentlemen.

3 And you know words are sometimes difficult to define
4 and certainty sometime is a difficult thing to define,
5 but I'm going to suggest this to you. When I started the
6 trial of this case yesterday I told you, ladies and
7 gentlemen, that you might forget about this case and go
8 on and try other cases, and that in time it would kind of
9 fade from your memory, but that you're going to make a
10 decision in another person's life that is one of the most
11 important decisions ever made in that person's life. And
12 that is whether Aaron Pumpkin Collier is convicted of
13 these offenses or not. And so in rendering your decision
14 I would respectfully ask you, ladies and gentlemen, to
15 use the same degree of certainty that you would if you
16 were making an informed decision in your own life.

17 If you, ladies and gentlemen, were trying to decide
18 whether to move, or change jobs, or go back to school, or
19 get married, or have a child, or get divorced, all these
20 important decisions that we in our lives make on a daily
21 basis, I am asking you, ladies and gentlemen,
22 respectfully to put the same deliberations into this
23 decision that you would in a decision like that. And you
24 know what, if you weren't firmly convinced you wouldn't
25 make one of those decisions a particular way. And if you

1 have uncertainty as to whether a reasonable doubt had
2 been established you wouldn't make that significant
3 change in your own life. And I would submit to you if
4 you apply that standard, and if you consider it on that
5 basis, you will remember the testimony of those officers,
6 you will remember the testimony of Aaron Collier, and you
7 will come back with a verdict of not guilty. Thank you.

8 MS. BENTLEY: May it please the Court?

9 THE COURT: Yes, ma'am.

10 MS. BENTLEY: Mr. Steele? Good morning, ladies and
11 gentlemen. As you were told yesterday, my name is Lisa
12 Bentley. And along with Elizabeth Major we presented
13 evidence on behalf of the State. At the beginning of the
14 trial you were told that the defendant had been charged
15 with three crimes, failure to stop for a blue light,
16 reckless driving and driving under suspension.
17 Essentially the State is asserting that Aaron Collier was
18 the driver of the red Camaro observed by police on
19 November 11, 2008. The red Camaro that crossed double
20 yellow lines, sped head on into traffic and failed to
21 stop when signaled by police blue lights and siren in an
22 attempt to flee.

23 Ms. Major promised you that we would prove the
24 State's case beyond a reasonable doubt and that is
25 exactly what we have done. As you heard, the driver of

1 the car fled from police that day, and he was not
2 apprehended. Just because someone is not found right
3 away does not mean that he cannot be charged with, or
4 convicted of a crime. It does not mean that the State
5 cannot meet the burden of proof.

6 As the judge will tell you in a few minutes, proof
7 beyond a reasonable doubt, which is the State's burden,
8 is proof that leaves you firmly convinced of the
9 defendant's guilt. The State does not have to eliminate
10 every trace of doubt. There are very few things in life
11 that can be known or proven with 100 percent certainty.
12 A lot of times you just can't. You need to be firmly
13 convinced though. And we should have left you firmly
14 convinced by all the evidence and by all the testimony.

15 You first heard from Marie Waring from the
16 Department of Motor Vehicles and she testified that on
17 November 11, 2008, Aaron Collier had a suspended driver's
18 license. It was suspended in 2007. It was an indefinite
19 suspension. And by November 11, he had not done what was
20 needed to get it reinstated. You can read exactly what
21 he needed to do on State's Exhibit Number 4. And you can
22 determine whether or not perhaps he complied with those
23 things by 2010. We didn't ask her about that. And
24 there's really no dispute over whether or not his license
25 was suspended that day. The issue of the case, as you're

1 well aware, is whether or not Aaron Collier was the
2 driver on November 11. And we submit that all the
3 evidence should leave you firmly convinced that it was.

4 So let's review the testimony regarding the driver
5 of the red Camaro. You first heard from Deputy Chris
6 McBee. He's been with the sheriff's office for 16 years.
7 And he was out at Cedar Falls Road that day waiting,
8 watching and searching for Aaron Collier. It is part of
9 his routine duties to have photographs and to serve
10 warrants, and that's why he was there that day. That's
11 why was out there. He did not know Aaron Collier. It
12 was not his decision to be there. That was his
13 assignment. He was doing what he was told.

14 Deputy McBee told you that he had not one but two
15 photographs of Aaron Collier on that day. He told you
16 that regardless of what's on the bottom that was the
17 photo that he was given by Investigator Garrett. He was
18 looking at this picture and trying to determine or -- and
19 using it to determine who Aaron Collier was. And I
20 submit to you that this photo was available on November
21 11, 2008, and it was the photo he used to identify Aaron
22 Collier. And if you look at it it very clearly is Aaron
23 Collier.

24 So he had those two pictures. He's waiting in the
25 fire station for some information and he hears from

1 Deputy Garrett that a red Camaro is headed his way. Does
2 he turn on his lights and siren automatically? Does he
3 active his camera? Is he ready to make an arrest? No.
4 He goes to the intersection to find out who's driving
5 that Camaro. He doesn't know who it's going to be. What
6 happens? He pulls up so that his driver's window is
7 directly next to the driver's window of the Camaro. How
8 close were they? Two, maybe three feet. Closer or as
9 close as I am to this bar right here. And what does he
10 tell you? His window was down, he remembers that,
11 because he shouted out his window. And who does he see?
12 Who's driving the Camaro? Aaron Collier. It's a clear
13 day. He remembers the windows were not tinted. So
14 perhaps he would remember if they were dirty. He didn't
15 ask him. But he knows that he sees Aaron Collier. He's
16 close enough to make that determination.

17 At that point he says, hey, turn off your ignition,
18 because that's what he's there for. He's there to find
19 Aaron Collier. He's found him. Does Aaron Collier turn
20 off his ignition? No. He pulls out as fast as he can
21 be, and you saw in the video, races down McKelvey road.
22 Crosses double yellow lines. Pulls another car off --
23 makes another car pull off the side of the road and is
24 speeding so fast into oncoming traffic that Deputy McBee
25 has to call off the chase for public safety.

1 Did Deputy McBee rely on anyone else's testimony, or
2 anyone else's statements when he told you how he
3 identified Aaron Collier? No. He said, I had pictures.
4 I was looking at pictures. It was my assignment to find
5 Aaron Collier, and I found him. He -- you heard his
6 siren on the video. He turned on his blue lights and the
7 blue lights come on. That's when the video is activated.
8 I believe he told you that. And you saw what you could
9 see. Deputy McBee had no motive to lie.

10 I submit that while he's passionate about the case,
11 he wasn't argumentative. When I asked him to read the
12 issue date on here, he read the issue date. When I
13 showed him the video and I said, do you see any cars
14 right here? He said no. And then he was able to say, I
15 didn't know what was over the hill. Perhaps he should
16 have been a little bit more friendly with Mr. Steele.
17 Perhaps Mr. Steele wanted him to be a little nicer.
18 That's his personality.

19 Who else did you hear from? You heard from
20 Investigator John Garrett. He's been an investigator
21 with the sheriff's office in their vice and narcotics
22 unit for nine years. And he told you that was it was his
23 assignment that day to find Aaron Collier. He's the one
24 that assembled everyone at Cedar Falls Road to look for
25 him. He knew Aaron Collier. You heard that he had spoke

1 to him in the past. They'd spent time together. It was
2 a man he was able to recognize.

3 What does he do? He drives down Cedar Falls Road
4 and passes that Camaro in the opposite direction. Does
5 he try and tell you that as he passed that car he was
6 able to make a clear identification? No. He doesn't try
7 and tell you that. He tells you that he radioed and told
8 people that, hey, a red Camaro is coming be on the look
9 out. But then he turns around and catches up to the
10 Camaro. He's at the back bumper and he's looking inside
11 the car. He's looking in the rear-view mirrors. You
12 don't just have that little eye mirror, you also have a
13 side mirror. And he said he was able to see the driver's
14 face in that mirror and he was able to tell it was Aaron
15 Collier. He knew it, and he was able to make that
16 identification.

17 What else did Investigator Garrett tell you? He
18 told you that when he found Aaron Collier a few weeks
19 later on December 2nd, Mr. Collier was in possession of
20 this car. Now, this car is admittedly black right now,
21 or it was on December 2nd. And you can see from the
22 picture where the hood is up it hadn't always been black,
23 it used to be red. That evidence speaks for itself. Did
24 he test the Camaro on December 2nd to see if it still
25 worked? No. It doesn't matter. He doesn't care about

1 the condition of the Camaro on December 2nd, except to
2 say that it used to be red and now it's black. The
3 evidence has changed a little bit. But whether or not it
4 works a couple weeks later, that doesn't matter to the
5 case.

6 So in addition to two experienced police officers,
7 you also heard from Mr. Collier and his good friend
8 Rhonda Price. Now, Ms. Price was clearly trying to help
9 her friend today, or yesterday rather. And what did she
10 tell you really? Did she provide you any evidence, any
11 testimony of value? She told you that at some point
12 during either the first or second weeks of November, or
13 some period of time, Mr. Collier and Najda Foldes, his
14 friend, brought down a black Camaro and left it at her
15 house. And she doesn't know why. And she doesn't really
16 remember how it got there, and she doesn't really
17 remember when it got there. And she doesn't really
18 remember who took it away. And she didn't really know
19 anything about the car, or why it was there. All she
20 knows is that it was there when he needed it to be there.

21 Now, her confusion could be because she was so sick
22 at that time. She needed eight boxes of Sudafed which
23 being November 10th and November 12th (sic). So she was
24 clearly a little under the weather, and as she told you
25 she was still using methamphetamines at that time. So

1 perhaps her memory isn't as clear as it should be.

2 Mr. Steele told you to think about a witness's
3 demeanor on the stand. How was Ms. Price's demeanor?
4 Did she make eye contact with you? Did she seem
5 confident in what she was saying? How did she act? As
6 the finders of fact these are all things for you to take
7 into consideration when you're determining a witness'
8 credibility. There are things that you can take into
9 consideration when determining Mr. Collier's credibility
10 when he took the stand and told you that he was in
11 Florida visiting his sick aunt.

12 What else did Mr. Collier tell you, when we asked --
13 or when his own attorney asked him about this black
14 Camaro? Well, he told you about three different stories.
15 He couldn't exactly remember what it was he wanted to
16 tell you about how it got to Grey Court, and why it was
17 in Grey Court, and how it came back. First he took it,
18 but then he didn't take it, then it had to go on a
19 rollback. There were a couple different stories there.
20 He couldn't get them straight.

21 MR. STEELE: Your Honor, I would object. She's
22 misstating the evidence. He was very clear in his
23 testimony.

24 THE COURT: All right. Overruled. The jury has
25 heard the testimony and will make a determination whether

1 that's a misstatement under the same prong.

2 MS. BENTLEY: I submit to you that he was not clear
3 in how it got there. All he knew is that he sure didn't
4 drive it and he sure wasn't in town when this happened.

5 Mr. Collier -- or Mr. Steele said his client was
6 also very truthful when asked about his prior record. I
7 submit to you that he wasn't. When I asked him about his
8 possession of stolen vehicle he didn't say, that's right,
9 I made a mistake. He said, no, I was standing next to
10 it. And when I asked him about his intent to distribute
11 methamphetamine, he said, well, I mean, I guess if that's
12 what that piece of paper says. He didn't -- he didn't
13 cop to it. You was also argumentative and avoided the
14 questions.

