

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY

Howard P. King, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BILLY LEE LISENBY,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
) FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD) 2008-GS-13-0350, 0351, 0352

STATE OF SOUTH CAROLINA,
PLAINTIFF,
VS.
BILLY LISENBY, A/K/A MALIK
AL-SHABAZZ,
DEFENDANT.

TRANSCRIPT OF RECORD

APRIL 21, 2008
CHESTERFIELD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARK HAYES, JUDGE

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

J. R. JOYNER, ESQUIRE
ERIC ROWELL, ESQUIRE
ATTORNEYS FOR THE PLAINTIFF

PATRICIA RIVERS, ESQUIRE
ATTORNEY FOR THE DEFENDANT

BONNIE H. KELLY
CIRCUIT COURT REPORTER

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1 THE COURT: Yes, sir, Mr. Solicitor.

2 MR. JOYNER: Thank you, Your Honor. Judge, the State
3 would call docket number 08-GS-13-0352, State v Malik Al-
4 Shabazz. He is indicted for assault with intent to kill.

5 Next is 08-GS-13-0351. He is indicted for failure to
6 stop for a blue light.

7 And the final docket is 08-GS-13-0350, and he is
8 indicted for a second count of assault with intent to kill.

9 THE COURT: All right. Yes, ma'am.

10 All right. Lawyers, approach a moment. Lawyers
11 approach a moment.

12 (Bench conference.)

13 THE COURT: Could I see one of the bailiffs at the
14 bench for a moment?

15 (Bench conference continues.)

16 THE COURT: All right. Ladies and gentlemen. All
17 right. Ladies and gentlemen, thank you for your patience
18 while we proceeded to get started this afternoon.

19 We are about to begin the case of the trial of the
20 *State of South Carolina vs Malik Al-Shabazz*, also known as
21 Billy Lisenby. Before we begin the jury selection, there
22 are several questions which I will need to ask you. As you
23 were this morning when we went through the qualification
24 process, it is essential that you give accurate and
25 truthful information to the questions that I am about to

1 ask. Now, as part of this process, I am going to need for
2 you to please stand and raise your right hand. The clerk
3 needs to swear each one of you in. Please stand and raise
4 your right hand.

5 (Jury panel is sworn in by clerk of court.)

6 (All say "I do" and are seated.)

7 THE COURT: All right. Ladies and gentlemen, as I
8 previously stated, we are about to begin the case of the
9 *State vs Malik Al-Shabazz*, also known as Billy Lisenby, Jr.
10 Ladies and gentlemen, is there anyone related by blood or
11 marriage to Malik Al-Shabazz, a/k/a Billy Lisenby, Jr.,
12 either related by blood or marriage to him, or do you have
13 a close personal or social relationship with him? If so,
14 please stand at this time.

15 (No response.)

16 THE COURT: All right. Ladies and gentlemen, I now am
17 going to read the names of potential witnesses who may be
18 called as part of this case. I need you to please listen
19 to these names, and then if you're related by blood or
20 marriage to any of these witnesses, or if you have a close
21 personal or social relationship with any of these
22 witnesses, I need for you to please stand; and do so after
23 I've called these -- the names of all the witnesses.

24 Again, and if any of these witnesses are present in
25 the courtroom, I would ask that the witness please stand

1 and face the ladies and gentlemen of the jury.

2 Spencer Vaughn; Wayne Jordan.

3 (Mr. Jordan stands.)

4 THE COURT: Thank you, sir.

5 Robert Winburn.

6 (Mr. Winburn stands.)

7 THE COURT: Thank you, sir.

8 Again, ladies and gentlemen, any of you related by
9 blood or marriage to any of these witnesses, or do you have
10 a close personal or social relationship with any of these
11 witnesses? If so, please stand at this time.

12 Yes, ma'am. Your juror number?

13 JUROR BURR: Eighteen.

14 THE COURT: And you're Ms. Burr?

15 JUROR BURR: Yes, sir.

16 THE COURT: And ma'am, who is that you know?

17 JUROR BURR: I know Wayne, Wayne Jordan.

18 THE COURT: Ma'am, the fact that you know Mr. Jordan,
19 does that in any way affect your ability to give both the
20 State and the Defense a fair and impartial trial in the
21 event you are selected as a member of the jury?

22 JUROR BURR: I don't think so.

23 THE COURT: All right. Thank you, ma'am.

24 Yes, ma'am. Your juror number?

25 JUROR BROWN: Fourteen.

1 THE COURT: You're Ms. Brown?

2 JUROR BROWN: Yes, sir.

3 THE COURT: Ma'am, who is it that you know?

4 JUROR BROWN: I know Mr. Winburn.

5 THE COURT: And the fact that you know that witness,
6 would that in any way affect your ability to give both the
7 State and the Defense a fair and impartial trial in the
8 event you're selected as a member of the jury?

9 JUROR BROWN: No, sir.

10 THE COURT: Thank you, ma'am. You may be seated.

11 MS. RIVERS: May I have that number, Your Honor?

12 THE COURT: Ma'am?

13 MR. JORDAN: Fourteen.

14 MS. RIVERS: Fourteen?

15 THE COURT: Fourteen.

16 Yes, sir. Your juror number?

17 JUROR GIBSON: Number 45.

18 THE COURT: You are Mr. Gibson?

19 JUROR GIBSON: Yes, sir.

20 THE COURT: Yes, sir, Mr. Gibson. Who is that you
21 know

22 JUROR GIBSON: I know Mr. Winburn, but I also know Mr.
23 Spence.

24 THE COURT: All right. You know one of the witnesses?

25 JUROR GIBSON: Yes, sir.

1 THE COURT: All right. And sir, the fact that you
2 know that witness, would that in any way affect your
3 ability to give both the State and the Defense a fair and
4 impartial trial in the event you are selected as a member
5 of the jury?

6 JUROR GIBSON: No, sir.

7 THE COURT: All right. Thank you, sir.

8 Now -- now, when I called the names of the witnesses,
9 I believe that Mr. Vaughn -- Spencer Vaughn was not present
10 in the courtroom. Is he now present?

11 MR. JOYNER: Yes, sir.

12 THE COURT: Mr. Vaughn, please face the ladies and
13 gentlemen.

14 All right. Ladies and gentlemen, anybody -- any of
15 you related by blood or marriage to this witness, or have a
16 close personal or social relationship with this particular
17 witness? Please stand at this time if you do.

18 (No response.)

19 THE COURT: All right. Thank you.

20 All right. Ladies and gentlemen, I am now going to
21 ask the lawyers who are participating in this case to
22 please stand and introduce themselves to you.

23 MR. JOYNER: My name is J.R. Joyner, from Patrick,
24 South Carolina.

25 MR. ROWELL: My name is Eric Rowell, from the

1 solicitor's office.

2 MS. RIVERS: I'm Patricia Rivers, public defender.

3 THE COURT: All right. Ladies and gentlemen, thank
4 you. Ladies and gentlemen, I need for you to please stand
5 if you are related by blood or marriage to any of the
6 lawyers that are involved in the case. If you have a close
7 personal or social relationship to any of the lawyers
8 involved in the case, or if you have ever been represented
9 by any of the lawyers in this case. If so, please stand at
10 this time.

11 THE COURT: Yes, ma'am. Your juror number?

12 JUROR ELLERBE: Forty.

13 THE COURT: You're Ms. Ellerbe?

14 JUROR ELLERBE: Yes.

15 THE COURT: Yes, ma'am. And which lawyer do you know?

16 JUROR ELLERBE: I know J.R. Joyner and -- of the
17 solicitor's office.

18 THE COURT: And ma'am, the fact that you have that
19 knowledge, would that in any way affect your ability to
20 give both the State and the Defense a fair and impartial
21 trial in the event you are selected as a part of the jury?

22 JUROR ELLERBE: No.

23 THE COURT: Thank you, ma'am.

24 Yes, ma'am? Your juror number?

25 JUROR RATLIFF: 107.

1 THE COURT: You're Ms. Ratliff?

2 JUROR RATLIFF: Yes, sir, I am.

3 THE COURT: Ma'am, and who is it that you know?

4 JUROR RATLIFF: Patricia Rivers.

5 THE COURT: And ma'am, the fact that you are aware --
6 or know Ms. Rivers, would that in any way affect your
7 ability to give both the State and the Defense a fair and
8 impartial trial in the event you are selected as a member
9 of the jury?

10 JUROR RATLIFF: No.

11 THE COURT: Thank you, ma'am.

12 Has any member of the jury panel formed or expressed
13 an opinion about any of the issues involved in this case?
14 If so, please stand at this time.

15 (No response.)

16 THE COURT: Is any member of the jury panel aware of
17 any bias or prejudice towards either the State or the
18 defendant in this case? If so, please stand at this time.

19 (No response.)

20 THE COURT: Is there any member of the jury panel that
21 was a member of the grand jury which issued the indictment
22 in this case? If so, please stand at this time.

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 is a member of or contributor to any group which has as its

1 primary concern the promotion of law enforcement rights or
2 victims' rights? These groups would include, but certainly
3 be not limited to, such groups as MADD, SADD, or CAV --
4 Citizens Against Violent Crimes. If so, please stand at
5 this time.

6 (No response.)

7 THE COURT: Does any member of the jury panel know of
8 any reason whatsoever why he or she should not serve as a
9 juror in this case, with particular emphasis being placed
10 on your ability to be fair and impartial to both the State
11 and the Defense? If so, please stand at this time.

12 (No response.)

13 THE COURT: Does the State have any additional
14 questions?

15 MR. JOYNER: No, sir.

16 THE COURT: Does the Defense?

17 MS. RIVERS: No, Your Honor.

18 THE COURT: All right. Five and five. Exceptions
19 from either party concerning a member of the jury?

20 MR. JOYNER: No, sir.

21 MS. RIVERS: No, Your Honor.

22 CLERK OF COURT: No. 96, Deborah F. O'Neal.

23 THE COURT: If you would, Ms. O'Neal, please come
24 forward and bring any of your personal belongings and stand
25 up in front of the clerk.

1 CLERK OF COURT: What saith the State?

2 MR. JOYNER: Please present the juror.

3 CLERK OF COURT: Defense?

4 MS. RIVERS: Seat the juror.

5 CLERK OF COURT: Have a seat in the jury box, please.

6 THE BAILIFF: Here you go, ma'am.

7 CLERK OF COURT: No. 72, Barbara A. Langley.

8 MR. JOYNER: What juror was that?

9 CLERK OF COURT: Barbara A. Langley, No. 72.

10 What saith the State?

11 MR. JOYNER: Please present the juror.

12 CLERK OF COURT: Defense?

13 MS. RIVERS: Seat the juror.

14 CLERK OF COURT: Have a seat in the jury box, please.

15 No. 59, Heyward T. Howell. What saith the ---

16 MR. JOYNER: Please present the juror.

17 CLERK OF COURT: Defense?

18 MS. RIVERS: Seat the juror.

19 CLERK OF COURT: Have a seat in the jury box, please.

20 No. 95, Tonya M. Oliver. What saith the State?

21 MR. JOYNER: Please present the juror.

22 CLERK OF COURT: Defense?

23 MS. RIVERS: Seat the juror.

24 CLERK OF COURT: Have a seat in the jury box, please.

25 No. 33, Charles W. Davis, III. What saith the State?

1 MR. JOYNER: Please present the juror.

2 CLERK OF COURT: Defense?

3 MS. RIVERS: Excuse the juror.

4 CLERK OF COURT: You may return to your seat.

5 No. 117, Karen F. Schauer. What saith the State?

6 MR. JOYNER: Please present the juror.

7 CLERK OF COURT: Defense?

8 MS. RIVERS: Seat the juror.

9 CLERK OF COURT: Have a seat in the jury box, please.

10 No. 40, Jacqueline A. Ellerbe. What saith the State?

11 MR. JOYNER: Please present the juror.

12 CLERK OF COURT: Defense?

13 MS. RIVERS: Excuse the juror.

14 CLERK OF COURT: You may return to your seat.

15 No. 102, Irvin B. Poole. What saith the State?

16 MR. JOYNER: Please present the juror.

17 CLERK OF COURT: Defense?

18 MS. RIVERS: Seat the juror.

19 CLERK OF COURT: Have a seat in the jury box, please.

20 No. 108, Vickie B. Ratliff. What saith the State?

21 MR. JOYNER: Please present the juror.

22 CLERK OF COURT: Defense?

23 MS. RIVERS: Seat the juror.

24 CLERK OF COURT: Have a seat in the jury box, please.

25 No. 17, Veronica S. Burns. What saith the State?

1 MR. JOYNER: Please present the juror.

2 CLERK OF COURT: Defense?

3 MS. RIVERS: Seat the juror.

4 CLERK OF COURT: Have a seat in the jury box, please.

5 No. 16, Teresa C. Bryant. What saith the State?

6 MR. JOYNER: Please excuse the juror.

7 CLERK OF COURT: You may return to your seat.

8 No. 104, Kathy A. Powe. What saith the State?

9 MR. JOYNER: Please present the juror.

10 CLERK OF COURT: Defense?

11 MS. RIVERS: Seat the juror.

12 CLERK OF COURT: Have a seat in the jury box, please.

13 133, Anita G. Thomas. What saith the State?

14 MR. JOYNER: Please present the juror.

15 CLERK OF COURT: Defense?

16 MS. RIVERS: Excuse the juror.

17 CLERK OF COURT: You may return to your seat.

18 No. 106, Christopher Raley. What saith the State?

19 MR. JOYNER: Please excuse the juror.

20 CLERK OF COURT: You may return to your seat.

21 No. 92, Michelle M. O'Connor. What saith the State?

22 MR. JOYNER: Please present the juror.

23 CLERK OF COURT: Defense?

24 MS. RIVERS: Excuse the juror.

25 CLERK OF COURT: You may return to your seat.

1 No. 28, Phyllis S. Chapman. What saith the State?

2 MR. JOYNER: Please present the juror.

3 CLERK OF COURT: Defense?

4 MS. RIVERS: Seat the juror.

5 CLERK OF COURT: Have a seat in the jury box, please.

6 22, John R. Campbell, Jr. What saith the State?

7 MR. JOYNER: Please present the juror.

8 CLERK OF COURT: Defense?

9 MS. RIVERS: Excuse the juror.

10 CLERK OF COURT: You may return to your seat.

11 No. 83, William C. McIntosh. What saith the State?

12 MR. JOYNER: Please present the juror.

13 CLERK OF COURT: Defense? Or is there a cause for
14 challenge, should I say?

15 MS. RIVERS: Yes, I challenge this witness. This --
16 this juror's wife is a -- works at Cheraw Police
17 Department. This is law enforcement.

18 THE COURT: I'm sorry. You're going to need to stand
19 when you address me, and talk loud enough so that I may
20 hear you.

21 MS. RIVERS: Your Honor, this ---

22 THE COURT: Thank you.

23 MS. RIVERS: Mr. McIntosh is -- his -- he has family
24 working for the police department, and there would be a
25 conflict there. I would beg the Court strike that one.

1 THE COURT: Yes, sir?

2 MR. JOYNER: Judge, the Cheraw Police Department isn't
3 involved. There was no objection to the juror prior to --
4 when it was the appropriate time to object. I think she's
5 used up all her strikes, and I would object to this juror
6 being excused, Your Honor.

7 THE COURT: She's asking for cause.

8 MR. JOYNER: Yes, sir, I would object.

9 THE COURT: All right. I will deny your request for
10 cause.

11 You may seat the juror.

12 MS. RIVERS: Thank you, Judge.

13 CLERK OF COURT: No. 64, William A. Jacobs. What
14 saith the State?

15 MR. JOYNER: Please present the juror.

16 CLERK OF COURT: Is there any cause for challenge?

17 MS. RIVERS: No.

18 CLERK OF COURT: You may have a seat in the jury box,
19 please.

20 How many strikes on the alternates?

21 THE COURT: Is one alternate sufficient?

22 MR. JOYNER: Yes, sir.

23 MS. RIVERS: Yes, Your Honor.

24 THE COURT: One each.

25 CLERK OF COURT: All right. No. 147, Latoya C.

1 Lockhart. What saith the State?

2 MR. JOYNER: Please present the juror.

3 CLERK OF COURT: Defense?

4 MS. RIVERS: Excuse the juror.

5 CLERK OF COURT: You may return to your seat.

6 No. 48, Jessie R. Gooden. What saith the State?

7 MR. JOYNER: Please present the juror.

8 CLERK OF COURT: Defense?

9 MS. RIVERS: Seat the juror.

10 CLERK OF COURT: Have a seat in the jury box, please.

11 THE COURT: What was his name and juror number?

12 CLERK OF COURT: Forty-eight, Jessie R. Gooden.

13 THE COURT: Anything from the State or Defense
14 concerning the manner and method of selection of the jury?

15 MR. JOYNER: Nothing from the State, Judge.

16 MS. RIVERS: Nothing, Your Honor.

17 THE COURT: All right. Thank you.

18 All right. Ladies and gentlemen, congratulations on
19 being selected as our first jury of the week.

20 What I'm going to do at this time is I'm going to need
21 to instruct you that throughout the -- throughout this
22 case, you are never to have any discussions with anyone
23 about anything involved in the case, that's whether or not
24 it's on afternoon or lunch break; when you go home speak to
25 your loved ones; see anybody in the courtroom, courthouse

1 staff, anybody at all. You're not supposed to have any
2 discussions about anything involved in this case, even
3 among yourselves.

4 The only time you're to have any discussions about
5 anything that involves this case will be when you begin
6 your deliberations at the end of the trial, when I've told
7 you to begin your deliberations.

8 There will be times when I need to excuse you from the
9 courtroom, as I'm fixing to do in just a moment. These are
10 times when I have to take up matters of law that I have to
11 take up with the attorneys outside of your presence. And
12 so we're going to get you back just shortly, but right now,
13 we need for you to go with the bailiff. He's going to show
14 you where the jury deliberation room is.

15 Get comfortable in there for a few minutes. I believe
16 there's a restroom back there, if you need to go to the
17 restroom. We'll get you back there shortly. There's a
18 couple of items that I need to take up with the lawyers
19 before we start the trial, please. Thank y'all very much.

20 (The jury exits at 2:38 p.m.)

21 THE COURT: All right. Ladies and gentlemen, anything
22 that we need to place on the record before we proceed with
23 the trial of the case and I dismiss the other ladies and
24 gentlemen of the jury?

25 MR. JOYNER: No, sir.

1 MS. RIVERS: No, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, thank
3 you for your time and thank you for your patience while we
4 reached the point where we have in the selection process of
5 this case.

6 I will let you know that as of today, in just a few
7 moments, you're going to be -- feel free to go home for the
8 rest of the day.

9 I believe there is a telephone number for them to call
10 back to after six o'clock?

11 CLERK OF COURT: Yes, sir.

12 THE COURT: After six o'clock this evening, you will
13 hear a recording that will give you instructions for
14 tomorrow or the next day. In the event that this trial
15 runs long and you are not needed tomorrow, be sure you
16 check again tomorrow afternoon, after six o'clock, and
17 receive your instructions. But continue to check that
18 number and -- until you're called back in -- in the court.
19 And then in the event this trial -- can't say that it
20 would, but in the event this trial say takes 3 or 4 or 5
21 days, then eventually that -- that recording would tell you
22 not to come back to the courthouse. And so continue to
23 check that number.

24 Again, I want to thank you for your time and your
25 patience today. But at this moment, you are free to go.

1 If you would, please do so as quiet as you can, because
2 we're going to continue to be conducting business.

3 (Remaining jury panel exits at 2:40 p.m.)