15 All that aside, ladies and gentlemen, the judge will
16 tell you that he rules on issues of law and that you are
17 the finders of fact. You can believe one witness over
18 all, two against none. You can believe parts of what a
19 witness tells you and not believe the other parts. You
20 decide whether someone has bias or a reason to be
21 untruthful. And as Mr. Steele told you in his opening
22 and again in his closing, you brought with you the most
23 important tool that a juror can have, and that is your
24 common sense. Your common sense is all that you need
25 today to look at this evidence and be firmly convinced of

1 Aaron Collier's guilt.

2 The judge will give you the elements of each of the
3 three offenses and the elements that the State had to
4 prove today. And we submit that we have proven each of
5 those elements beyond a reasonable doubt. We proved that
6 on November 11, 2008, Aaron Collier was driving the red
7 Camaro that was seen by not one but two experienced
8 police officers who were searching for him. He failed to
9 stop when signaled by a police blue lights and siren. He
10 drove away in a reckless manner and with a suspended
11 driver's license. And, ladies and gentlemen, if all this
12 evidence has left you firmly convinced of his guilt then
13 you must return verdicts of guilty for failure to stop
14 for a blue light, reckless driving and driving under
15 suspension. Thank you.

16 THE COURT: All right, ladies and gentlemen. I'm
17 about to give you the closing charge on the law. It's
18 going to take my anywhere between 15 and 20 minutes,
19 approximately. So I'll ask you before I get started, do
20 any of you need a break? Clear your head or otherwise?
21 No. Okay. Then I'll roll right into it.

22 I'm going to apologize to you before we even get
23 started. I'm going to read a little bit. I'm going to
24 try not to read, because I don't like to. But when
25 somebody reads to me it suggests to me one of two things,

1 either they're too lazy to learn exactly what is they're
2 supposed to know or they're just not smart enough to get
3 it. And there's a lot lawyers in town who would probably
4 argue that both is true with me. But the fact of the
5 matter is is that I'm going to give you some fairly
6 precise definitions of law and it's not fair for me to
7 just do it off the top of my head, do it
8 extemporaneously. So from time to time what you'll see
9 is I'll begin to read and that's when I'm reading precise
10 definitions and propositions of law. And it's just not
11 fair that I don't take a little bit of time.

12 And the reason I say that is because this has been a
13 fairly short trial, but of course it is an important
14 trial. It's important for the defendant obviously, but
15 it's important for the State too. And I submit that it's
16 important to y'all because you have invested now a day, a
17 day and a half of your time into this case. So for me to
18 not get it right on the closing charge to you would be a
19 disservice to you and would be a sign of disrespect to
20 you, and I'm not going to do that.

21 Some of the things I'm going to tell you I'm going
22 to restate. I'll restate it just in summary fashion but
23 understand that some of the things that I restate are
24 very important. And I'll restate to you again that you
25 recognize that you are the judges of the facts in this

1 case, and you will make the determination the what the
2 facts are in this case. And by distinction I'm the judge
3 of the law.

4 And the reason I tell you that again is because I'm
5 about to give you a charge on the law and under your oath
6 you are required to accept the law as I give it to you.
7 Meaning that if you came into this courtroom with any
8 predisposition of what the law is or of what the law
9 should be you must disregard that. Take the law as I
10 give it to you.

11 I'll also tell you this, because you are the judge
12 of facts, understand that I can't have an opinion on the
13 facts, and I will not offer an opinion on the facts. If
14 you think that anything I said during the conduct of this
15 trial suggests that I have an opinion one way or another
16 about the facts or the verdict that you should reach,
17 please disregard that because I honestly do not have an
18 opinion in that regard at all. And please disabuse
19 yourself of any notion otherwise.

20 Now, as you know, there are three indictments in
21 this case. Failure to stop for a blue light, driving
22 under suspension and reckless driving. Now, all of those
23 are autonomous charges, autonomous indictments, which
24 means that you have to consider them all separately and
25 independently. Just because you may determine that the

1 defendant is guilty or not guilty of one, that does not
2 mean that you would determine by extension that he should
3 be or is necessarily guilty or not guilty of the other.
4 You must look at each and every indictment, each and
5 every charge and make a determination of whether the
6 State has met its burden of proving each and every
7 element of the offense beyond a reasonable doubt.

8 Now, I will tell you again, the State has the burden
9 of proof. The State has the burden of proving the
10 defendant guilty beyond a reasonable doubt. As I
11 suggested to you earlier, Mr. Collier is presumed
12 innocent. And he retains that presumption of innocence
13 until you, collectively, decide that the State has met
14 its burden of proving each and every element of the
15 offense beyond a reasonable doubt.

16 Now, understand that this presumption of innocence
17 is not just a mere legal theory that lawyers talk about,
18 it is in fact a foundation of our criminal justice
19 system, and you must take it very seriously. And you
20 must consider your role and your duty within that
21 context.

22 Now, I've bandied about this term, reasonable doubt,
23 any number of times. And it's important that I define
24 that for you. And proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced of the defendant's

1 guilt. And you recognize that there is very few things
2 in this world that we can know with an absolute
3 certainty, and the law doesn't require proof that over
4 comes every possible doubt. If based on your
5 consideration of the facts you are firmly convinced that
6 the defendant is guilty of the crime then you must find
7 the defendant guilty. But on the other hand, if you
8 think there is a real possibility that the defendant is
9 not guilty you must give the defendant the benefit of the
10 doubt and find him not guilty.

11 Now, ladies and gentlemen, you heard evidence in
12 this case, you received evidence in this case, and
13 evidence can take two primary forms, direct and
14 circumstantial evidence. Direct evidence is evidence
15 which immediately establishes the fact to be proven, such
16 as eyewitness testimony. I saw it. I felt it. I
17 touched it. Circumstantial evidence is proof of a chain
18 of facts which in combination proves the main fact to be
19 asserted.

20 Now, it's a lot easier for me to give you an example
21 than just give you a sterile definition of the
22 distinction between direct and circumstantial evidence.
23 And the thing to me that makes the most sense is an
24 example that a judge told me long ago -- a long time ago,
25 which makes sense to me. And that is this, just imagine

1 that you go to sleep one evening, or you were in your
2 house and you were going to your bedroom to go to sleep.
3 And you walk past the front door or the front window and
4 you look out into your yard and there's no precipitation.
5 There's nothing. You see your lawn, or your parking lot,
6 or your driveway, or whatever it may be, and it's free of
7 any precipitation, or free of any type.

8 In the morning you wake up and you walk past that
9 same window, or that same door, and you see that there is
10 a blanket of snow covering your front lawn, your front
11 parking lot, your driveway. And you also notice that
12 there are foot steps in the snow which lead up to your
13 front door and then lead away from your front door.

14 Now, you've got direct evidence that it snowed that
15 night because you can grab it, you can feel it, you can
16 touch it, see it. But you have circumstantial evidence
17 that someone came to your house that morning or that
18 evening, because you know that those foot steps could not
19 have appeared there last evening because it hadn't
20 precipitated yet. And you know that those footsteps lead
21 to your door and they lead away. So you have that
22 circumstantial evidence that somebody came to your door
23 in that time period. You didn't see them. You didn't
24 feel them. You didn't touch them. You didn't throw a
25 snowball at them, but you know he was there, he or she.

1 Now, the law doesn't make any distinction between
2 the value of direct and circumstantial evidence. You
3 place what value you think is appropriate on that
4 evidence. Both has the same value under the law. And
5 you will decide whether you place great weight upon it or
6 whether you place little weight upon it. That's all in
7 your determination. And all of the evidence that you
8 have received you're going to make a determination of
9 what value to place upon it, because that's your duty,
10 that's your role, that's your province.

11 And you may decide to place great weight upon a
12 piece of evidence, and by distinction you may decide not
13 to put much weight upon a piece of evidence in your
14 discretion.

15 You also heard from witnesses, and it's your role
16 again to determine who's credible and who's not credible,
17 and what weight to put on that testimony, and what weight
18 not to put on that testimony. You saw the witnesses
19 testify. And you saw their demeanor. You saw their
20 body language. You saw their expressions. You heard
21 what they said. You recognize that some witnesses may
22 or may not have biases or motives, and you take all of
23 that into consideration and you determine what weight to
24 put on somebody's testimony. And understand that you
25 can put a great amount of weight on a part of a

1 witness's testimony, and then put very little weight on
2 another part of a witness' testimony. You can give it
3 whatever weight you think is appropriate under the
4 circumstances.

5 Now, also, ladies and gentlemen, you heard some
6 evidence at the beginning of the trial in the State's
7 case, and I gave you a curative charge. You remember
8 there was evidence placed in the record that there may
9 or -- that there may have been outstanding warrants
10 against the defendant, and the officers were attempting
11 to serve outstanding warrants. The fact that there may
12 or may not have been outstanding warrants in this case is
13 not relevant to your determination in this matter. It's
14 not to be considered by you in your deliberations in this
15 case. Understand the only thing that you are taking into
16 consideration is whether the State has met its burden of
17 proof in proving that three -- the elements of these
18 three crimes. Any and all other crimes which may or may
19 not have been offered into evidence, or suggested, are
20 not relevant to your consideration of whether the State
21 has met its burden of proof in this matter.

22 Now, you heard a witness which took the stand and
23 there was a question with respect to her prior record.
24 And I would tell you that a person who has a prior record
25 is competent to testify in court, and a past record

1 doesn't affect the ability of that witness to testify.
2 Past record may only be considered if at all in
3 determining the witness' believability. And remember,
4 you're the judges of the facts and you'll decide whether
5 the witnesses were believable or not and what effect any
6 past criminal record may have on you determining his or
7 her believability.

8 You've also heard evidence that the defendant was
9 convicted of a crime other than one for which he is now
10 on trial. And that evidence may be considered by you
11 only in deciding whether the defendant's testimony is
12 believable and for no other purpose. You must not
13 consider the defendant's prior record as evidence of
14 the defendant's guilt of the charge that's being tried
15 today.

16 Ladies and gentlemen, at issue in this case is also
17 the issue of identification. The State has the burden of
18 proving identity beyond a reasonable doubt. And you must
19 be satisfied beyond a reasonable doubt of the accuracy of
20 the identification of the defendant before you may
21 convict him. Identification testimony is an expression
22 of belief or impression by the witness. You must
23 determine the accuracy of the identification of the
24 defendant. You must consider the believability of each
25 identification witness in the same way as any other

1 witness, and you may consider whether the witness had an
2 adequate opportunity to observe the offender at the time
3 of the offense. This will be affected by things like,
4 how long or short a time was available, how far or close
5 the witness was, the lighting conditions, and whether the
6 witness had a chance to see or know the person in the
7 past.

8 I instruct you that the burden of proof on the State
9 extends to every element of the crime charged, and this
10 specifically includes the burden of proving beyond a
11 reasonable doubt that the identity of the defendant as
12 the person who committed the crime. If after examining
13 that testimony you have a reasonable doubt as to the
14 accuracy of the identification you must find the
15 defendant not guilty.

16 Ladies and gentlemen, I'm going to move on now to
17 the three charges, and I'm going to define for you the
18 elements of the three charges that are before you. The
19 first charge, as you know, is failure to stop for a blue
20 light. In order to prove this crime, the State must
21 prove beyond a reasonable doubt that the defendant was
22 driving a motor vehicle on the road, street, or highway
23 of this state, that the defendant was signalled to stop
24 by a law enforcement vehicle by means of a siren or a
25 flashing light, and that the defendant did not stop. An

1 official signal requiring a motorist to stop may be a
2 siren or flashing lights, but both are not required. An
3 attempt to increase the speed of a vehicle or in some
4 other manner avoid the pursuing law enforcement vehicle
5 when signalled by a siren or flashing light may be
6 considered as evidence of failure to stop for a blue
7 light. However, it is merely an evidentiary fact to be
8 taken into consideration by you along with all the other
9 evidence in the case, and to be given that weight which
10 you think is appropriate in your deliberations.

11 The second charge, ladies and gentlemen, is driving
12 under suspension, and the State must prove beyond a
13 reasonable doubt that the defendant drove a motor vehicle
14 on a public highway in this state during the time the
15 defendant's driver's license was cancelled, suspended or
16 revoked. The defendant must have been notified by the
17 Department of Public Safety that his driver's license was
18 cancelled, suspended, or revoked. In all cases of
19 suspension, the Department of Public Safety shall notify
20 the licensee that his license has been suspended by
21 depositing the notice in the United States mail with
22 postage prepaid and addressed to the person at the
23 address contained in the driver's license records of the
24 department. The giving of notice by mail is complete 10
25 days after the deposit of the notice.