4 THE COURT: All right... Madam Bailiff, you have
5 something to report to the Court? Did you call the name?

6 THE BAILIFF: No, sir.

7 THE COURT: I asked one of the bailiffs to call the
8 name of the defendant.

9 THE BAILIFF: Oh, yes, sir. I did.

10 THE COURT: All right.

11 MS. RIVERS: Your Honor ---

12 THE BAILIFF: And he is not present.

13 MS. RIVERS: I have located him. He's at Mental
14 Health. He's on his way.

15 THE COURT: When will he be here?

16 MS. RIVERS: Soon as he can get here. I think it was
17 Chesterfield County.

18 THE BAILIFF: Tri-County.

19 MS. RIVERS: Tri-County Mental Health.

20 THE COURT: How long will it -- an hour wait --

21 THE BAILIFF: It takes five minutes to come from Tri-
22 County. You want me to call and see?

23 THE COURT: Yes, sir.

24 MS. RIVERS: If Your Honor will ---

25 THE COURT: All right. Let me get ---

1 MS. RIVERS: I -- I did ---

2 THE COURT: --- let me get ---

3 MS. RIVERS: I did remind him.

4 THE COURT: Let me get the bailiff to go on the record
5 to report what I have asked her to do.

6 Yes, ma'am?

7 THE BAILIFF: His name was called three times; he is
8 not present.

9 THE COURT: And you did it from the steps of the
10 courthouse?

11 THE BAILIFF: Inside and outside.

12 THE COURT: All right. Thank you, ma'am.

13 And what was the notification to the defendant?

14 MR. JOYNER: Judge, he was given an offer, and he
15 refused the offer. And then we brought him before the
16 Judge and made him aware that we would be calling his case
17 today for trial. We also made him aware that he would be
18 tried in his absence if he failed to show. And all of that
19 was made aware to him on the record, and he understood.
20 And here we are.

21 THE COURT: And what time was he supposed to be here
22 today?

23 MR. JOYNER: Judge, he was told to be here at nine
24 o'clock in the morning today.

25 THE COURT: All right. And he is how far away from

1 the courthouse?

2 MS. RIVERS: It's a short distance, Your Honor. Two
3 minutes.

4 THE COURT: All right. All right. I will step down
5 and -- for a couple of minutes. Hopefully, he will get
6 here. Y'all ready to proceed with your opening statements?

7 MR. JOYNER: Yes, sir.

8 MS. RIVERS: Yes, Your Honor.

9 THE COURT: All right. Thank you. I'll step down a
10 few minutes. How long do you think your opening is going
11 to be?

12 MR. JOYNER: No more than 10 minutes, Judge.

13 THE COURT: Ten minutes? All right.

14 MS. RIVERS: That's fine.

15 THE COURT: About the same?

16 MS. RIVERS: Yes, sir.

17 MR. JOYNER: Maybe five. It'll be very short.

18 THE COURT: All right.

19 THE COURT: Anything else before we bring the jury
20 back?

21 MR. JOYNER: Nothing from the State, Judge.

22 MS. RIVERS: No, Your Honor.

23 THE COURT: All right. Let's bring the jury back.

24 (The jury enters at 2:58 p.m.)

25 THE COURT: All members of the jury seem to be

1 present. Ladies and gentlemen, we're now going to start
2 the trial of the case of Malik Al-Shabazz, also known as
3 Billy Lisenby, Jr.

4 Ms. O'Neal, I'm going to ask if you would -- you would
5 serve as the foreperson of this jury. I will give you
6 instructions on performing that duty and responsibility at
7 the end of the trial.

8 Before we begin the case, ladies and gentlemen, it is
9 necessary for the Clerk of Court to swear you in. So if
10 you would, please stand and raise your right hand.

11 (The jury is sworn.)

12 THE COURT: Ladies and gentlemen, before we begin the
13 trial, I want to tell you that this trial probably will be
14 different from what you might expect. Many people do not
15 have the chance to attend an actual court session as you
16 are now, and may think from watching television or movies
17 or reading books that trials are always full of high drama,
18 intense action and riveting circumstances. While all of
19 these things may be true at times, this trial is not for
20 entertainment. It is a fundamental part of our democracy,
21 a search for the truth in an effort to make sure that
22 justice is done between the parties before this court.

23 Searching for the truth and making sure that justice
24 is done is often slow, deliberate, and repetitive; the
25 opposite of what you may have seen on television or in

1 movies or read about in books.

2 This courtroom is a place of honor dedicated to -- to
3 the protection and preservation of citizens' rights through
4 what many have called the "greatest justice system ever
5 created."

6 The attorneys appearing before you are advocates for
7 the parties they represent. But first and foremost, they -
8 - but first and foremost, they are officers of the court.
9 They are sworn to uphold the integrity and fairness of our
10 judicial system, and to help you in the search for the
11 truth. You should expect them to be professional,
12 competent, and ethical in their representation of their
13 clients' interest.

14 Remember that you have taken an oath to try this case
15 and to reach a fair and just verdict. And you are also
16 expected to be professional, reasonable, and ethical.
17 Thank you for accepting the important responsibility of
18 jury service, and for your contribution today to our
19 justice system.

20 What I will now say is intended to serve as the
21 introduction to the trial of this case. Now, these remarks
22 are not a charge of the law in the case. I will instruct
23 you on the law applicable to this case at the end of the
24 trial, before you retire to consider your verdict. This is
25 merely an explanation of the procedures that we will

1 follow, so that you may better understand what is
2 happening.

3 Now, the defendant is charged by indictments. Now, he
4 is charged with the crimes of assault with intent to kill,
5 assault with intent to kill, and failure to stop for a blue
6 light. The elements of those crimes will be explained to
7 you later, but these indictments are simply the charges by
8 which this case is brought to the Court. They are not in
9 any sense evidence of any of the allegations contained in
10 them. The defendant has pled "not guilty" to these
11 indictments.

12 The State, therefore, has the burden of proving each
13 of the elements of the indictments beyond a reasonable
14 doubt. And it will be your duty, ladies and gentlemen, to
15 decide whether the State has met that burden.

16 Your purpose as jurors is to find and determine the
17 facts. You are the sole judge of the facts. If at any
18 time I make any comment regarding the facts, you must
19 disregard it. You are to determine the facts from the
20 testimony you hear and the other evidence introduced in
21 court. It is up to you to determine the inferences which
22 you feel may properly be drawn from the evidence.

23 It is essential -- I'm sorry. It is especially
24 important that you perform your duty in determining the
25 facts diligently and conscientiously, because ordinarily

1 there is no way to correct an erroneous determination of
2 the facts that is made by a jury.

3 On the other hand, with equal emphasis, the same law
4 that makes you the judge of the facts makes me the judge of
5 the law. The law as given by the Court is the only law you
6 may consider. You must accept and follow, even though you
7 may disagree with it. I cannot tell you what the facts
8 are; and you cannot disagree with me about what the law is
9 or should be.

10 Your job is to take the law as I give it to you and
11 apply it to the facts as you find them from the testimony
12 of the witnesses and any other evidence that is introduced.
13 After doing that, you will render your verdict. A true and
14 just verdict under the solemn oath that you just took as
15 jurors.

16 Until I advise you to begin your deliberations, you
17 must not discuss the case with anyone, including your
18 fellow jurors, friends, family members, and anyone else
19 involved in the case. After the case is submitted to you,
20 you must discuss it only in the jury room with your fellow
21 jurors. The attorneys and the parties in the case have
22 been advised that they are not to talk with you at all. So
23 if you see anyone involved in the case and they do not even
24 say "hello," they're not being unfriendly. They are just
25 following my instructions.

1 Now, during the trial, do not read, listen to, or
2 watch any news reports about the case, particularly if
3 there's anything that might have been in the news
4 previously. You must not consider anything you -- you must
5 not consider anything you may have read or heard about the
6 case outside of the courtroom, whether before or during the
7 trial.

8 It is important that you keep an open mind and not
9 decide any issue in the case until all the evidence has
10 been presented, the parties have made their closing
11 arguments, and -- and I have instructed you on the law of
12 the case.

13 It is your solemn responsibility to determine the
14 guilt or innocence of the defendant. Your verdict must be
15 based solely on the evidence that is presented to you in
16 this trial, and on the law as I instruct you during and at
17 the close of the trial.

18 Now, in just a moment, the solicitor will make what is
19 called an "opening statement," in which the solicitor will
20 explain to you the issues in the case, or at least what the
21 solicitor thinks the issues are in the case. The attorney
22 for the defendant may also make an opening statement,
23 although she is not required to do so.

24 What the attorneys tell you during their opening
25 statements is not evidence in the case. It's only their

1 contention as to what the issues are. The evidence in the
2 case will be presented to you by testimony of sworn
3 witnesses from the witness stand, and any exhibits that
4 might be introduced during the course of the trial.

5 From time to time during the trial, you may hear one
6 of the lawyers say something like, "Your Honor, I believe I
7 have a question of law or a matter of law to discuss with
8 you," or, "Your Honor, may we approach the bench?"

9 Or sometimes, I, myself, may find it necessary to
10 excuse you from the courtroom for a short while so that the
11 attorneys and I may discuss what's called, a "matter of
12 law."

13 The reason for this is because you are the judge of
14 the facts. And sometimes when I am discussing matters of
15 law with the attorneys, it may be necessary for me to make
16 some comment as to the facts in connection with a ruling on
17 whether or not a particular law applies.

18 I am not supposed to tell you what I think the facts
19 are, so I will excuse you from the courtroom while these
20 discussions are taking place, so that in no way you will be
21 influenced by anything that I say or do in connection with
22 the facts.

23 Now, in determining what true -- what the true facts
24 are in this case, you must decide whether or not the
25 testimony of the witnesses is believable. It will be my

1 responsibility to rule as a matter of law whether or not
2 certain testimony is admissible at all or not. But once
3 the testimony is admitted, whether or not you believe it is
4 solely for you to determine.

5 In deciding whether to believe a witness, you have the
6 right to consider the interest of any witness, the bias of
7 any witness, the prejudice of any witness, the opportunity
8 for the witness to have seen the matter to things about
9 which the witness may testify, the way the witness acts on
10 the stand.

11 You have a right to consider anything that is in the
12 record that will help you evaluate the testimony of the
13 witnesses. And that means that it is your duty to pay
14 close attention to the witnesses, to observe them, to
15 listen to them, and to pay close attention to the attorneys
16 and to the Court. Don't let your thoughts wander, but give
17 strict attention to the testimony in the case so that at
18 the end of the testimony -- after the arguments of counsel
19 and the charge on law -- you will then be in a position to
20 render -- to determine what the true facts are, apply the
21 law to those facts, and thus render a true and just
22 verdict.

23 Madam Foreperson, it is your added duty to be this
24 jury's spokesperson here in the courtroom. It will also be
25 your duty to write the verdict, and I will give you further

1 instructions about that at the conclusion of the case.

2 In order to preserve everyone's rights, I will give
3 either party an opportunity to object to anything that I
4 have now said during these instructions.

5 Anything from the State?

6 MR. JOYNER: Nothing from the State.

7 THE COURT: Any from the Defense?

8 MS. RIVERS: No, Your Honor.

9 THE COURT: We will now receive the opening
10 statements.

11 MR. ROWELL: Thank you, Your Honor. May it please the
12 Court?

13 Ladies and gentlemen of the jury, my name is Eric
14 Rowell, and I am with the Chesterfield County Solicitor's
15 Office, here today with my co-counsel, Mr. J.R. Joyner.

16 We are here today because this man, Billy Lisenby,
17 failed to stop for a blue light when signaled by the
18 Chesterfield County Sheriff's Office, by Deputy Spence
19 Vaughn. During that chase, ladies and gentlemen -- the
20 chase that followed -- he also assaulted two other deputies
21 that work for the Chesterfield County Solicitor's Office,
22 Deputy Wayne Jordan and Deputy Robert Winburn.

23 Now, ladies and gentlemen, I'm going to take you to --
24 back to March 4th of this year, 2008. Officer Vaughn was
25 sitting alongside Snow Hill Road in Chesterfield County,

1 right off 145. He was entering a ticket into his computer,
2 he had his radar going, and it was about nine o'clock in
3 the morning. A car blew by him at a high rate of speed.

4 Officer Vaughn immediately proceeded to chase that
5 car. His -- his radar said the car was going, I think,
6 approximately 72 miles an hour when the car passed him.

7 Now, the chase that followed lasted an hour --
8 approximately an hour. During that chase, ladies and
9 gentlemen, the -- the defendant, Billy Lisenby, reached
10 speeds up to 120 miles an hour, chased with the -- and the
11 chase followed throughout most of Chesterfield County, and
12 also up into Anson County.

13 Now, during that chase, you'll see -- when we show you
14 the video of this chase -- that not only did he not fail to
15 stop -- not only did he fail to stop for a blue light, but
16 he also endangered the lives of many other officers and
17 citizens of Chesterfield County.

18 Now, what we're going to do, ladies and gentlemen, we
19 are going to prove to you by showing you a video of the
20 chase that Spence Vaughn recorded from his car. And when
21 we show you that tape, we're going to prove not only did
22 Billy fail to stop, but we're going to prove that he
23 assaulted two other officers during that chase. The video
24 is clearly going to show that.

25 And at the end of this testimony, ladies and

1 gentlemen, you're also -- at -- at the end of the video,
2 we're also going to show you -- I mean, have testimony
3 given by all three officers involved, the two officers that
4 were assaulted and Officer Spence Vaughn.

5 Now, at the close of the State's evidence, ladies and
6 gentlemen, we ask -- at the close of the hearing, we ask
7 that you come back on all three counts with finding him
8 guilty on failure to stop and two counts of assault with
9 intent to kill. Thank you.

10 THE COURT: Yes, ma'am.

11 MS. RIVERS: Ladies and gentlemen, on the date that
12 has been mentioned in March, it is true that the officer
13 observed Billy Lisenby, he did engage his blue light, and
14 Billy Lisenby did not stop. That's true. He does not deny
15 that.

16 What he does deny is that he tried to kill these
17 officers. What you have here was a car chase. Law
18 enforcement was chasing him. He was trying to get away.
19 No other -- nothing else on his mind but trying to outrun
20 the police. No intent to kill anybody or harm anybody.
21 And that's what he's here today for a trial, for the
22 assault with intent to kill.

23 "Failure to stop" means you're driving a car, the
24 officer engages his blue light, and you don't stop. It's
25 pretty cut and dry. That much he does not deny.

1 Then the State goes on to say that he used his car to
2 try to kill somebody. That the State has to prove, because
3 this defendant denies that. He never had any intent to
4 harm anybody. Now, we have intent not to stop his car.

5 So that's what you're here for today. And you have to
6 listen to the evidence that's presented to you inside this
7 courtroom -- nothing else, but what you see and hear in
8 this courtroom -- to determine did this defendant try to
9 kill somebody with his car.

10 And I will submit to you that he did not. He was
11 being chased. He was trying not to stop. He was stopped.
12 Nobody was harmed, not a scratch on one soul. And that was
13 the way he intended. He never intended to hurt anybody.

14 He was -- now, you may say he's negligent. He was
15 doing something dangerous. He was doing something foolish
16 that we shouldn't do. But he was not trying to kill
17 anybody. That's something in your head -- an intent. And
18 you have to determine that inside his head he had decided
19 he wanted to kill somebody, and he was not able to carry it
20 out. Therefore, it was an assault with -- an assault with
21 the intent to kill. And that he didn't get -- he didn't go
22 through with it. He just stopped.

23 We beg you to listen to the evidence. Give this
24 defendant the benefit of the doubt. Because we're in
25 criminal court now. In criminal court, the State has to

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1 prove beyond a reasonable doubt -- and that is a high level
2 of proof -- that this defendant tried to do what they're
3 saying he tried to do. And I would submit to you that, at
4 the end of the day, you will find he didn't. He had no
5 intention -- nothing going on up here -- to try to harm
6 anybody. Thank you.

7 THE COURT: Is the State ready to call their first
8 witness?

9 MR. ROWELL: Yes, Your Honor. The State calls Spence
10 Vaughn to the stand.

11 JOHN SPENCER VAUGHN, JR., being
12 first duly sworn, testifies as follows:

13 DIRECT EXAMINATION BY MR. ROWELL:

14 Q Please state your name for the record.

15 A John Spencer Vaughn, Jr.

16 Q Mr. Vaughn, where do you live?

17 A Well ---

18 Q Where do you live?

19 A --- I live in Chesterfield.

20 Q You married?

21 A Yes, sir. Been married about 11 years.

22 Q You have any kids?

23 A Got two, boy and a girl.

24 Q And where do you work?

25 A For the sheriff's department in Chesterfield.

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1 Q Okay. How long have you been with them?

2 A Soon be 12 years.

3 Q Is this the only agency you've worked for?

4 A I worked for the Town of Chesterfield for about two
5 months, until I got hired for the sheriff's department.

6 Q Okay. I want to take you back to March 4th of this
7 year. What were you doing? Were you working that day?

8 A Yes, sir. I was.

9 Q Okay. And do you recall what happened on that day?

10 A Yes, sir.

11 Q Okay. Would you tell the jury what you remember from
12 March 4th?

13 A I was sitting on Snow Hill Road. If any of you are
14 familiar with that, it's right up by Robert's Rib. There's
15 a little pull-off there on the side of the road. There's a
16 little straightaway coming from the direction of the
17 Brock's Mill end of Zoar Road.

18 I was sitting there on the side of the road in a
19 little pull off, putting in some tickets where I had wrote
20 somebody previously. And I was sitting there and actually
21 chewing tobacco, which I know is bad. But I was doing that
22 and putting the tickets in. And I looked up to get my spit
23 bottle, and as I looked up, I seen a car coming in my
24 direction at a high rate of speed. I estimated I believe
25 it was around 70 or 71. And as it got closer, I activated

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1 my radar. I had it on stationary, which you know, you have
2 a moving mode and a stationary mode. And as it come to me,
3 I registered about 72 and I locked it in at 71.

4 And as it went by me, I looked in that direction
5 because I was sitting still on the side of the road. As it
6 went by, I seen two occupants, and I could tell the driver
7 was a black male, and he had on a white stocking-type thing
8 on his head. I believe he had on a white T-shirt. And as
9 he went by, and like I say, I looked. And the reason being
10 I looked, me sitting -- as long as I been doing this job,
11 sometimes you have a tendency of people to jump out the car
12 before you can turn around and get caught up to them. So I
13 always want to try to look see what the driver looks like
14 in case that happens. Because it don't do any good to lock
15 up the passenger because he weren't the one driving.

16 So as they -- he -- as he went by me, I looked, and I
17 saved what I was doing on my computer. It took me a second
18 or two to -- to save the ticket that I was putting in. And
19 as I got it saved, I set down the computer in my seat and I
20 took off, you know, turned around and made a -- the
21 direction that he was going, toward 145.

22 And as I topped the hill there at Crawford Loop where
23 it comes around, there's another straightaway, and I was
24 gradually catching back up to him. And he had already made
25 it to the stop sign there at -- across from Robert's Rib,

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1 going to Chesterfield. And there was a car already at the
2 stop sign, in front of this car -- the brown -- I believe
3 it was a brown Ford Taurus.

4 And as he was approaching the stop sign, I was still a
5 little piece behind him. He hit the shoulder of the road
6 at the stop sign -- between the car that was in front of
7 him and the stop sign, to get around that car to turn in
8 the direction of 145.

9 And at that time, when I seen him run the stop sign, I
10 made the assumption that he was going to run. So I started
11 notifying my dispatchers. I believe I was fixing to be
12 ten/zero, which means a pursuit. And as I made it to the
13 stop sign, went on through it, and we went in the direction
14 of 145 towards the Georgia state line. By then, we was
15 picking up speed, so I notified my dispatcher and notified
16 Anson County, which -- which is the county that we were
17 going into -- to let them know that I was headed that
18 direction and needed some assistance, if they were
19 available.

20 I flipped over to their channel to ask them for
21 assistance. And they acknowledged and said they would help
22 and they were coming from Wadesboro.

23 And do I need to keep -- keep going, or -- or what?

24 Q Yeah. You can go ahead and keep going.

25 A So as we went into North Carolina, still on 145, I was

1 communicating with Anson County. I had got the tag number
2 and I had called it into Anson County, you know, to run it
3 for me. Because I didn't know who it was at the time. And
4 so we went on up into -- towards Morven, and got close to
5 the City of Morven -- those of you may know or been there
6 before. We made a left turn on -- I believe it's Sandy
7 Plains Church Road or something like that. It's right
8 before you get to the Town of Morven. We traveled that
9 road on out a little piece and got to 1003 and went the
10 direction of 742 there at Jimmy's Superette -- those of you
11 that may know where that's at.

12 And Anson County at the time still hadn't got there to
13 me, but they were on the way. They had already
14 communicated they were -- they were headed ---

15 MS. RIVERS: Objection, Your Honor. Hearsay.

16 THE COURT: Sustain the objection.

17 A So anyway, when I got to 742, I crossed over from the
18 Deep Creek Road, which is still 1003. And we traveled that
19 road just a little piece longer, made a couple of turns to
20 the right on another paved road. I can't remember which --
21 you'll see that maybe.