1 I further charge that you a certificate by the
2 director of public safety or his designee that the notice
3 has been sent as required is presumptive proof that the
4 requirements of notice of suspension have been met, even
5 if the notice has not been received by the addressee.
6 Consequently one need not have an actual notice that his
7 license or privilege to drive had been terminated in
8 order to be convicted of driving with a suspended
9 license.

10 Now, ladies and gentlemen, the third charge,
11 reckless driving. And the State must prove beyond a
12 reasonable doubt that the defendant was driving a vehicle
13 in a manner showing willful or wanton disregard for the
14 safety of persons or property. Willful and wanton mean
15 the conscious failure to exercise reasonable care.
16 Whether the defendant was driving recklessly is to be
17 decided based on all the surrounding circumstances. What
18 is reckless driving under some conditions may not be
19 reckless driving under other conditions. In deciding
20 whether the defendant is guilty of reckless driving you
21 should consider the manner of the defendant's driving
22 with respect to the time and place of the alleged
23 violation, and the width, character and condition of the
24 highway, weather conditions as to light or darkness, the
25 position of other vehicles, the weight and load of the

1 defendant's vehicle, the opportunity for observation and
2 familiarity with the highway, and the chance of being
3 able to stop or avoid a collision. Something more than
4 mere negligence in operating a motor vehicle is necessary
5 to show reckless driving. The State must prove beyond a
6 reasonable doubt that the defendant knew that his driving
7 was negligence and continued driving with a conscious
8 disregard of the consequences of his negligence.

9 All right. Ladies and gentlemen, I hope I'm done
10 reading now. I'm going to give you a verdict form,
11 actually three separate and distinct verdict forms. As
12 you know, I've told you that you have three charges and
13 they are all autonomous and distinct, which means that
14 you're going to have to make a determination based on
15 each and every charge. And I've given you verdict forms
16 for each and every charge.

17 Now, I'll show them to you very quickly, because
18 they are very, very simple. Very, very simple. On each
19 charge you have two options, not guilty or guilty. And
20 the verdict sheet is simple. It says, we the jury, with
21 respect to the charge of failure to stop for a blue
22 light, unanimously find the defendant, Aaron Winford
23 Collier, not guilty or guilty.

24 Now, a couple things I need to tell you about
25 this verdict form. The order in which I put the

1 options is not relevant. It's fairly arbitrary. Don't
2 think I have a prejudice or a bias either way. I told
3 you that many times, but I truly don't. One has to be
4 first and one has to be second. Don't impute anything
5 from that.

6 The other thing I want to point out to you is that
7 it says unanimously. You verdict must be unanimous.
8 That is 12 to zero, can't be eight to four, seven to
9 five, or any other combination of numbers that adds up to
10 12. It has to be unanimous. Your verdict has to be based
11 on the law. It has to be based on the facts as you
12 determine them to be. It can't be the product of
13 passion, or prejudice, or emotion. It has to be based on
14 the law.

15 Now, ladies and gentlemen, when you've reached a
16 unanimous verdict, then, Mr. Ramirez, you will sign there
17 as foreperson and then you let the bailiff know that you
18 have reached a unanimous verdict.

19 Now, don't quite begin your considerations yet,
20 because I need to talk to the attorneys and make sure
21 that I have defined all of these -- all of these legal
22 propositions appropriately. It does happen on occasion
23 that I misstate something. It happens sometimes that I
24 leave something out. And they'll correct me if they need
25 to. And once they've corrected me I'm going to do one of

1 two things. I'm either going to send the case back to
2 you or I'm going to bring you back out and I'm going to
3 correct something or add something to what I've said. So
4 please don't discuss the case yet and I'll give you the
5 case very shortly. Thank you.

6 (The jury exited the courtroom at 10:02 p.m.)

7 THE COURT: All right. Any exceptions to the
8 charge?

9 MS. BENTLEY: Nothing from the State, Your Honor.

10 MR. STEELE: Your Honor, please. Not an exception
11 or an addition as such, but Your Honor will recall that
12 at the time of the mention of the warrants being
13 served ---

14 THE COURT: Yes, sir.

15 MR. STEELE: --- I made a motion for a mistrial.

16 THE COURT: Yes, sir.

17 MR. STEELE: I just don't want my failure to accept
18 now to be considered a wavier of that motion. So I
19 mention that at this point. But subject to that, no
20 additions or exceptions.

21 THE COURT: Okay. I consider that a renewal of your
22 motion and you're protected on the record in that regard.
23 And I respectfully deny the same. Thank you. Anything
24 further?

25 MS. BENTLEY: No.

1 MR. STEELE: No, sir.

2 THE COURT: All right. What I'm going to do now is
3 I'm going to give them the case. I'm going to ask that
4 the alternates be escorted up to my chamber and I'm going
5 to dismiss them and thank them. Okay. All right. We'll
6 be in recess until we receive either a question or a
7 verdict.

8 (The jury began their deliberations at 10:04 a.m.)

9 (Court's Exhibit Number 1 was marked and filed.)

10 (Court's Exhibit Number 2 was marked and filed.)

11 (A recess was taken while the jury deliberated.)

12 (A discussion was held off the record.)

13 THE COURT: All right. Bring the jury in, please.

14 THE BAILIFF: Judge?

15 THE COURT: Yes, sir.

16 THE BAILIFF: The jury would like to take notes?

17 THE COURT: Like to take notes?

18 THE BAILIFF: Yes, sir.

19 THE COURT: All right. Okay.

20 MR. STEELE: Your Honor, can we tell them they can't
21 do that at this late date?

22 THE COURT: Yeah, I'm going -- I'm going to tell
23 them they can't do that right now. Tell them to come on
24 in. Yeah.

25 (The jury entered the courtroom at 1:55 p.m.)

1 THE COURT: All right, ladies and gentlemen. I
2 apologize to you that my technology is not any better
3 than it is. We're going to play back the officer's
4 testimony that you have requested. And forgive us in
5 advance for the audio quality but it's all that I can
6 offer you.

7 Let me tell you a couple things before I play it.
8 First thing is this, sometimes I am reluctant to replay
9 portions of testimony and to go back to a transcript, and
10 that is because I'm very wary not to suggest that I think
11 any portion of the trial, or on any bit of evidence has
12 any greater importance than another. And I don't like
13 for me to suggest that -- that any piece of evidence
14 should be given greater weight than that another piece of
15 evidence. That's entirely up to y'all. And know that I
16 am honoring your request but at the same time I'm not
17 suggesting to you that the answer to whatever dilemma
18 that you may have lies in this piece of evidence. I
19 don't know. I'm simply playing it as an accommodation,
20 and that's all.

21 Now, there's also a request I got to take notes. I
22 don't mind jurors taking notes ordinarily, but ordinarily
23 we need to make a decision on whether you will or whether
24 you won't. And because during the conduct of the trial
25 there was no request and there was in no notes I don't

1 want to start it at this time because the introduction of
2 evidence phase is over and you're in your deliberation
3 phase. So I'm going to require that you rely upon your
4 recollection and listening to the tape as it exits here.
5 And I'm sorry for that. Okay. You may play it.

6 (The testimony of Chris McBee was played back.)

7 THE COURT: All right, ladies and gentlemen. That's
8 the testimony. Retire to your jury room and continue
9 deliberations. Thank you.

10 (The jury exited the courtroom at 2:24 p.m.)

11 THE COURT: Mr. Steele, I think you needed to be --
12 I don't know if you needed to be protected on the record
13 for your exception.

14 MR. STEELE: Yes, sir. I would just object to the
15 proceeding that we just went through, Your Honor, and ask
16 the Court in place of that, and Your Honor knows that I
17 made this objection contemporaneous with the earlier
18 discussion, I would have just asked the Court in place of
19 that replay of the testimony that you would just have
20 told them that they had to recall it the way it was
21 originally given. And the grounds for that would be that
22 this causes an unfair weight and attention to one
23 witness's testimony to the exclusion of the other
24 witnesses.

25 THE COURT: I understand. All right. And I will

1 say for the record in order to protect Mr. Steele in
2 that regard, that he had posed an objection prior to
3 the jury returning to hear that testimony, whether that
4 was on the record or not I can't remember precisely,
5 but that objection was posed in anticipation of
6 replaying that tape. So as far as this Court is
7 concerned you're certainly protected on the record in
8 that regard.

9 MR. STEELE: Thank you, Your Honor.

10 THE COURT: Yes, sir. All right. Anything further
11 from the State?

12 MS. BENTLEY: Nothing, Your Honor.

13 THE COURT: All right. We'll be in recess then
14 until the jury returns with a question or a verdict. And
15 you can advise the attorneys on the next case that I'm
16 ready if they are.

17 (A recess was taken while the jury deliberated.)

18 THE COURT: All right. Ready for the jury?

19 MR. STEELE: Ready for Mr. Collier, Your Honor.

20 THE COURT: All right. If you would, please, bring
21 the jury in.

22 (The jury entered the courtroom at 2:55 p.m.)

23 THE COURT: All right. Mr. Ramirez, has the jury
24 reached a unanimous verdict, sir?

25 MR. RAMIREZ: We have.

1 THE COURT: Would you hand the verdict form, please,
2 to the bailiff.

3 MR. RAMIREZ: Hand all three?

4 THE COURT: Yes, sir. Yes, sir. If you'd hand
5 those please to the Clerk of Court so that she may
6 publish the same.

7 THE CLERK: Your Honor, in the case of
8 2009-GS-23-2704, the State versus Aaron Winford Collier,
9 we the jury with respect to the charges of reckless
10 driving unanimously find the defendant, Aaron Winford
11 Collier, guilty. In the case of 2009-GS-23-1719, we the
12 jury with respect to the charge of failure to stop for a
13 blue light unanimously find the defendant, Aaron Winford
14 Collier, guilty. In the case of 2009-GS-23-2703, we the
15 jury with respect to the charge of driving under
16 suspension unanimously find the defendant, Aaron Winford
17 Collier guilty. These are signed by Joseph Ramirez our
18 foreperson.

19 Ladies and gentlemen of the jury, if you agree these
20 are the verdicts you reached in your deliberation room
21 would you please raise your right hand.

22 (All jurors raised their right hands.)

23 THE CLERK: Thank you.

24 THE COURT: All right, ladies and gentlemen.
25 Anything further from the jury?

1 MS. BENTLEY: Nothing from the State, Your Honor.

2 MR. STEELE: Nothing from Mr. Collier.

3 THE COURT: Okay. All right, ladies and gentlemen.
4 Thank you very much. I appreciate your service on this
5 jury. I appreciate you being attentive and conscientious
6 as you indeed have been. And I noticed that as we're
7 going through the trial. And that's important, and I
8 appreciate it.

9 I'm going to now sentence the defendant. You're
10 welcome to stay and you're welcome to leave. It's
11 entirely up to you what you would like to do. If you
12 elect to leave then if you would call the line tonight
13 after six o'clock and determine whether in fact your
14 service is required for the remainder of the week or
15 tomorrow I'd appreciate it. I honestly don't know as I
16 sit here. I've rolled into another trial and I know that
17 that will go through about midday tomorrow, but I don't
18 know what is remaining in the other courtrooms in the
19 courthouse. So again, thanks for you service and I
20 appreciate it. Proud to have had the opportunity to work
21 with you on this case and I appreciate the service that
22 you have provided to the county and to the state this
23 week. Thanks.

24 And by the way, if y'all have any questions of me at
25 some point, please feel free to give me a call in my

1 chambers. What I like to do ordinarily is go back in the
2 jury room with you after you've returned your verdict and
3 just answer questions that you have and maybe talk to you
4 a little bit, but I'm not going to have the luxury of
5 doing that today because I -- we stopped testimony in
6 this other trial to receive your verdict. So I just
7 don't have the time to do it. I'm sorry for that.