22 And by then, a few minutes later, Anson County finally
23 got there to me, and it was one of their deputies that
24 arrived to help me. And we made a right-hand turn on the
25 road that the deputy was up at, and so that put the deputy

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1 behind me -- the Anson County deputy. He was behind me and
2 I was behind the Ford Taurus.

3 And I had told Anson County to come around me ---

4 MS. RIVERS: Objection, Your Honor. Hearsay.

5 THE COURT: I'll allow. So far, he's -- it's not
6 hearsay, but it's approaching. Go ahead.

7 A I told Anson County to come around me, to take the
8 chase over due to that I was in their jurisdiction. And at
9 the time, he couldn't ever get around me, because the roads
10 was curvy and we were driving in the middle of the road,
11 what-have-you. So anyway, we -- I followed him on, along
12 with the Anson County deputy, for several more miles in
13 Anson County. Went back to 1003, and we turned right going
14 back towards 109, which runs, you know, from Mount Croghan-
15 to Wadesboro.

16 And on down the road a little piece, we got to another
17 Anson County deputy, which at the time, he was trying to
18 deploy the stop sticks. It's an object that you put out in
19 front of a vehicle. It's got little needle things in it.
20 You run over them and it flattens your tires.

21 Well, as he was attempting to do that, the driver of
22 the Ford Taurus made an evasive move, went up an
23 embankment, went through a yard behind that Anson County
24 deputy's car to avoid him. So the driver missed his stop
25 sticks and we continued on.

1 Went several more miles up toward White's Store Road
2 area, and eventually turning left on White Store Road,
3 coming back into Pageland, South Carolina. And once we got
4 into South Carolina, the Pageland area, on Hornsboro Road,
5 we went on towards the direction of the town of Pageland,
6 which I -- by then, I'd already called in for assistance
7 from the Town of Pageland. And I met one of their officers
8 a couple of miles from town, you know, coming my direction.

9 So we finally made it towards the Town of Pageland.
10 He made a turn to get on No. 9 before you get to Food Lion
11 area of Pageland. We got on No. 9. Course he was running
12 the stop signs, going around cars and what-have-you. And
13 we traveled No. 9 to Airport Road. We made a right-hand
14 turn onto Airport Road, and traveled out towards the high
15 school -- those of you may be familiar with Central High
16 School -- still passing cars and trucks and 18-wheelers and
17 what-have-you; and we continued that road all the way on
18 out to 265, there at Fairview Crossroads, where the church
19 is.

20 We went on through there and went toward Woodard Mill.
21 By then, I was getting some more officers that was
22 affiliated with the sheriff's department. And of course, I
23 had the town and also had Anson County that was still
24 behind us as well, because they had already notified their
25 officers and they were going to have charges as well from

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1 the stuff that had occurred up there. So they continued
2 on.

3 We went out -- so we went out to the Woodard Mill
4 area, finally making it to 109. We turned right onto 109,
5 and as we turned right, one of our officers driving a Ford
6 Explorer was coming towards Ruby on 109 from Angeles Road,
7 those of you that may be familiar.

8 And by then, I'd already -- by that time, I'd already
9 knew that it was Billy Lisenby driving. And as he was
10 traveling down 109, Officer Wayne Jordan was driving a dark
11 colored Ford Explorer -- was in his lane. The driver of
12 the vehicle crossed the center line and got in his lane,
13 which was in the opposite lane, driving on the wrong side
14 of the road. Met that Ford Explorer, and Deputy Jordan
15 had to take evasive action by going into the ditch to -- to
16 keep from getting hit head-on.

17 And as that happened, we went on past them and we went
18 on towards Angeles Road Crossing. And he started to make a
19 turn onto Angeles Road, but was going too fast and couldn't
20 make his turn. So he continued on down 109 towards 145,
21 Campbell's Crossing. And as we was getting towards
22 Campbell's Crossing, we was going at a high rate of speed.
23 And my concern was at that crossroad, somebody coming
24 through there and getting T-boned.

25 So there was an officer -- Mr. Winburn -- Robert

1 Winburn is his name. He was in that -- up there at that
2 intersection. I asked him to block the intersection --
3 being to block anybody coming from McBee to Chesterfield,
4 to keep from getting, you know, hit if he decided to keep
5 on going straight.

6 And as he was attempting to do that and as we was
7 coming up to the intersection, the driver, Mr. Lisenby,
8 again crossed over the center line in the wrong lane, and
9 drove towards the white Jeep Cherokee that he was driving
10 at the time, and went straight towards him. Which he was
11 trying to block the road to keep the car from being hit.

12 So Mr. Winburn was able to get out of his way, and so
13 we continued on down -- by then, it turned to Ruby-
14 Hartsville Road -- 109 turns into Ruby-Hartsville Road,
15 going towards the winery area. We went on through the
16 winery area and by then, I was thinking we might be going
17 to go to Darlington County, so I was making arrangements to
18 notify them so they'd be able to help us.

19 So I went on up to Saint John's Church Road area, up
20 above the winery. We turned left and went out towards 102,
21 and I was -- still had officers behind me, but I was never
22 able to get anyone that was in front of him to be able to
23 put out stop sticks.

24 And so went on out across 102, went towards Huntsville
25 and Huntsville Road. Traveled that road for several miles

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1 and we turned left on Evans' Mill Road, like you're going
2 back towards Teal's Mill. And as we turned left, we
3 traveled that road to the stop sign at -- at -- oh. I
4 can't think of the road. Bear Creek Road, that's it. We
5 got to the stop sign, he turned left toward -- back towards
6 102.

7 And as we was going down that road, there was a bridge
8 up there where the Hunt's Mill swamp starts that goes
9 toward the pond. And then Jason Privette, a deputy with
10 us, at that time was coming in my direction. And I asked
11 him to try to put out the stop sticks. That -- that was
12 his intent to do it, was to put them out in between the
13 guard rails and the bridge, because he'd already avoided
14 them at one time. And Deputy Privette wasn't able to get
15 there in time to be able to put them out where I was
16 needing them. He put them out a little bit below that.

17 So as he went to put them out, Mr. Lisenby, the
18 driver, made an evasive move and got around me. So he
19 ended up turning right on Elmo McFarland Road, traveled it
20 out on up to Buggy Lane, which makes a little circle back
21 over to Ted Melton Road.

22 So he turned left onto that road, which is -- is a
23 dirt road, Buggy Lane. And as he turned left, he followed
24 that road out and got to the stop sign there at Ted Melton.
25 As he turned right, he started -- he opened up his car door

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1 as he was going to jump out, because he'd already taken his
2 seat belt off several miles before then.

3 And I got my car -- and as he opened the door, you
4 could actually see him looking out the door to see where I
5 was. And as he got out -- he jumped out of the car and I
6 jumped out and was able to handcuff him and take him to --
7 you know, to jail. Nobody got hurt, as far as me or him.
8 And there -- there was a passenger. I can't remember his
9 name. But he was detained, but he was -- later was let go,
10 because we had no charges on him, other than his being the
11 passenger in the vehicle.

12 Q Mr. Vaughn, what attempts did you make to stop Mr.
13 Lisenby during the pursuit?

14 A Well, we deployed stop sticks twice; I called him on
15 the PA system. On into the chase, when we got about the
16 winery area -- because like I say, I knew -- I knew Billy.
17 I went to school with him; growing up, knew him. And I
18 started announcing on the PA to pull over, that we knew who
19 he was, and we weren't going to go anywhere. But you know,
20 he didn't pull over, but -- so I had that and two -- two
21 times of trying to deploy the stop sticks.

22 Q Were your blue lights displayed during the pursuit?

23 A Yes, sir. And the siren.

24 Q At any point, did -- did Billy attempt to slow down or
25 to pull over?

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1 A No, sir. He -- well, he slowed down to make turns.

2 But he never slowed down to pull over and give up.

3 Q And what -- what was the average speed? Or what was
4 the max speed during the pursuit?

5 A You know, my car -- it'll cut off at 120, and it --
6 and it -- several times in the chase it -- it was cutting
7 back. It's got a -- like a governor or something on it.
8 But the probably the average speed was between 70 and 80
9 the majority of the times. You know, there would be some
10 long straightaway, we might get to 100 or so, but most of
11 it probably 70 or 80.

12 Q Were you operating the car's in-camera video?

13 A Yes, sir.

14 Q Okay. And how -- do you know Mr. Billy Lisenby?

15 A Yes, sir.

16 Q Okay. Could you please identify -- do you see -- do
17 you see the -- Billy Lisenby here in the courtroom today?

18 A He's sitting beside Ms. Patricia Rivers.

19 Q Okay. Let the record reflect, Your Honor, the witness
20 has identified the defendant.

21 May I approach, Your Honor?

22 Q Do you recognize -- well, let the record reflect I'm
23 showing States Exhibit No. 1 to the witness.

24 Do you recognize this, Mr. Vaughn?

25 A Yes, sir.

1 Q What's this?

2 A It's a DVD that was made -- a copy of the chase. An
3 in-car video camera.

4 Q Okay. Did you make this copy?

5 A Yes, sir. Me and John McCarn made it.

6 Q Is this a fair and accurate representation of the
7 original?

8 A Yes, sir.

9 Q Okay.

10 Your Honor, at this time, I'd move to enter State's
11 Exhibit No. 1.

12 MS. RIVERS: No objection.

13 THE COURT: Without objection, be admitted to State's
14 1.

15 (Entered State's Exhibit No. 1, video, into evidence.)

16 MR. ROWELL: Your Honor, at this point, I'd like to
17 publish Exhibit No. 1 to the jury.

18 (Bench conference.)

19 THE COURT: All right. Ladies and gentlemen, as I
20 told you at the beginning of the trial, there are times
21 when I have to take up matters of law with the lawyers and
22 I have to do so outside of your presence.

23 I'm going to ask if you would -- again remind you
24 don't have any discussions about anything involved in the
25 case among yourselves. And we'll get you back just

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1 shortly. Let you retire back to the jury room for a break.

2 (The jury exits at 3:33 p.m.)

3 THE COURT: Now, we were having a bench conference
4 about the -- about the CD, which is my understanding it's a
5 CD that reflects a video from the car chase scene; is that
6 correct?

7 MR. JOYNER: Yes, sir.

8 THE COURT: And Defense counsel indicated that that
9 had not been provided to her. I would have some -- I mean,
10 if it's not been provided to her, I'd have some
11 reservations about allowing the jury to see it.

12 MR. JOYNER: Well, Judge, I think my -- my first issue
13 is that it's already been entered into evidence at this
14 point. She had a chance to make this prior to. Having no
15 objection and stipulating to it, it's already in now. And
16 I think that it may be appropriate that maybe it would
17 wait.

18 The second thing, Your Honor, is that under Rule 5, it
19 says that we have to make available for copying and viewing
20 all objects, including this disc, that are in the
21 possession of the prosecution. I believe "possession of
22 the prosecution" means not only me, but also in the
23 officers that made the case.

24 THE COURT: I agree.

25 MR. JOYNER: They were made -- notified that the

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1 officer had a video of this entire incident and they could
2 see it any time they want to. Rule 5 does not provide us
3 to make a copy and to spend our money, and then mail it to
4 them or go and deliver it to them. Rule 5 specifically
5 says, "Make available for viewing and copying."

6 We made it available. All they had to do -- in fact,
7 Judge, the office is right above the sheriff's office.
8 It's not even a drive; they walk down the stairs and the
9 sheriff's office is right there. All they had to do was
10 during this time come down, see Officer Vaughn, view the
11 CD. They simply chose not to, although they were made
12 aware that he did have it.

13 And I believe, Judge, under those circumstances,
14 that's a failure to view it on their part, when they had
15 plenty of time to do so. And I would ask Your Honor to --
16 to not change your ruling from allowing this into evidence
17 and allow us to please publish it to the jury.

18 MS. RIVERS: Your Honor? They did say they had
19 something, and I did say "no problems." I didn't
20 understand that it was a CD; I thought it was a photograph.
21 We were not told -- I do deny that. We were not told there
22 was a video; we did -- were not told that it was available
23 to us. And as far as me getting up with Officer Vaughn, as
24 far as I know, he doesn't stay in the sheriff's department.
25 He -- he wasn't in the sheriff's department the day this

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1 happened. And me just walking down to the sheriff's office
2 and telling him I want to see a CD, I don't -- it's not
3 that easy.

4 But we were not -- I was -- I deny I was told there
5 was a CD, and I deny that I was given opportunity to view a
6 video.

7 As far as copying a video, I don't even know how -- I
8 don't know how to do that. I admit I'm computer
9 illiterate. I don't know how to make a copy of a CD.

10 THE COURT: Well, on -- on the -- I don't find it
11 credible your statement that you thought it was a
12 photograph, because the gentlemen -- the lawyer stood right
13 here at the bar, and I waited for a response from you on
14 whether or not it was going to be admitted or not, and it
15 took some time for you to respond that you would allow it.

16 MS. RIVERS: Yes, sir.

17 THE COURT: So I do not find that to be a credible
18 statement.

19 MS. RIVERS: And that's when I should -- my client is
20 continuously talking to me, and I'm trying to listen to him
21 and listen to him at the same time. And I'm having a hard
22 time trying to do both.

23 THE COURT: All right. You need to do better.

24 I have concerns over whether or not to allow the
25 entire playing of this into evidence. Y'all indicated to

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1 me it has an hour almost car chase scene. Defendant is
2 admitting to the fact that -- his failure to stop. He
3 didn't stop.

4 I would assume -- and correct me if my assumption is
5 wrong -- I would assume that the CD and your desire wanting
6 to have to review the CD is for the purposes of the
7 charges. Not only does it show the failure to stop for the
8 blue light, but also the charges of assault with intent to
9 kill; is that correct?

10 MR. JOYNER: Your Honor, that is correct.

11 THE COURT: All right.

12 MR. JOYNER: I also have just one more small -- and
13 this is just a technicality, Judge. But my fear also is
14 that anything that Ms. Rivers said in her opening statement
15 certainly could not be construed as evidence by the jury.
16 And if we go forward and don't show this video, then he
17 chooses not to testify, then that evidence never comes in,
18 and I'm stuck. I haven't shown them the actual footage of
19 him driving like a maniac and running dump trucks off the
20 road. I think it's certainly very effective to show it to
21 the jury.

22 THE COURT: It is no doubt sometimes a video, watching
23 it with your eyes can add to the impact of the testimony,
24 because the officer has testified quite artfully, or
25 articulately, as to the events that happened with the --

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1 with the chase.

2 How difficult would it be for you to locate the
3 instances that involve where he -- where the State would
4 contend when instances where he attempted to assault?

5 MR. JOYNER: It -- it shouldn't be too difficult, Your
6 Honor. There is a timer up in the top corner that are on
7 all of these cars. And we have the -- the three particular
8 times that he -- that he -- that the instances occurred
9 that we based the assault with intent to kills on. And --
10 and I could -- I could do that. I could show those -- I
11 could -- I could basically forward it.

12 It may take me a little -- you know, a few minutes to
13 get there, because we intended to do it on a computer,
14 where you just slide the probe over. But I -- I'm certain
15 we could do it on the TV just as easy.

16 And I'm prepared. I've got -- I know the times and
17 I'm prepared to -- to just those times, if that would make
18 it --

19 THE COURT: Any objection, Ms. Rivers? All right.
20 Ms. Rivers, you're going to need to listen when the
21 arguments are being presented to me.

22 MS. RIVERS: I'm sorry, Your Honor.

23 THE COURT: I need your attention. Your client needs
24 your attention. At that moment, you were not talking with
25 your client.

1 Now, do you have any objection to what the solicitor
2 just offered?

3 MS. RIVERS: No, Your Honor.

4 THE COURT: She has no objection to that.

5 MR. JOYNER: Your Honor, I don't -- there's no problem
6 for me. If you would give me just a second. While the
7 jury's out, we can set the TV up quickly and try to work it
8 out. Because I've actually had the times written down
9 here.

10 MS. RIVERS: Your Honor, may -- may I also -- that's
11 pointed toward the jury. Could we get it so we can see it,
12 too, as it's being played?

13 THE COURT: If you can. I don't -- can you do that?

14 MR. JOYNER: Your Honor, I don't believe I can.
15 Usually, we just go and stand back behind the jury whenever
16 they're ---

17 MR. ROWELL: He can slide it back farther on, you
18 know, Your Honor.

19 THE COURT: Are you concerned with them standing back
20 there?

21 MR. JOYNER: No, I don't object, Judge; I'm going to
22 be back there myself.

23 MS. RIVERS: That'll be fine.

24 THE COURT: I will be joining you back there.

25 MS. RIVERS: I'm sorry?

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1 THE COURT: I will be joining you back there so I can
2 see it as well.

3 MR. VAUGHN: Do you need me to sit here or what?

4 MR. JOYNER: No. You can come up and point out
5 exactly -- because there's one spot where the car's in the
6 road and it's not to stop him. I shouldn't be talking.

7 THE COURT: Mr. Vaughn, if you do exit the witness
8 stand, I will instruct you that you will need to -- have to
9 speak up, because you will be -- not be around a
10 microphone. And the lady in front of you is the court
11 reporter. She needs to be able to hear you, as well as all
12 those people who are sitting over there. So whenever you
13 speak, you're going to need to really speak up.

14 And Mr. Solicitor, if your witness does not maintain
15 an audible voice, he will have to sit back down and will
16 not be allowed ---

17 MR. JOYNER: Yes, Your Honor. What -- what I'll do,
18 Judge, is subject ---

19 MR. VAUGHN: I can speak loud.

20 MR. JOYNER: Yeah, he -- he can get loud, Your Honor.
21 I'll -- I'll have him stand here, and that way if there's
22 anything that needs clarification, then he can do so in a -
23 - in a voice loud enough for the court reporter to hear
24 him.

25 THE COURT: All right.

1 THE DEFENDANT: Your Honor, may I say something?

2 THE COURT: No, ma'am. No, sir. You need to speak
3 with your lawyer.

4 (Bench conference.)

5 THE COURT: (To the defendant) Sir, you stay right
6 there.

7 All right. Mr. -- how -- how do you wish for me to
8 address you?

9 THE DEFENDANT: Mr. Lisenby.

10 THE COURT: Mr. Lisenby? All right.

11 THE DEFENDANT: Lisenby.

12 THE COURT: Yes, sir. Your lawyer informs me that you
13 wish to address the Court?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: What is it that ---

16 THE DEFENDANT: The -- the reason I want to address
17 the Court because just like I said, I just made bond
18 Tuesday. They advised me in writing to be in court on May
19 21st, and no one has ever notified me. I never discovered
20 -- I never -- ain't none of this been presented to me.

21 I just made a \$75,000 bond Tuesday and that's my first
22 court appearance, anything. And I can't -- I go up for a
23 bond reduction the week before. They -- they said 120
24 days, they'll give me ---

25 THE COURT: Yes, sir. Let -- I --

1 THE DEFENDANT: Huh?

2 THE COURT: Interrupt you for one moment. We have
3 already passed those issues in this case, sir.

4 THE DEFENDANT: Well, see, I wasn't notified to be
5 here. They -- they -- they told me it'd be on May 21st. I
6 was at Mental Health for seeking -- seeking psychological
7 evaluation just now.

8 THE COURT: All right, sir. We have -- you are
9 represented by an attorney.

10 THE DEFENDANT: Uh-huh.

11 THE COURT: We have already addressed those issues, if
12 they were to be addressed by this court; and this trial has
13 already started.

14 THE DEFENDANT: Well, she had an obligation ---

15 THE COURT: Any issues concerning notification of this
16 trial and the -- and proceedings in this trial has already
17 been taken care of or waived. So this trial is underway
18 and you were present.

19 THE DEFENDANT: I know I was present today at this. I
20 mean, we just was -- was just speaking. I -- I was issued
21 a speeding tickets, I mean, I didn't even -- my probably
22 cause ---

23 THE COURT: Sir, let me ask you this: I've -- I've
24 allowed you to stand and to address the Court because I
25 thought that you had something you wanted me to know about

1 your lawyer, not to make substantive arguments about issues
2 that arise in this case. That is your lawyer's job, not
3 yours.