8 Know this, I've told you that you can't discuss the
9 case but you can now. You can discuss it with anybody
10 you want to. Go home and discuss it with anybody what
11 wants to discuss it with you. But also know that you
12 don't have to discuss it. And if there's somebody who
13 wants to discuss it with you and you don't want to, just
14 say, no, I don't want to discuss it. And if that person
15 persists in trying to discuss it with you then you are
16 welcome to say no and then call me and let me know who
17 that is and I'll take care of that for you. So that
18 having been said, thanks.

19 All right. Can we bring the defendant forward for
20 sentencing?

21 MR. STEELE: Yes, sir.

22 THE COURT: All right. All right. Ms. Bentley,
23 anything further from the State?

24 MS. BENTLEY: There's a prior record, Your Honor.

25 THE COURT: All right. Be happy to hear the prior

1 record.

2 MS. BENTLEY: 1993, driving under suspension; 1994,
3 aiding a prisoner to escape; 1994, disorderly conduct,
4 disorderly conduct, driving under suspension; 1995,
5 fraudulent check; 2005, PWID crack cocaine -- pardon me,
6 it's methamphetamine; 2006, failure to stop for blue
7 lights, possession of stolen vehicle, driving under
8 suspension; and 2007, driving under suspension. There
9 are additionally pending charges, Your Honor, but ---

10 THE COURT: What are those pending charges?

11 MS. BENTLEY: It is a possession with intent to
12 distribute methamphetamine, second offense, and resisting
13 arrest.

14 THE COURT: Okay. I wanted that for information
15 purposes but I will not consider those in sentencing.
16 And I may have just heard this anecdotally, and I didn't
17 ask additionally, is Mr. Collier currently in detention
18 on a probation violation or a warrant stemming from a ---

19 MR. STEELE: He's in detention on a violation of
20 home detention.

21 THE COURT: Home detention.

22 MR. STEELE: Yes, sir. And he does have a
23 pending -- to answer your question -- go ahead.

24 MS. BENTLEY: Go ahead.

25 MR. STEELE: I was just going to say he has a

1 pending probation violation if that's what Your Honor was
2 asking.

3 THE COURT: Okay. All right. All right.

4 MS. BENTLEY: And he was on probation at the time
5 this happened.

6 THE COURT: Okay. Good enough. Now, are we going
7 to handle the probation violation today?

8 MR. STEELE: Well, we're willing to do that and
9 prepared to do that. I will tell Your Honor for the
10 Court's information it's currently set for the 22nd of
11 November. That's when the agent said do it, but I think
12 both Mr. Collier and I, he can correct me if I'm wrong,
13 we would prefer to handle it right now.

14 MR. COLLIER: Do it all right now.

15 THE COURT: All right. Let's see. I don't know if
16 we have anybody from probation down here right now.
17 They're on their way, okay. All right. Good enough.
18 All right.

19 MS. BENTLEY: Did you want to handle the pending
20 charges as well?

21 MR. STEELE: Yes.

22 THE COURT: Okay. Well, while we're waiting let's
23 go ahead and make a little bit of use of your time. And
24 let's make sure I am -- that I am clear on the maximum
25 possible penalty. Failure to stop for a blue light

1 second or subsequent offense, what's the maximum possible
2 penalty?

3 MS. BENTLEY: Five years, Your Honor.

4 THE COURT: Reckless driving?

5 MS. BENTLEY: Thirty days.

6 THE COURT: And DUS, third or subsequent?

7 MS. BENTLEY: It is 90 days to six months, Your
8 Honor, and \$1,000.

9 THE COURT: Okay.

10 MR. STEELE: If Your Honor, please? Mr. Collier has
11 just indicated and I think it's acceptable to the
12 solicitor's office a willingness to enter a plea to the
13 pending drug charge. And I think the solicitor's office
14 is going to dismiss the pending resisting arrest charge.

15 MS. BENTLEY: That's correct, Your Honor.

16 THE COURT: Is that correct? Okay. All right.

17 MS. BENTLEY: One moment.

18 THE COURT: I appreciate y'all staying. And y'all
19 just make yourselves comfortable. What's happening right
20 now is I'm waiting for probation to get down here so that
21 we can handle a probation violation as well, and I can
22 make essentially a global sentence on everything that's
23 outstanding. There's also additional charges to which
24 Mr. Collier intends to plead guilty and I'll go through a
25 colloquy, a series of questions related to that guilty

1 plea as well. So -- and he's going to sign certain
2 documents demonstrating his willingness to enter a plea
3 of guilty to those offenses. So we'll probably take a
4 about few minutes. Okay.

5 MR. COLLIER: Thank you for doing all these, Your
6 Honor.

7 THE COURT: Hey, no problem. It's helpful to
8 everybody, Mr. Collier.

9 MR. COLLIER: I'd rather get it all over with now.

10 THE COURT: All right. Mr. Collier, do you need to
11 serve Mr. Collier with the warrants, or have you already
12 done that?

13 MR. STEELE: I think he's already been served.

14 MR. COLLIER: Yeah, I believe he has. He's already
15 been served. He has a pending hearing on November 22nd.

16 MR. STEELE: That's right.

17 THE COURT: All right. Good enough. All right.
18 Now, realize that Mr. Collier, probation officer, has
19 indicated that there are victims on the possession of
20 stolen vehicle and has brought that to the Court's
21 attention. I'm going to go forward with the probation
22 revocation hearing. If the -- if the victims wish to
23 come before this Court then they may do so on the 22nd
24 and Mr. Collier can be transported at that time to attend
25 that hearing. But anticipating that they won't have an

1 issue with us going forward today I'm going to go ahead
2 and move along so -- as a matter of judicial and
3 practical economy. Okay. Thank you very much.

4 Okay. Mr. Collier, with respect to the -- to the
5 indictment 2009-GS-23-6290, distribution of -- is it
6 crack cocaine, I'm not looking ---

7 MS. BENTLEY: It's methamphetamine.

8 THE COURT: Methamphetamine, second offense. And is
9 it your intention to enter a plea of guilty, is that
10 correct, sir?

11 MR. COLLIER: Yes, sir.

12 THE COURT: All right, sir. You previously today
13 swore in under oath and swore to tell the truth. You
14 continue under that oath. Do you understand that, sir?

15 MR. COLLIER: Yes, sir.

16 THE COURT: Mr. Steele, you had the opportunity to
17 discuss with Mr. Collier his Constitutional rights and
18 the possible ramifications of his plea to indictment
19 2009-6290, sir?

20 MR. STEELE: Yes, Your Honor.

21 THE COURT: And you in fact represent him on that
22 charge as well?

23 MR. STEELE: Yes, Your Honor, I do.

24 THE COURT: And is it your understanding that he
25 wishes to waive all of his Constitutional rights and

1 proceed with a plea of guilty this afternoon?

2 MR. STEELE: Yes, Your Honor.

3 THE COURT: Do you agree with that decision?

4 MR. STEELE: Yes, sir.

5 THE COURT: Mr. Collier, you recognize, sir, you
6 have a right to a jury trial on this charge?

7 MR. COLLIER: Yes, sir, I do.

8 THE COURT: You recognize that if you had a jury
9 trial the State would have the burden of proving you
10 guilty beyond a reasonable doubt?

11 MR. COLLIER: Yes, sir.

12 THE COURT: And you understand in that proceeding
13 you would not have the burden of proving yourself
14 innocent. You have a right to remain silent, which means
15 you wouldn't have to say, do or prove anything to that
16 jury?

17 MR. COLLIER: Yes, sir.

18 THE COURT: And you understand that even though you
19 have that right to remain silent you could in that
20 proceeding take the stand and testify and tell your side
21 of the story, present evidence, present witnesses. You
22 could present legal defenses. You could make motions
23 before the Court to protect your legal interests. You
24 could also cross-examine any of the State's witnesses.
25 Do you understand that, sir?

1 MR. COLLIER: Yes, sir.

2 THE COURT: Has the indictment been true billed?

3 MS. BENTLEY: Yes, Your Honor, it has.

4 THE COURT: Okay. All right. And, sir, do you want
5 to give up these Constitutional rights, sir, and enter a
6 plea of guilty to this charge?

7 MR. COLLIER: Yes.

8 THE COURT: All right. And in indictment
9 2009-GS-23-6290, you're pleading guilty to distribution
10 of methamphetamine, second offense?

11 MS. BENTLEY: PWID meth., second offense, Your
12 Honor.

13 THE COURT: What's the maximum possible penalty
14 under the law?

15 MS. BENTLEY: Five to 30 years, Your Honor.

16 THE COURT: You understand, sir, that under the law
17 you could receive between five and 30 years incarceration
18 on that offense?

19 MR. COLLIER: Yes.

20 THE COURT: All right, sir. And how do you wish to
21 plead to that, sir?

22 MR. COLLIER: Guilty.

23 THE COURT: All right. Is that classified as a
24 serious offense?

25 MS. BENTLEY: No, Your Honor, it is not.

1 THE COURT: Okay. All right, sir. And are you
2 pleading guilty, sir, because you are guilty?

3 MR. COLLIER: I want to get it behind me.

4 MR. STEELE: One moment, Your Honor. *why*

5 MS. BENTLEY: Your Honor, I'd like to change the CDR
6 code on that.

7 MR. COLLIER: Yes, sir.

8 THE COURT: Okay. I'm going to ask you that again,
9 Mr. Collier. And I recognize the position that you have
10 found yourself in. And I appreciate that. But my job is
11 to make sure that if you in fact are going to plead
12 guilty that you acknowledge your guilt and that there are
13 sufficient factual basis for you to enter a plea and for
14 you to be convicted of potentially at trial. So I'm
15 going to ask you again, are you pleading guilty of your
16 own freewill because you are guilty, sir?

17 MR. COLLIER: Yes.

18 THE COURT: Has anyone forced, threatened, or made
19 you enter into the plea?

20 MR. COLLIER: No.

21 THE COURT: Has anyone promised you anything in
22 exchange for your plea?

23 MR. COLLIER: No.

24 THE COURT: Are you under the influence of any drugs
25 or alcohol today, sir?

1 MR. COLLIER: No, sir.

2 THE COURT: Do you suffer from any mental sickness
3 that would affect your ability to understand and
4 appreciate what's going on today?

5 MR. COLLIER: No, sir.

6 THE COURT: And have you had the opportunity to
7 discuss this case with Mr. Steele as much as you've
8 needed to?

9 MR. COLLIER: Yes.

10 THE COURT: And has he answered all of your
11 questions and done everything you've asked him to do?

12 MR. COLLIER: Yes.

13 THE COURT: All right. And are you satisfied with
14 his services?

15 MR. COLLIER: Very much so.

16 THE COURT: And you recognize that by pleading
17 guilty to this offense that it is a violation of your
18 previously imposed probation?

19 MR. COLLIER: Yes, sir, I do.

20 THE COURT: Okay. And you understand that -- and
21 again, understanding and appreciating the circumstances
22 that you find yourself in you may think that's not a big
23 deal, but let's say hypothetically that you were to go up
24 on appeal and the conviction was overturned. You
25 recognize that even if it were overturned this would

1 still be a violation of your probation because you
2 entered a plea of guilty?

3 MR. COLLIER: Yes, sir, I do.

4 THE COURT: Okay. All right. And want to proceed
5 on that basis, sir?

6 MR. COLLIER: Yes, sir, I do.

7 THE COURT: Okay. And I'll ask you again, have you
8 understood all the questions I've asked you today, sir?

9 MR. COLLIER: Yes, I have.

10 THE COURT: Do you have any questions that you would
11 like to ask me or Mr. Steele regarding your rights, or
12 this proceeding before we move forward?

13 MR. COLLIER: Any questions? No, sir.

14 THE COURT: Okay. All right. Ms. Bentley, with
15 respect to the offense to which he's pleading guilty, I'd
16 be happy to hear the facts.

17 MS. BENTLEY: Yes, Your Honor. On December 2, 2008
18 members of the Greenville County Sheriff's Office and
19 Fountain Inn Police Department were conducting
20 surveillance at 1006 Autumn Leaf Lane in Fountain Inn.
21 There they observed this defendant in the garage at the
22 residence. The officers had active arrest warrants for
23 this defendant and entered that residence. This
24 defendant was found hiding in the master bedroom bathtub.
25 A syringe was located on his person and others were found

1 in plain view. Based on this a search warrant for the
2 residence was obtained. Inside a dresser drawer in the
3 master bedroom there were four baggies containing a white
4 powder substance. That powder lab tested positive as 1.7
5 grams of methamphetamine. And this occurred in
6 Greenville County.

7 THE COURT: Okay. Mr. Collier, you heard those
8 facts, sir, is that what happened?

9 MR. COLLIER: Yes, sir.

10 THE COURT: All right. I do find that there is a
11 substantial factual basis for the plea. It's been
12 entered freely and voluntarily with the advice of counsel
13 with whom Mr. Collier indicates that he is satisfied.
14 You've recited into the record the prior record. Mr.
15 Collier, you heard that. Do you think that's a fair and
16 accurate recitation of your prior record?

17 MR. COLLIER: Yes.

18 THE COURT: Okay. All right. Mr. Collier,
19 probation officer, is there anything you need to put on
20 the record, sir?

21 MR. COLLIER: No, sir. You have the violation
22 reports which -- I don't know if you want to put those on
23 the record. We have all the present violations on there,
24 besides the offense that he's pleading to.

25 THE COURT: Okay. All right. Good enough. All

1 right. Mr. Steele, I'd be happy to hear from you, sir.

2 MR. STEELE: And I thank the Court for that
3 opportunity. I would point out that on the charges that
4 he was convicted on by the jury, convicted of by the jury
5 that there was an extensive deliberation, which I would
6 submit gives some justification to his decision to go to
7 trial.

8 Secondly, I would tell you about Mr. Collier
9 personally. Next month, the first week in December,
10 he'll turn 37 years old. He was born in 1973. He has
11 worked most recently as a diesel mechanic and he -- the
12 name of his last employer was a company called After
13 Hours, and he was working there. And I don't think he
14 would mind me telling you, it's quite honestly the truth,
15 that he's had some trouble with drugs. He has had some
16 trouble staying sober. And I'm respectfully asking you
17 and whatever decision -- whatever sentence you choose to
18 impose that you give him the benefit of some drug
19 treatment and put him in the ATU program while he's
20 serving his sentence.

21 Furthermore, I agree with his decision to go ahead
22 and plead guilty to the outstanding charge, and I think
23 he's doing the right thing. And to be very honest with
24 the Court we have a lot of confidence in this Court.
25 He's been before you, he tells me, for both of his trials

1 as well for one of his house arrest violations, and
2 perhaps for other things as well. But he's been before
3 this particular Court at least three times that I'm aware
4 of. And we have absolute confidence in Your Honor to
5 impose a fair, fair to everybody, sentence that
6 encompasses all the things that he's appearing before you
7 today. So I think part of his decision to plead guilty
8 was because he wanted to do it now in front of you. Am I
9 correct?

10 MR. COLLIER: Yes, sir.

11 THE COURT: I appreciate that. Mr. Collier, I'd be
12 happy to hear from you, sir, if there's anything you'd
13 like to tell me.

14 MR. COLLIER: I just beg for the mercy, that's all.

15 THE COURT: All right, Mr. Collier.

16 MR. COLLIER: You're a very fair man.

17 THE COURT: Well, I appreciate you saying that, you
18 know, and I don't -- you say that before ---

19 MR. COLLIER: I don't expect to get off scott free,
20 I understand.

21 THE COURT: Well, I'm going to tell you something.

22 MR. COLLIER: I expect fairness.

23 THE COURT: You -- I'm going to treat you fairly
24 but, you know, the most significant thing that you're
25 looking at obviously is not what you were convicted of by

1 this jury.

2 MR. COLLIER: Yes, sir.

3 THE COURT: That's almost incidental but for the
4 fact that it violated your probation. You do have
5 obviously a drug problem, and that's unfortunate. I do
6 intend to enter a sentence that gives you the opportunity
7 to address that drug problem. And I certainly hope that
8 you do take advantage of that opportunity.

9 MR. COLLIER: I will do that. I greatly appreciate
10 that. I willfully acknowledge my drug habit.

11 THE COURT: How much time have you served on this?

12 MS. BENTLEY: Between the probation violations and
13 the time he spent in jail on all those charges
14 approximately 340 days, Your Honor.

15 THE COURT: 340 days. Okay. I'm going to give you
16 credit for time served of 340 days on all of those.
17 Okay. Okay. Does that sound right, Mr. Collier?

18 MR. COLLIER: Yes, sir, it does.

19 THE COURT: All right. Everything can be
20 concurrent, Mr. Collier.

21 MR. COLLIER: Thank you.

22 THE COURT: The sentence of the Court is on the
23 reckless driving 30 days, time served, credit for your
24 340. On the driving under suspension third, six months,
25 time served, credit for your 340 days. On the failure to

1 stop for a blue light second, that's five years,
2 concurrent with all other sentence, 340 days credit time
3 served. On the manufacture of crack cocaine second, the
4 sentence of the Court is you be committed to the State
5 Department of Corrections for a period of 15 years,
6 provided upon the service of eight years the balance is
7 suspended to probation for five years, concurrent, credit
8 for 340 days. During your period of incarceration I'm
9 recommending ATU which is the Addiction Treatment Unit so
10 you can get that inhouse treatment. And when you get out
11 during probation, substance abuse counseling, random drug
12 and alcohol testing. So when you do get out you will
13 have a resource that you can lean on if you begin to have
14 problems and a potential relapse. With respect to your
15 probation, partial revocation of eight years and
16 terminate it.

17 MR. STEELE: Your Honor, that eight year probation
18 sentence is concurrent, am I correct?

19 THE COURT: Yes, sir, everything is concurrent.
20 Eight years and terminate on the warrant 2105, case 1540.
21 And then on the other one I believe it's three years
22 suspended and that's a partial revocation of two years
23 and terminate, concurrent.

24 MR. COLLIER: Thank you, Your Honor.

25 THE COURT: All right. Mr. Collier, good luck to

1 you, sir.

2 MR. COLLIER: Thanks.

3 MS. BENTLEY: May I change that CDR code, Your
4 Honor?

5 THE COURT: Yes, ma'am.

6 - - -END OF TRANSCRIPT OF RECORD- - -

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C E R T I F I C A T E

I, the undersigned Mary E. DiGirolamo, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 9th day of November, 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 13, 2012



Mary E. DiGirolamo

Official Court Reporter

WITNESSES

J Garrett

Greenville County Sheriff's Office

12/22/2008

(APD)

DOCKET NO. 2009-GS-23-

WIB

002703

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
February 10

TERM 2009

THE STATE

GUILTY

VS.

AARON WINFORD COLLIER

ARREST WARRANT NUMBER

1381435

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0175

Indictment for

DRIVING UNDER SUSPENSION

VIOLATION § 56-01-0460(3)

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DRIVING UNDER SUSPENSION

FEB 18 2010

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That AARON WINFORD COLLIER did in Greenville County, on or about the 11th day of November, 2008, drive a motor vehicle on a public highway of this state when his license to drive was suspended pursuant to § 56-5-2990, such not being the first such offense within a period of five years including and immediately preceding the foregoing date. This is in violation of §56-1-460(3) of the 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.


SOLICITOR

§ STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.Aaron Winford Collier

AKA: _____

Race: _____ Sex: M Age: 36

DOB: _____ SS#: _____

Address: _____

City, State, Zip: FOUNTAIN INN, SC 29644

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offenseINDICTMENT/CASE#: 2009GS2302703A/W#: 1381435Date of Offense: 11/11/2008S.C. Code § : 56-01-0460(3)CDR Code #: 0175

SENTENCE SHEET

in violation of § 56-01-0460(3) of the S.C. Code of Laws, bearing CDR Code # 0175☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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.

ARREST: _____

Lisa Bentley
Bentley, Lisa77787
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 60 days/months/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/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years 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. 350 days☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter: m. D. Anderson

SCCA/217 (06/2010)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge _____

Judge Code: 01587Sentence Date: 11/19/2010

WITNESSES

J Garrett

Greenville County Sheriff's Office

12/22/2008

PHO

DOCKET NO. 2009-GS-23-032704

WIB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM 2009

THE STATE

vs.

AARON WINFORD COLLIER

GUILITY

ARREST WARRANT NUMBER

1381402

ACTION OF GRAND JURY
TRUE BILL

Ann D. Federle
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0857

Indictment for

RECKLESS DRIVING

VIOLATION § 58-05-2920

Foreperson of Petit Jury

Date:

B STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Aaron Winford Collier

AKA:

Race: Sex: M Age: 36

DOB: SSN:

Address:

City, State, Zip: FOUNTAIN INN, SC 29644

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Traffic / Reckless Driving

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2302704A/W#: J381402Date of Offense: 11/11/2008S.C. Code §: 56-05-2920CDR Code #: 0657

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 56-05-2920 of the S.C. Code of Laws, bearing CDR Code # 0657☒ 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:

Elizabeth Major
Major, Elizabeth74805
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 30 days/months/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/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years 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. 340 days☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Paul B. Wickham

Court Reporter:

M-Di

SCCA/217 (06/2010)

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2158Sentence Date: 11/19/2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
RECKLESS DRIVING

At a Court of General Sessions, convened on **FEB 16 2010** the Grand Jurors of Greenville
County present upon their oath:

That AARON WINFORD COLLIER did in Greenville County on or about the 11th day of November, 2008,
drive a motor vehicle on the highways of this state in such a manner as to indicate either a willful or wanton
disregard for the safety of persons or property. Such actions are in violation of S. C. Code Section 56-5-2920, and
against the peace and dignity of the state.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

DOCKET NO. 2009-GS-23-
WIB

001719

The State of South Carolina

County of Greenville

WITNESSES

(Signature)

John Garrett

Greenville County Sheriff's Office

12/2/2008

COURT OF GENERAL SESSIONS

February TERM 2009

THE STATE

GUILTY vs.

AARON WINFORD COLLIER

ARREST WARRANT NUMBER

1381403

ACTION OF GRAND JURY
TRUE BILL

(Signature)
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

2386

Indictment for

FAILURE TO STOP FOR BLUE LIGHT

VIOLATION § 56-05-0750(B)(2)

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FAILURE TO STOP FOR BLUE LIGHT

At a Court of General Sessions, convened on **FEB 16 2010** the Grand Jurors of Greenville

County present upon their oath:

That AARON WINFORD COLLIER did in Greenville County, on or about the 11th day of November, 2008, willfully, knowingly, and unlawfully commit the offense of failure to stop for police vehicle in that the said defendant while driving on a road, street or highway of the State did fail to stop when signaled to do so by a police vehicle using blue lights and/or siren. This is in violation of §56-5-750 of the 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.


SOLICITOR

B STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.Aaron Winford Collier

AKA: _____

Race: _____ Sex: M Age: 36

DOB: _____ SS#: _____

Address: _____

City, State, Zip: FOUNTAIN INN, SC 29644

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Traffic / Failure to stop for a blue light, no injury or death - 2nd or sub. offenseINDICTMENT/CASE#: 2009GS2301719A/W#: 1381403Date of Offense: 11/11/2008S.C. Code § : 56-05-0750(B)(2)CDR Code #: 2396

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSIn violation of § 56-05-0750(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2396☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Lisa Bentley
Bentley, Lisa77787
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 5 days/months/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/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years 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. 300 days☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	<u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§ 14-1-212 (Law Enforce. Funding)	\$25	\$	<u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$	
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCJA Surcharge)	\$5	\$	<u>5</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$	
3% to County (if paid in installments)		\$	
TOTAL		\$	

Clerk of Court/ Deputy Clerk

Court Reporter: M. D. Stordame

SCCA/217 (06/2010)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2158Sentence Date: 11/19/2010

WITNESSES

John Garrett

Greenville County Sheriff's Office

12/3/2008

(Handwritten: JMO)

DOCKET NO. 2009-GS-23-

WIB

006273

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2008¹⁰

THE STATE

VS.