4 THE DEFENDANT: Well, I -- I need to go -- I mean,
5 it's a lot of things going on now with this case that's not
6 being objected and everything. I would prefer to go on my
7 own, because I mean, I'm -- I -- I mean, that's the best
8 thing to do. Because I mean, just like just now. She
9 plainly told you she didn't know anything about the -- the
10 -- the CD. Now, I'm going to have to suffer for that, you
11 know, her mistakes. I mean, which this is a nice lady. I
12 -- I'm not going to deny this.

13 Well, I'm suffering from this. So I mean, if I'm
14 going to suffer, I'm going to suffer for my -- for my own
15 mistakes, not for somebody else's. I'm facing 20 years, 23
16 years.

17 And I -- I hadn't been out -- we only been able to
18 speak two times, because like the last time she came up to
19 the jail to speak to me, they wouldn't even let her. They
20 told her that she had to leave, she was a piece of trash,
21 to leave. She hasn't even been able to talk to me. Hadn't
22 been able to send me any paperwork or anything dealing with
23 this case. We -- she has tried over and over again to come
24 and talk to me and prepare for -- about my witnesses.

25 Give them my -- my mental health. I was on medication

1 that day. She -- she didn't even -- I couldn't even
2 explain it to her, because I was -- y'all transported me
3 from here to North Carolina. We -- we haven't been able to
4 talk. I went two counties in North Carolina. And she
5 didn't even know I was out. I just got out of South
6 Carolina Thursday -- I mean, North Carolina Thursday. They
7 extradited me all the way over there. She didn't -- had no
8 chance to -- to take care of the case. Because she's
9 tried. I'm not going to deny it.

10 This woman has tried every -- they told her the other
11 day that when she came in to see me that she was trash, and
12 they didn't have time for -- to bring the inmates out.
13 They told her that.

14 She has tried every day, every step to get with me.
15 And like I said, my -- it took all -- well, we thought -- I
16 wrote a letter -- I wrote her a letter. She thought that I
17 was going to be the 21st.

18 THE COURT: What is that piece of paper you just
19 referred to?

20 THE DEFENDANT: It just states that -- my bond. My
21 aunt gave me the bond. Madge Lisenby, she'll testify to
22 this.

23 THE COURT: Give that to Ms. Rivers.

24 THE DEFENDANT: I was supposed to come to court on the
25 21st ---

1 MS. RIVERS: That's the original.

2 THE DEFENDANT: -- of May.

3 MS. RIVERS: He's got the original.

4 THE DEFENDANT: Nobody told her or me that I was due
5 to come to court. I even tried to get in touch with her
6 when I first came home. I wrote her a letter, which she
7 should have got today, and because I know she's always
8 busy. I couldn't get anybody at the office. We haven't
9 had any time to do anything. She don't even know who half
10 my witnesses are. And Patricia would help me 110 percent,
11 if she knew, if she had enough time. She couldn't even
12 subpoena anybody. She couldn't even subpoena her own son.

13 THE COURT: All right. You may -- you may have a
14 seat.

15 I want to see the lawyers in chambers.

16 (To Mr. Vaughn) Sir, if you will, you can step down,
17 but I need to instruct you you're still under oath and in
18 the process of giving your testimony. You're not supposed
19 to have any discussion with anyone about the substance of
20 your testimony.

21 MR. VAUGHN: Okay.

22 THE COURT: All right. Mr. Lisenby, is there anything
23 else that you would like to say concerning your -- what
24 you've been talking to me about?

25 THE DEFENDANT: Yes. I need my witnesses. I have

1 doctor and I have a witness who was in the car with me. I
2 mean -- I mean, all I have to do is -- he's at work right
3 now. All I have to do is get him here. I don't have to
4 get y'all to subpoena him; I can have him here. He's just
5 at work. And when they notified me, I was at -- at mental
6 health. I was nowhere I could have got to him, and y'all
7 started my trial and that's why I came here first. He's --
8 he's at work in Wadesboro. I can have him here.

9 And -- and my -- my -- my doctor, Dr. Rumble, and my
10 mental health, as well as my neurologist. They'll come at
11 -- at the drop of a dime. All they need is a subpoena and
12 they'll be here. They -- they'll be -- I don't have any
13 witnesses -- I mean, I don't have anybody -- the guy --
14 that's the reason I need him. He's the one that cut off
15 the car. That's the reason they caught me.

16 THE COURT: All right. Mr. Lisenby, I -- I'm not
17 going to get into trial strategy between you and your
18 lawyer. You know, that is something that you will need to
19 talk to your lawyer about.

20 THE DEFENDANT: But she didn't know. I mean, I
21 couldn't -- I couldn't tell her.

22 THE COURT: Mr. Lisenby, let me speak, if you would.
23 I believe that you -- you are being represented by a very
24 competent lawyer; many years of experience, excellent
25 reputation. So I am -- you know, I'm going to -- whatever

1 it is, I'm -- and I'm trying to help you out by trying to
2 read in between the lines what it is you're asking me to
3 do.

4 THE DEFENDANT: Uh-huh.

5 THE COURT: Because you haven't really asked anything.
6 You've registered a lot of complaints, but you haven't
7 really asked me to do anything specific.

8 THE DEFENDANT: Well -- well, may I ask you to allow
9 me to ---

10 THE COURT: Let me finish. Sir?

11 THE DEFENDANT: May I ask you to allow me to get my
12 witnesses here?

13 THE COURT: Sir, again, that is something between you
14 and your lawyer. Your lawyer has that responsibility of
15 coming up with a trial strategy. Sir? Sir! Please listen
16 to me when I am talking to you. Will you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Whether or not to call certain
19 witnesses as part of a trial, that is part of a trial
20 strategy, and I am not going to grant any type of request
21 simply to ask for witnesses in general to be subpoenaed to
22 come to trial. That is something that is between you and
23 your lawyer as to a particular trial strategy that you or
24 your lawyer would feel that you should employ in
25 representing you in this case. So I will not grant that

1 request.

2 We are going to proceed with the trial of the case. I
3 have been provided documentation, and I thank you for
4 providing me with some of those documentations concerning
5 your notifications to your first and second appearances and
6 your bond work.

7 I've also been provided specific documentation that
8 indicates that this trial was scheduled for today. You
9 were to have been here at nine o'clock today to start this
10 trial. And we waited for you to get here. You know, we
11 delayed this in order for you to have your discussion with
12 -- with your attorney, while we also -- while the Court
13 also had discussions with the attorneys in the back
14 concerning your rights and how best to -- and how best your
15 lawyer felt that she could represent you.

16 We have started this trial. We are now going to
17 proceed with this trial. I encourage you to work with your
18 lawyer as you have during this trial; to continue to work
19 with your lawyer. And we will proceed on it.

20 THE DEFENDANT: May I -- may I ask you a question?

21 THE COURT: You may ask your lawyer a question. She
22 is your lawyer, sir.

23 THE DEFENDANT: But you just said I was notified. But
24 I was never notified.

25 THE COURT: Yes. Sir, if you would -- you are

1 represented by Ms. Rivers. From now on, sir -- I have
2 allowed you an opportunity to speak to me, which is a
3 rarity to have a criminal -- have a person charged with a
4 crime speak directly with the Court.

5 I have been very courteous to you; I hope that you
6 think so.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And I have afforded you this opportunity
9 to speak with me, but now we've got to proceed. You need
10 to talk to your lawyer, and we're going to proceed with the
11 trial of this case.

12 We will need to make part of the Court's -- as a
13 Court's Exhibit the document that indicates that the trial
14 was to occur at 9:00 a.m. today, status conference, notice
15 of mandatory court appearance, and the other documents,
16 which I believe are his bond work we gave back to him.

17 (Marked Court's Exhibit No. 1, trial docket.)

18 MS. RIVERS: Your Honor, if I may, there was a witness
19 that I was aware of that I have tried to get that witness.
20 He has informed me that the witness is working. And I --
21 and I informed Mr. Lisenby that we probably -- we probably
22 wouldn't get to the defense of this case today, and that
23 would give us an opportunity to get him this afternoon, and
24 could have him here in the morning to testify for him. And
25 that -- the reason I couldn't find him he says is because

1 he was working. And I would beg the Court, can -- can we
2 do the defense side in the morning and I'll --

3 MR. JOYNER: I don't object to that, Judge.

4 MS. RIVERS: That way, he'll -- he'll be satisfied to
5 have that witness. There was only one witness that's
6 really pertinent to the case that was there.

7 THE COURT: What witness is that?

8 MS. RIVERS: There was a passenger in the car, and
9 his name's Chad Coit.

10 THE COURT REPORTER: C-o-u-r-t?

11 MS. RIVERS: He has -- C-o-i-t, I believe.

12 THE COURT: All right. Well, maybe we can at least
13 get them -- the video shown to them before we adjourn
14 today.

15 MR. JOYNER: Yes, sir.

16 THE COURT: All right. Are you ready to show the
17 video?

18 MR. JOYNER: Yes, sir.

19 THE COURT: All right. Will you have your witness
20 come back around?

21 (To Mr. Vaughn) Sir, I will remind you that you remain
22 under oath.

23 MR. VAUGHN: Yes, sir.

24 (Sotto voce discussion between the Clerk of Court,
25 the court reporter, and the witness.)

1 THE COURT: (To Mr. Vaughn) Sir, you may be seated.

2 All right. All right. We're ready to bring the jury
3 back.

4 (The jury enters at 4:33 p.m.)

5 THE COURT: Ready to proceed?

6 MR. ROWELL: Yes, Your Honor.

7 MR. JOYNER: Yes, sir.

8 MR. ROWELL: All right. Your Honor, at this point,
9 I'd like to publish to the jury the DVD, State's Exhibit
10 No. 1.

11 THE COURT: All right. I'm going to come down and go
12 back there.

13 MR. JOYNER: Can everybody see?

14 (DVD plays.)

15 THE COURT: Solicitor, if you would, when you are
16 going through the video, since we're making a -- the court
17 reporter's making a transcript. Have your witness identify
18 things that are on the tape so that the court reporter can
19 get it down. Like the areas or something like that.

20 MR. JOYNER: Yes, sir. I'll do that. Judge, would it
21 be okay is after I show it, I could just pause it to let
22 him explain it?

23 THE COURT: Okay.

24 (DVD is plays.)

25 MR. ROWELL: All right. Mr. Vaughn, could you just

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1 explain to the jury what's happened up until this point,
2 and what they just observed?