AARON WINFORD COLLIER

ARREST WARRANT NUMBER

1521760

ACTION OF GRAND JURY
TRUE BILL

(Handwritten: Ann D. Garrett)
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

3015

Indictment for

POSSESSION OF METHAMPHETAMINE WITH
INTENT TO DISTRIBUTE

VIOLATION §44-53-0375

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF METHAMPHETAMINE WITH INTENT TO
DISTRIBUTE

At a Court of General Sessions, convened on

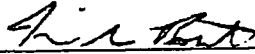
FEB 16 2010

the Grand Jurors of Greenville

County present upon their oath:

That AARON WINFORD COLLIER did in Greenville County, on or about the 2nd day of December 2008, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Methamphetamine (Crank), a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-375 of the 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.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Aaron Winford Collier

AKA:

Race: Sex: M Age: 36
 DOB: SS#: 279

Address:

City, State, Zip: FOUNTAIN INN, SC 29644

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base 2ndIn violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039 3015

☒ 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:

Bentley, Lisa 77787 x 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 15 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
 and/or to pay a fine of \$ —; provided that upon the service of 5 days/months/years and/or payment

of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years 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. 340 1455☐ 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 PTUPTotal: \$ — plus 20% fee: \$ — days/hours Public Service EmploymentPayment Terms: RESTITUTION FROM☐ Set by SCDPPPS No - 65-30-0605 TRAVE Obtain GED ☐TO THIS TERM OF PROBATION Attend Voc. Rehab. or Job Corp. —Recipient: 145

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter: M. De Staleno

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2306290A/W#: 1521760Date of Offense: 12/2/2008S.C. Code §: 44-53-0375(B)(3)CDR Code #: 3039

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code: 2158Sentence Date: 11-9-2010

Probation begins after completion of any early release program.

Created by the South Carolina Department of Probation, Parole and Pardon Services

STATE OF SOUTH CAROLINA

County of Greenville
STATE VS.

Aaron Collier

AKA: _____
Race: _____ Sex: M
DOB: _____
SSN: _____
SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#: 05-GS-23-05140
Probation CW#: W-23-08-2105

Name of Original Offense: PW17D Meth 1st offense
Original AWW#: I566259
Date of Original Offense: 6-1-05
Conviction S.C. Code #: 44-53-375
Conviction CDR Code #: 31-1-9-8
Original Sentence: 10 yrs Susp to 18 mos +
ORDER 3 yrs probation

The above named defendant has been charged with violating the conditions of probation ordered on 12/6/08 in the Court of General Sessions of Greenville County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on _____ as set forth in the attached warrant(s) or citation(s) dated W-3/5/08. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number of Indicate special conditions as provided in the affidavit) 1, 2, 3, 6, 7, 9, 10, 11 & 12

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 8 months/years, the remainder of the original sentence, and/or pay \$ _____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court:

Terminate Probation

☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

☒ The defendant has previously served 18 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 9th day of November 2010
Greenville SC

Presiding Judge Hon. Robin B. Stibuck
Judicial Circuit 13th

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper, or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____ Year _____ at _____ City _____ SC

FORM 5

IN - 4 PM 4:01
 CLERK OF COURT
 GREENVILLE CO. S.C.
 D. P. WICKHAM

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of GREENVILLE)AARON W. COLLIER 00319743)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2011-CP-23- 07360

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Livesay Correctional Institution
104 Broadst Drive, Spartanburg, SC 29303
2. Name and location of Court which imposed sentence Greenville County
General Sessions Court,, Greenville, SC
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) see attachment
 - (b) _____

4.)

- A) Distribution/Manufacture Methamphetamine cocaine
2009-GS-23-06290
- B.) DUS 2009-GS-23-02703
- C.) FTS Blue Light 2009-GS-23-01719
- D.) Reckless Driving 2009-GS-23-02704
- E.) violatin of probation 05-GS-23-5140, 06-GS-30-0664,665

5.)

- A.) 15 yrs suspended 8yrs balance suspended 5 yrs probation
- B.) 6 months
- c.) 5 yrs
- d.) 30 days
- e.) 5 yrs concurrent, credit 340 days

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) See attachment
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty yes
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) did know any grounds
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) improper assistant counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) didn't investigate charges, didn't proper objections
- (b) advised to plea, wasn't prepared to defend client
- (c) didn't proper prepare for plea
- (d) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Carlyle Steele
P.O. Box 10351 FED.Stat: Greenville, SC 29603
 ii. _____
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. trial, plea, probation violation
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

new trial

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Richard H. Warder, attorney for Applicant, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Richard H. Warder

SWORN to and subscribed before me this 4th
day of November, 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires: 10-31-13

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, _____

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-7360
COUNTY OF GREENVILLE	)	
	)	
Aaron Winford Collier,	)	
S.C.D.C. No. 319743,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKENHISER

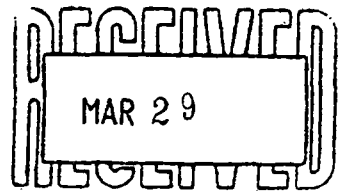
2012 MAR 21 P 1:37

In response to the post-conviction relief application filed November 4, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant for failure to stop for a blue light (2009-GS-23-1719), driving under suspension (DUS) (2009-GS-23-2703), and reckless driving (2009-GS-23-2704). Carlyle Steele, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On November 9, 2010, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of five (5) years for failure to stop for a blue light, second offense, six (6) months for DUS, third offense or greater, and thirty (30) days for reckless driving. The Applicant also pled guilty to the charge of possession with intent to distribute methamphetamine, second offense (2009-GS-23-6290) and received a concurrent sentence of fifteen (15) years suspended on service of eight (8) years and five (5) years probation. The Application also received a probation revocation on the charge of



possession with intent to distribute methamphetamine (2005-GS-23-5140) and received a concurrent eight (8) year sentence. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the trial/guilty plea/probation revocation transcript.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel:
 - a. "[D]idn't investigate charges, didn't proper objections[,] advised to plea, wasn't prepared to defend client[,] didn't proper prepare for plea."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

on the issues raised in the PCR application.

Respectfully submitted,

ALAN WILSON
Attorney General

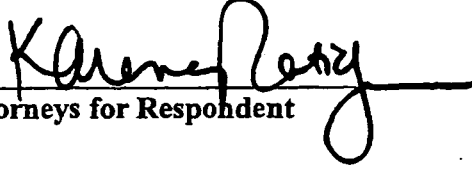
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 15, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2011-CP-23-7360

AARON WINFORD COLLIER, 319743

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

FILED CLERK OF COURT
GREENVILLE CO. S.C.
2012 MAR 27 P 1:37

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Aaron Winford Collier, 319743
Livesay Correctional Institution
Post Office Box 580
Una SC 29378-0580**

DATED this 15th day of March, 2012.


Judy A.C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

AARON W. COLLIER,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2011-CP-23-7360

APRIL 17, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

RICHARD H. WARDER
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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EXHIBITS

(NONE)

1 **April 17, 2013**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 THE COURT: All right, Mr. Warder.

5 MR. WARDER: Your Honor, this is the case of
6 Aaron Collier. And Mr. Collier was represented at trial
7 and a plea by Carlisle Steele. It was a trial wherein he
8 was -- he went to trial and was convicted on the charges
9 Mr. Steele represented him on. After that trial, it's
10 the position of my client that they went ahead and
11 entered a plea to the charge that Ms. Ross represented
12 him on so it could all be sentenced at one time. And
13 that through that, no one ever -- Carlisle didn't talk to
14 him at all about the facts, didn't really investigate the
15 facts, because he wasn't representing him at that time.
16 No one discussed with him that it was an eighty-five
17 percent sentence that he was pleading guilty to. And the
18 only mention of any particular characteristic about it is
19 in the record and it indicates that they said it was not
20 serious, second offense distribution, possession with
21 intent to distribute methamphetamine and that carried a
22 five to thirty. And of course, that was violent and an
23 eighty-five percent sentence. That just wasn't
24 discussed.

25 What happened in this is that we think Mr. Steele

1 tried to help him out afterwards, tried to -- he had --
2 faced with the conviction after the trial. And the
3 solicitor had charges she wanted to get rid of and so
4 they entered a plea to everything and he ended up with an
5 eighty-five percent violent sentence that he both had
6 defense and didn't know it was eighty-five percent and
7 couldn't receive advice on it because no one at that
8 hearing there had investigated the charges.

9 So the fact that Mr. Steele didn't really represent
10 him is the only issue that we needed -- Ms. Ross did. I
11 think Mr. Steele's file would indicate that, too.

12 THE COURT: So it all relates to the plea, not
13 the trial?

14 MR. WARDER: That's right. The truth is that
15 my client is really happy with -- not thrilled that he
16 got convicted, but Mr. Steele did nothing that he can
17 complain about. Carlisle presented the facts at the
18 trial and argued the case. The jury just came back with
19 a verdict that he didn't expect and was somewhat taken
20 back by the conviction that he didn't feel was justified
21 and that Mr. Steele argued against.

22 And then after that was kind of this situation where
23 they wrapped everything up. And in the wrapping
24 everything up, he ended up with a sentence -- and I'm not
25 even sure what the judge intended, because the judge gave

1 him an eight year sentence on the charge he was convicted
2 of with the jury. On the cocaine charge, the judge gave
3 him fifteen years suspended to eight. And of course, I
4 don't believe that the judge -- and the judge's only
5 comments about it were that he asked if it was serious
6 and he was informed by the solicitor it was not serious.
7 And then no other thing was mentioned about it being
8 violent or eighty-five percent. And I guess I've assumed
9 the judge was aware of it because judges always know the
10 law. But I just don't know in this case and he ended up
11 now sitting with an eighty-five percent of eight years
12 that greatly changes what he would have got had he just
13 served the eight years on the charge he was convicted of.

14 And so the charge we wanted and the issue that we
15 wanted Ms. Ross's testimony for was that that was still
16 her client and that she didn't discuss this plea with
17 him.

18 THE COURT: So how do you feel that her
19 testimony might not be needed?

20 MR. WARDER: Well, Mr. Steele, I think, might
21 be able to provide the testimony that he, in fact,
22 indeed, didn't represent him on that charge. And so, I
23 mean, I need to get that fact in.

24 THE COURT: Ms. Ratigan, is the state aware on
25 the issue in this case?

1 MS. RATIGAN: Just from what Mr. Warder has
2 told me this morning. I mean, I was ready to -- it's all
3 laid out in the return, but it's kind of complicated.
4 They did a trial with Mr. Steele and then a plea and then
5 also a probation revocation. It all kind of tied into
6 one. The plea and probation revocation actually starts
7 on page about 168. You can see it was not a real lengthy
8 trial. So I was prepared to go forward on everything
9 today. I knew that Mr. Warder, last term, had told me
10 that he needed Suzannah here, but I didn't know the
11 purpose of that until about ten minutes ago.

12 But it's his burden of proof, so I don't want to
13 weigh in on whether or not she's necessary, since it's
14 his burden in this case.

15 THE COURT: Are you ready to proceed or do you
16 want to -- is there another case that could be heard or
17 not this morning?

18 MS. RATIGAN: There's one more case, Judge. I
19 would need like a two or three minute break to call my
20 office about an issue in that case that may resolve the
21 case. But if you want to take a bit of a break, we can
22 ---

23 THE COURT: Do you want to maybe see if we can
24 get her here? Take a short break and see if this other
25 case can be resolved and see if you can find her?

Aaron W. Collier -vs- State of South Carolina (2011-CP-23-7360)
PCR

7

1 MR. WARDER: I'd be willing to wait and see if
2 you can dispose of that case, just for judicial
3 efficiency, and then maybe she'll be here.

4 THE COURT: Okay. Let's take about a ten
5 minute break and see what we're going to do. We'll
6 either take care of that one or be back with you on this
7 one.

8 (WHEREUPON, the court stood at recess for a short
9 break.)

10 THE COURT: All right. Ms. Ratigan.

11 MS. RATIGAN: Thank you, Your Honor, may it
12 please the court. This is the case of Aaron Collier
13 versus the State of South Carolina. Docket number is
14 2011-CP-23-7360. Mr. Collier was indicted for failure to
15 stop for a blue light, driving under suspension and
16 reckless driving. He was represented on those charges by
17 Carlisle Steele. The case was brought to trial in
18 November of 2010 before Judge Stilwell. Mr. Collier was
19 found guilty of the charges. On November 9th of 2010,
20 Judge Stilwell sentenced him to concurrent sentences of
21 five years for failure to stop, second offense; six
22 months for DUS, third offense or greater; thirty days for
23 reckless driving.

24 After the trial, and actually it starts on page 168
25 of the transcript, Your Honor, Mr. Collier also pled

1 guilty to an outstanding charge of PWID methamphetamine,
2 second offense. He received a concurrent sentence of
3 fifteen years, suspended on the service of eight years
4 and five years probation.

5 Also, at that time Mr. Collier had a probation
6 revocation on a prior charge of PWID methamphetamine and
7 Judge Stilwell gave him a concurrent eight year sentence
8 on that, as well. Mr. Collier did not file an appeal.
9 Therefore, his total active sentence, Your Honor, would
10 have been eight years with five years probation
11 outstanding.

12 State is ready to proceed.

13 THE COURT: Mr. Warder.

14 MR. WARDER: Your Honor, if it please the
15 court, I would call C. Carlisle Steele.

16 THE COURT: All right. Mr. Steele, if you'll
17 come around and be sworn, please.

18 THE WITNESS: Yes, sir.

19 THE CLERK: Mr. Steele.

20 THE WITNESS: How are you today?

21 THE CLERK: I'm good. How are you?

22 THE WITNESS: Good to see you.

23 THE CLERK: Place your left hand on the bible
24 and raise your right hand. You do solemnly swear or
25 affirm that the testimony you're about to give in this

1 case will be the truth, the whole truth and nothing but
2 the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you. You may be seated.

5 THE WITNESS: Thank you, ma'am.

6 THE CLERK: State your full name for the
7 record.

8 THE WITNESS: Carlisle Steele.

9 **CARLISLE STEELE,**

10 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

11 **DIRECT EXAMINATION**

12 **BY MR. WARDER:**

13 Q. Mr. Steele, you've been practicing in Greenville,
14 South Carolina since 1974?

15 A. Yes, sir.

16 Q. You had occasion to represent Aaron Collier?

17 A. Yes, sir.

18 Q. Do you know what charges you were hired to represent
19 him on?

20 A. I know that I was hired to represent him on all the
21 charges that were connected with an alleged failure to
22 stop, which included failure to stop, reckless driving
23 and resisting arrest. And I'm pretty sure I was also
24 retained on a meth charge, at least one, maybe two.

25 Q. Okay. What happened? Did you go to trial on those

1 charges?

2 A. We went to trial.

3 Q. Okay. And as a result of that trial was Mr. Collier
4 convicted?

5 A. He was convicted. But I want the record to reflect
6 that the jury stayed out for hours.

7 Q. Okay. And after that jury returned, did you
8 undertake to enter into plea negotiations? Did the state
9 undertake to enter plea negotiations with you?

10 A. I'm not sure I'd call them negotiations. It
11 happened real fast. I think Ms. Lisa Bentley, the trial
12 judge for the solicitor's office -- excuse me -- trial
13 lawyer for the solicitor's office said something like,
14 would you like to get rid of these other charges and
15 would you like to address the probation violation? And
16 Mr. Collier said he did. And she actually dropped one or
17 two charges. I'm not sure what she dropped, but she
18 dropped soemthing. And then he pled to those other
19 charges that we're talking about here today. And if I
20 could just say, Mr. Collier was emphatic about getting
21 rid of them. And I think that's in the record, where he
22 said a time or two, I want to get it behind me. That's
23 it.

24 Q. With the other charge that he pled to, you hadn't
25 been retained to represent him on those?

1 A. I had been retained on one or two of them. I think
2 my contract says something about a meth charge. But I
3 don't think it mentions a manufacture of crack. Isn't
4 that the main one we're -- that's the main problem here,
5 and I don't think my contract reflects that. And
6 somewhere in my file, which is two inches thick, there is
7 a letter to Ms. Ross telling her that I've been retained.
8 I'd have to look through that file for it, but I don't
9 think that letter reflects the charge of manufacture of
10 crack. And Ms. Ross tells me that she never represented
11 him on that particular charge. I don't know. But to
12 answer your question, no, I don't think I was retained on
13 that one.

14 Q. All right. In specific, did you and Aaron have a
15 great deal of discussion about the charges and the cases
16 against him?

17 A. We talked a lot. I went to the jail several times.
18 I got him out of jail one time. Maybe more than that.
19 And I -- go ahead.

20 Q. With regard to the charges that -- not that he went
21 to trial for but the ones he pled to after, did you have
22 discussions with him about those charges?

23 A. I'm sure we talked about everything. But to be
24 honest with you, there's a pretty good chance I didn't
25 talk in depth about those charges.

1 Q. Okay. With particular, do you remember whether you
2 and him had any discussions as to the effects of the plea
3 as far as whether it was eighty-five percent or whether
4 it was serious, whether it was violent?

5 A. I can't say for sure. But if I were guessing, and I
6 don't, I don't think I did. I think I probably --
7 everything was moving so fast. He was anxious to plea.
8 I don't think we talked about that. I would say we did
9 not.

10 Q. Thank you. Would you answer any questions that the
11 attorney general might have?

12 **CROSS EXAMINATION**

13 **BY MS. RATIGAN:**

14 Q. So your file reflects you did represent him on at
15 least one meth charge?

16 A. I believe that's right. Yes, ma'am.

17 Q. Well, the record reflects the charge he pled to that
18 day was a PWID meth second. Do you recall if that's the
19 charge you represented him on?

20 A. I think that is probably what I was actually
21 retained on.

22 Q. And you don't have a real clear recollection if you
23 advised him of eighty-five percent one way or the other
24 regarding that meth charge?

25 A. No, I don't, but I don't think I did, because it was

1 moving so fast and charges were getting dropped. And he
2 -- I probably, in retrospect, should have opened up my
3 file and said, Mr. Collier, I don't represent you on
4 that. I'm going to leave now. But frankly, I thought I
5 was doing him a favor by hanging around going through the
6 plea, and that's what I did.

7 Q. Did Mr. Collier, after the state came up to you and
8 said, let's just kind of wrap this all up today, did Mr.
9 Collier ever tell you, you know, I'm not comfortable with
10 this? I want a separate day to do this. Did he ever
11 kind of waiver or balk?

12 A. I hate to say it, but he was real enthusiastic about
13 going forward, both to me personally in an aside and also
14 in the record. He's quite emphatic about, I want to get
15 it behind me. That's right there in the transcript.

16 Q. But if he told you -- if he had balked a little bit
17 and said, you know, I'm not comfortable doing this today,
18 what would you have done at that point?

19 A. I would have said, well, let's wait. You probably
20 need a lawyer on that, and it's not me. Retain one.

21 MS. RATIGAN: That's all I have, Your Honor.

22 THE COURT: Anything in ---

23 MR. WARDER: I have no redirect of this
24 witness, Your Honor.

25 THE COURT: I'm a little confused. Let me ask

1 a question, Mr. Steele.

2

EXAMINATION

3 **BY THE COURT:**

4 Q. I thought I heard you say that you represented him
5 on a manufacture or a PWID, but what you represented him
6 on, is that the one that was dropped?

7 A. No. He pled ---

8 Q. Or is that the one that he pled to?

9 A. I think he pled to a meth charge also, whatever.
10 But the one that got him fifteen years, as I understand
11 it, is a manufacture of crack. If I'm wrong -- okay.

12 Q. And you did not represent him on that?

13 A. No, I don't think I did.

14 Q. Do you know anybody who did?

15 A. According to Ms. Ross, back there just now as she
16 left, it's not reflected in her file either. So he may
17 have been lawyerless.

18 Q. Doesn't the transcript of record show that you did
19 tell the judge you represented him on that?

20 A. Well, when we were standing up there pleading, I
21 certainly didn't say -- yes, it does. I didn't say, I
22 don't represent him. If I ---

23 Q. I thought he asked were you representing him?

24 A. Probably did. And I bet I said yes.

25 Q. All right. Thank you.

Aaron W. Collier -vs- State of South Carolina (2011-CP-23-7360)
PCR

15

1 THE WITNESS: May I be excused, Your Honor?

2 THE COURT: Do you need him anymore?

3 MR. WARDER: No, sir.

4 THE COURT: Yes, sir, Mr. Steele. Thank you
5 very much.

6 THE WITNESS: Thank you, sir.

7 MR. WARDER: Your Honor, I call as my next
8 witness the applicant in this case, Aaron Collier.

9 THE COURT: All right. Mr. Collier, come
10 around and be sworn.

11 THE CLERK: Mr. Collier.

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: Please place your left hand on the
14 bible and raise your right hand. You do solemnly swear
15 or affirm that the testimony you're about to give in this
16 case will be the truth, the whole truth and nothing but
17 the truth, so help you God?

18 THE WITNESS: Yes, ma'am.

19 THE CLERK: Thank you. You may be seated.
20 Please state your full name for the record.

21 THE WITNESS: Aaron Winfred Collier.

22 AARON WINFRED COLLIER,

23 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. WARDER:

1 Q. Mr. Collier, you were represented by Susannah Ross
2 and Mr. Steele?

3 A. Yes, sir.

4 Q. And Mr. Steele was hired close to trial; is that
5 right?

6 A. Yes, sir.

7 Q. Do you know how long before trial you hired Mr.
8 Steele?

9 A. Not exactly. A couple of months.

10 Q. Okay. And on what charges did you hire him?

11 A. Well, sir, what had happened was I was on house
12 arrest and I had messed up the house arrest and I ended
13 up back at the county. Carlisle Steele said that if I
14 retained him that he could get me out. To my knowledge
15 that was the only thing he was going to do at the time,
16 was to get me out of the county so I could go home. Not
17 knowing to me, that piece of paper I signed kicked
18 Susannah Ross off of my case on the current charges and
19 put him on. So it was driving under suspension first,
20 failure to stop for blue lights and resisting arrest.
21 Q. Okay. And you went to trial on the charges Carlisle
22 represented you on?

23 A. Yes, sir.

24 Q. And that trial took place, I guess, the next month,
25 in November -- November 9th. I think the trial took two

1 days; didn't it?

2 A. Yes, sir.

3 Q. So it would be the 8th and the 9th of 2010?

4 A. Yes, sir.

5 Q. And the jury came back and found you guilty?

6 A. Yes, sir.

7 Q. You were surprised?

8 A. Very much so. My theatrics was not up to par with
9 my accusers.

10 Q. And at that point in time, the record reflects some
11 negotiations or some offers to drop some charges and
12 plead to some?

13 A. Yes, sir. The judge asked us to come up to the
14 podium so he could sentence me to the charges. He gave
15 me five years. That was the most -- you know, it was
16 like six months, thirty days, but the most of it was five
17 years. And Carlisle leaned to me and said, would you
18 like to take, you know, take care of your pending charge?
19 I had a pending charge that was coming up for court in
20 another month. You can get rid of it now. Ms. Lisa
21 Bentley said, yeah, you know, you can take care of it
22 now. Me, I just got found guilty of something that I
23 wasn't guilty of. I was kind of in duress. And I said
24 okay. So in my mind, the way Carlisle had explained it
25 to me at the time, I was going to get five years to go

1 with this five years. They were going to run together
2 and that was going to be that. It was going to be taken
3 care of. That is not at all what came out of the judge's
4 mouth.

5 Q. Did anybody sit down and explain to you that this
6 would be the effect of a violent crime?

7 A. No, sir. I actually leaned over to Carlisle Steele
8 and asked him was it non-violent and he said, yes, it is
9 non-violent. And on the court records, even on my
10 sentencing sheet, it says non-violent. But SCDC does not
11 classify the same as the courtroom.

12 Q. They show ---

13 A. They show me as a violent eighty-five.

14 Q. Okay. And did anybody talk to you about eighty-five
15 percent, that ---

16 A. No, sir, not at all. I thought we were, we were
17 just -- it was going to go with the other charge and I
18 wouldn't have to come back to court and everything was
19 going to be -- all the court stuff was going to be over
20 with. And that's ...

21 Q. Did anybody talk to you about whether it was serious
22 or non-serious or what that meant?

23 A. No, sir, not at all.

24 Q. Now, since you've been in prison, you've found out
25 quite a bit about the difference between eighty-five

1 percent ---

2 A. Yes, sir.

3 Q. --- and non-eighty-five percent; right?

4 A. Yes, sir. A non-violent, you have parole. You also
5 have work release. You are able to go to a non-violent
6 camp. You have way less restrictions. The violent
7 eighty-five, you are treated a whole lot differently.

8 And I'm basically doing three more years than I
9 originally thought was happening. I really don't
10 understand.

11 Q. You pled guilty, and the way it was presented to
12 you, you were going to get five years concurrent?

13 A. Yes, sir. That's the reason I pled guilty. And ...

14 Q. And would you have pled guilty if you had known that
15 it was going to be an eighty-five percent sentence?

16 A. No, sir. I'm not guilty of the charge. There's
17 even a young lady who is guilty of the charge named Niser
18 Foldus (phonics), who has claimed that it was her
19 methamphetamine and I just happened to be there. I just
20 didn't want to come back to court and thought I could get
21 it taken care of.

22 Q. Okay. What you're talking about now is somebody
23 else has admitted that it was theirs and they pled guilty
24 to that charge?

25 A. Yes, sir.

1 Q. There were two of you charged initially?

2 A. Yes, sir.

3 Q. And your co-defendant has accepted responsibility
4 for that?

5 A. Yes, sir.

6 Q. And you've maintained it was hers?

7 A. Yes, sir.

8 Q. And I guess after the surprise of getting convicted
9 and your belief that everything was going to run
10 concurrent and ---

11 A. And the judge said fifteen suspended to eight and it
12 became violent and my whole world crashed in. Yes, sir.
13 I had made plans to take care of my house and my car and
14 my life for the little bit of time. But since this has
15 happened I've lost everything.

16 Q. Answer any questions that the attorney general has.

17

CROSS EXAMINATION

18 **BY MS. RATIGAN:**

19 Q. Just a couple of quick questions. Did Mr. Collier
20 also represent you on some drug charges in addition to
21 these kind of driving offenses?

22 A. I'm Mr. Collier.

23 Q. I'm sorry. It's been one of those days.

24 A. Yes, ma'am.

25 Q. Mr. Steele, did he represent you on some drug

1 charges in addition to these driving charges?

2 A. No, ma'am.

3 Q. So your contention today is that Ms. Ross

4 represented you on this meth charge?

5 A. Yes, ma'am.

6 Q. Okay. But you wanted to go ahead and get everything

7 behind you so you decided to plead guilty with Mr. Steele

8 instead of waiting on Ms. Ross?

9 A. With the time frame that I was -- I assumed was
10 going to be given to me, yes, ma'am.

11 Q. And did Mr. Steele promise you you were going to get
12 that five years or just that he was going to try and you
13 that five years?

14 A. There was no promises made. There was just an
15 indication. I assumed -- I paid my lawyer. I assumed
16 that he wouldn't steer me incorrectly.

17 Q. Well, when Judge Stilwell asked you if there had
18 been any promises made to -- in exchange for the plea,
19 you told him you had not gotten any promises?

20 A. Exactly. No, ma'am, just like I just told you,
21 there was no promises.

22 Q. So you just had -- after Mr. Steele talked to you,
23 you had a feeling you were going to get that five years
24 based on what he told you?

25 A. Yes, ma'am.

1 Q. But that he never made any kind of, like, concrete
2 promise?

3 A. Yes, ma'am.

4 Q. Okay.

5 A. And if I might say, I also understand that there's
6 an eight year probation revocation, which the eight
7 years, but that's -- I don't mind the eight year
8 probation revocation, because that is a sixty-five
9 percent. It's the other charge that -- the other eight
10 years.

11 Q. And that is going to take me to my last question.

12 A. Yes, ma'am.

13 Q. Which is, so Mr. Steele never mentioned anything
14 about eighty-five percent one way or the other?

15 A. No, ma'am. I didn't even understand that -- nothing
16 about it until I got incarcerated.

17 Q. So he didn't give you that advice? He just gave you
18 no advice? Would that be correct to say?

19 A. That would be really close to the truth.

20 MS. RATIGAN: That's all I have, Your Honor.

21 THE COURT: Any redirect?

22 **REDIRECT EXAMINATION**

23 **BY MR. WARDER:**

24 Q. While he might -- Mr. Steele might not have gave you
25 any advice on it, it was presented -- you felt that this

1 was presented in a way that it was all going to run
2 together on a five year ---

3 A. Yes, sir. I believed, the way it was presented to
4 me, that I was going to get five years for the pending
5 charge to go with the five years I just received. They
6 were going to run together. And I would have been home
7 three months ago.

8 Q. And that was because everybody was asking in an open
9 court if you wanted to take care of this other thing
10 together?

11 A. Yes, sir.

12 Q. And they said it would all run together?

13 A. Yes, sir.

14 Q. And the solicitor was even offering to drop things?

15 A. Yes, sir.

16 Q. And nobody said, hey, wait, part of these are
17 eighty-five and you can do a long time?

18 A. Nobody, nobody put up a stop sign or yield sign and
19 directed me any other way.

20 Q. Thank you. That would be all the questions I'd
21 have.

22 THE COURT: All right. Thank you. You can
23 step down.

24 MR. WARDER: Your Honor, if it would please the
25 court, that would be the applicant's case.

1 THE COURT: Anything from the state?

2 MS. RATIGAN: No witnesses from the state, Your
3 Honor.

4 THE COURT: All right. I'll take this under
5 advisement and read the transcript again and issue an
6 order, hopefully, soon.

7 MS. RATIGAN: Thank you, Your Honor.

8 MR. WARDER: Thank you, Your Honor.

9

10 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing
6 is a true, accurate, and complete transcript of record of
7 all the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Court of Common Pleas for Greenville County, South
10 Carolina, on the 17th day of April, 2013.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 November 19, 2013

16

17

18

19

20



Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Aaron Winford Collier,)
 S.C.D.C. No. 319743,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-7360

ORDER OF DISMISSAL

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This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 4, 2011. The Respondent made its return on March 15, 2012. An evidentiary hearing into the matter was convened on April 17, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Richard H. Warder, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, C. Carlyle Steele, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant for failure to stop for a blue light (2009-GS-23-1719), driving under suspension (DUS) (2009-GS-23-2703), and reckless driving (2009-GS-23-2704). C.

Carlyle Steele, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On November 9, 2010, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of five (5) years for failure to stop for a blue light, second offense, six (6) months for DUS, third offense or greater, and thirty (30) days for reckless driving. The Applicant also pled guilty to the charge of possession with intent to distribute (PWID) methamphetamine, second offense (2009-GS-23-6290) and received a concurrent sentence of fifteen (15) years suspended on service of eight (8) years and five (5) years probation. The Applicant also received a probation revocation on the charge of PWID methamphetamine (2005-GS-23-5140) and received a concurrent eight (8) year sentence. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. "[D]idn't investigate charges, didn't proper objections[,] advised to plea, wasn't prepared to defend client[,] didn't proper prepare for plea."

At the PCR hearing, the Applicant stated he was not challenging counsel's performance at trial. Rather, the Applicant stated he was challenging counsel's representation at the guilty plea hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their

credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of plea counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated counsel was hired to represent him on the charges that went to trial. The Applicant stated another attorney represented him on the PWID methamphetamine charge. The Applicant stated that, at the end of trial, both plea counsel and the solicitor asked if he wanted to take care of his pending PWID charge. The Applicant stated he agreed to do so because plea counsel led him to believe he would receive a concurrent five year sentence. The Applicant stated, however, that plea counsel did not promise anything in exchange for the guilty plea. The Applicant stated plea counsel did not give him any advice about parole eligibility on

this charge and stated he would not have pled guilty if he knew this would be an 85% charge.

Plea counsel testified he was retained to represent the Applicant on the set of charges that eventually went to trial. Plea counsel testified he was also retained to represent the Applicant on a PWID methamphetamine charge. Plea counsel testified that, right after the trial, the assistant solicitor asked if the Applicant wanted to dispose of the pending PWID charge and a probation revocation. Plea counsel testified the Applicant wanted to do so and the State also agreed to dismiss one or two other charges. Plea counsel testified the Applicant was "emphatic" about taking care of the pending matters at that time. Plea counsel testified the Applicant was enthusiastic about going forward and that, if he had balked, they would have waited and disposed of the pending matters later. Plea counsel testified that he could not recall whether or not he advised the Applicant about parole eligibility on the PWID charge, but that he probably did not.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Transcript, p.171; p.174). The Applicant told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Transcript, pp.169-72). The Applicant also told the plea judge that he trusted he would receive a fair sentence. (Transcript, p.176). This Court finds the Applicant entered a knowing and voluntary guilty plea to the charge of PWID methamphetamine. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969)

(holding that, to be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea).

Initially, this Court finds plea counsel was retained to represent the Applicant on the PWID methamphetamine charge at issue in this case. While the Applicant testified another attorney represented him on this charge, plea counsel testified he represented him on the PWID charge he pled guilty to that day. This Court finds plea counsel's testimony is more credible. In support of this finding, this Court notes plea counsel advised the plea judge that he represented the Applicant on this charge. (Transcript, p.168).

This Court finds the Applicant failed to meet his burden of proving plea counsel failed to investigate his charges. While this allegation was raised in the PCR application, the Applicant has failed to articulate anything further plea counsel should have done to investigate his PWID charge. As such, he cannot prevail on this allegation. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly advise him about parole eligibility. Even assuming arguendo that plea counsel did not advise the Applicant the PWID charge was not parole eligible (and he could serve 85% of that sentence), counsel was not obligated to convey this information. Parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. Randall v. State, 356 S.C. 639, 641, 591 S.E.2d 608, 609 (2004). Further, given plea counsel's testimony about the Applicant being "emphatic" and "enthusiastic" to proceed and dispose of all outstanding matters, this Court does not find credible the Applicant's testimony

5


that he would not have pled guilty to this charge if he had known it was parole ineligible.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

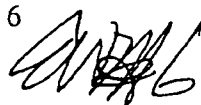
This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must

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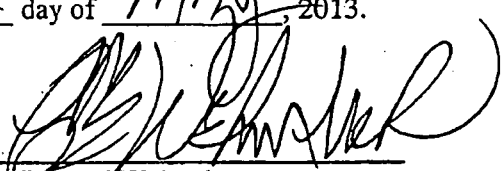
be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

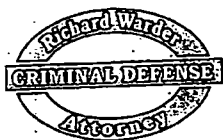
AND IT IS SO ORDERED this 3 day of May, 2013.



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit


_____, South Carolina.

Post Office Box 26133 • Greenville, SC 29616



South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina 29211



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