3 A I was -- this is the early beginning of the chase, and
4 we was on -- this is what they call "1003 Deep Creek Road"
5 in Anson County. And we was coming close to 109, where 109
6 and 1003 run together. Anson County would be the second
7 officer that was assisting me.

8 There was one behind me that was -- had got with us a
9 little earlier. He went to deploy stop sticks. As I spoke
10 earlier, that's where he made an evasive move up an
11 embankment and around the back of the car to avoid the stop
12 sticks, which you may have seen. They was laying across
13 the road by -- by his patrol car.

14 Q Okay.

15 (DVD plays; is paused; is fast-forwarded.)

16 (Sotto voce between Mr. Joyner and Mr. Rowell.)

17 (DVD is paused; is fast-forwarded; plays.)

18 Q All right. Mr. Vaughn, could you again summarize for
19 the jury what they just observed?

20 A We had just came off of Fairview Church Road and the
21 Woodard Mill Road area. Someone had made another call. We
22 turned right on Highway 109, headed back toward what's
23 called "wine community." And in the northbound lane going
24 towards the town of Ruby was Officer Wayne Jordan, driving
25 that dark-colored Ford Explorer. And as we started

1 approaching, the driver of the Ford Taurus, which was Mr.
2 Lisenby, come over across the center line unprovoked to run
3 the vehicle off the road.

4 Q Mr. Vaughn, approximately how fast were you going at
5 that point?

6 A Well, I hadn't been gone too far from the stop sign.
7 Probably 60 -- between 50 to 60 to 70 mile-an-hour range --
8 probably there, because I hadn't been too terribly long
9 turned.

10 (DVD plays; fast forwarded; plays.)

11 (Sotto voce discussion between Mr. Joyner and Mr. Rowell.)

12 (DVD plays.)

13 Q Again, Mr. Vaughn, could you explain what you -- the
14 jury just observed there?

15 A Well, at that particular place was where Ruby-
16 Hartsville Road and 109 crosses 145. And it's a lot of
17 traffic comes through there, a lot of 18-wheelers and what-
18 have-you. Mr. Winburn was -- had told me he was in that
19 area, and I had asked him to try to keep him from going
20 across that intersection, because I was scared he might hit
21 someone.

22 And in doing so, you could see that he was actually --
23 Mr. Winburn -- because I asked him to try to hold up
24 traffic, if anything was coming, because I didn't want
25 anybody getting hurt.

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1 He -- he was in that lane, which would be, you know,
2 this lane here away from -- if he had been where he's
3 supposed to have been, you know, Mr. Winburn was there.
4 And as he -- in that intersection tried to stop cars and
5 trying to maybe keep him from going across the
6 intersection, that's when he came over into that lane, you
7 know, to get Mr. Winburn out of his way. Of course, you
8 can tell that he -- he -- he hit his brakes somewhat, and
9 Mr. Winburn had to, you know, drive back across the center
10 lane to get in -- in my way to keep from being hit by the
11 driver of the Taurus.

12 (DVD plays.)

13 MR. ROWELL: Mr. Vaughn, this time could you just
14 describe it as the jury is observing as you're coming up on
15 the 431 mark.

16 MR. VAUGHN: There's a highway patrol sitting in his
17 yard here. I'd asked him earlier if he had stop sticks,
18 but he didn't have any. He said they weren't allowed to
19 have them. You can see this long straightaway coming
20 towards you and that crossroads, some call it "Campbell's
21 Crossroad," and you can -- as you may be able to tell,
22 going on pretty good speed-wise.

23 Then I was talking to Mr. Winburn -- which I call him
24 "Pops" -- to try to hold that intersection. Because I
25 didn't know if any traffic was coming. But you can see him

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1 crossing over, Mr. Winburn's in that lane, and then that --
2 as you'll start to see, he's having to get out of his way.

3 (Sotto voce discussion between Mr. Joyner and Mr. Rowell.)

4 MR. ROWELL: Okay. All right. Mr. Vaughn, thank you
5 very much. The State has no more questions at this time.
6 Please answer any questions Ms. Rivers has for you.

7 THE COURT: Let me see the lawyers for a moment.

8 (Bench conference.)

9 THE COURT: All right. Ladies and gentlemen, thank
10 y'all for your work today. I've consulted with the lawyers
11 and given the hour that it is, I've made a decision we're --
12 -- we're going to not start the cross-examination of this
13 witness.

14 And I told you when I gave you preliminary
15 instructions I think awhile ago before you had your break,
16 I instructed you on the fact that you're not to have any
17 discussions with anyone about anything involved in the
18 case. And I need to let you know that now since we're
19 actually taking a break, we're going to leave the
20 courthouse, that it's now even more important. You've had
21 an opportunity to watch a video. Probably you've seen
22 areas and roads that you're very familiar with.

23 My instructions to you concerning your not having
24 discussions with anyone includes your family members, loved
25 ones. You can go home and say, "Oh, what's the case about?"

1 What's -- what -- you know, what are you doing?"

2 Very -- tell them, "The judge has told me I can't talk
3 to you about it." Tell them you're not trying to be rude
4 to them, and that you can talk to them as much and as -- as
5 -- about anything involved in the case once the case is
6 over as they would like. Until the case is over, you're
7 not to have any discussions with them.

8 Now, you've seen in the video certain segments in the
9 county and probably places you are familiar with. I need
10 to instruct you: Do not go out of your way to do any type
11 of special investigation. Do not go to the accident scene,
12 or do not -- I'm sorry -- accident scene. Do not go to see
13 anything that you've seen on the video, simply say, "Well,
14 I want to see that."

15 If it's part of your normal travel, fine. Do not go
16 out of your way to take a look at it. Because again, the
17 decisions that you're going to make in this trial as jurors
18 is going to be that you're going to have to find what the
19 true facts are in this case.

20 And the true facts in this case are to be determined
21 solely from the information you received in this courtroom.
22 So don't do any type of independent investigation. Even if
23 you've heard a word used by the lawyers or by me and you
24 think, Well, I don't understand that; well, I'll go look it
25 up. Don't do it. Do not even go pull down a Webster's

1 Dictionary off the shelf, because any explanation as to
2 terms or -- or -- or -- or what the law is will come from
3 inside this courtroom.

4 I do want to thank you for your attention and your
5 work today. You've all been very attentive. I -- we are --
6 -- what we're going to do is we're going to resume taking
7 the testimony in this case about 1:15 on Thursday. So I
8 need you to be back in the jury deliberation room by 1:15
9 and we will resume the taking of the testimony. There are
10 reasons why we're doing that, which are not of importance
11 to y'all. There are reasons why we're not going to resume
12 this case until Thursday.

13 So that -- I need to stress to you the importance that
14 you're not to have any conversations with anyone about
15 anything involved in the case over the next couple of days.

16 Again, thank you for your work. The bailiff will show
17 you out.

18 (The jury exits at 4:52 p.m.)

19 THE COURT: All right. Like I have instructed the
20 jury, we are going to get back to y'all around one o'clock
21 on Thursday.

22 Now, Mr. Lisenby, that -- this will give you an
23 opportunity to be able to work with your lawyer, to talk
24 with her, using this time. Any of the complaints, and I'll
25 -- again I'm trying to read as much into what you talked --

1 talked to me about, and read it in a way that's favorable
2 to you. But any of those complaints or concerns that
3 potentially you've expressed to me, which will give you an
4 opportunity to be able to -- to discuss with her.

5 I encourage you to work with her and to be cooperative
6 with -- with your lawyer during the next day or two. And
7 then we will get back together on Thursday to resume the
8 taking of the testimony. That will include, you know, if
9 y'all want to have that witness subpoenaed here, you need
10 to do the appropriate things to have that witness
11 subpoenaed.

12 Yes, sir?

13 MR. JOYNER: Your Honor, I have two motions. The
14 first one: I would move that the defendant's bond be
15 revoked at this time, since we are in the middle of the
16 trial.

17 The second motion: I would ask Your Honor to please
18 make a ruling instructing the sheriff's department and the
19 jail faculty and the staff to please let Mrs. Rivers take
20 her client into -- there's a -- a room in the back where we
21 usually meet with defendants. It's -- it's a private room
22 and the doors can be closed. I would ask that you please
23 make an order that she be allowed to see him so there is no
24 issue of them not being able to be prepared when we restart
25 the trial.

1 THE COURT: All right.

2 MS. RIVERS: And Your Honor, may I request the video
3 so that he can see it at the jail, if it's necessary.

4 THE COURT: Do we have more than one copy of the
5 video?

6 MR. JOYNER: Officer Vaughn?

7 MR. VAUGHN: It ain't no -- it's not a problem making
8 it. I mean, I can make it in a few minutes, you know, when
9 we're done.

10 THE COURT: Well, the actual video that's been shown
11 is now in evidence in this case. And it is a rare thing to
12 do to have evidence removed from the possession of the
13 court reporter or of the court personnel. So do y'all have
14 another copy of it?

15 MR. VAUGHN: We -- we've got an actual VHS tape of it
16 that we made the DVD off the VHS.

17 THE COURT: Can you make -- take -- take the tape and
18 made another CD?

19 MR. VAUGHN: Yes, sir. Yes, sir. I can do that.

20 THE COURT: Will that be sufficient?

21 MS. RIVERS: Yes, Your Honor.

22 THE COURT: All right. We will -- then they will --

23 Sir, I'm going to instruct you that if you would make
24 -- take the tape, make another CD, get the CD to the
25 solicitor. He then will get it over to Ms. Rivers. Do

1 that as soon as you can so that Ms. Rivers may have access
2 to that.

3 I will grant the motion on the -- the revocation of
4 the bond, since we are in the middle of a -- of a trial.
5 In the event that it is needed, Mr. Solicitor and Ms.
6 Rivers, you may instruct the jailers that I have given the
7 instructions to -- to both of y'all and to them, you are to
8 be allowed access to your client during the next day, day
9 and a half, two days.

10 Whatever room it is that the solicitor was describing
11 for you to do -- conduct interviews and speak with him,
12 then that is to be made available to you absence of
13 extraordinary circumstances.

14 I understand that right now in Chesterfield, we are in
15 sort of an extraordinary circumstances with the events that
16 happened over the weekend and this morning. But I believe
17 that even with those extraordinary circumstances, you
18 should be able to have access to your client in -- in the
19 facility mentioned by the solicitor.

20 MS. RIVERS: Your Honor, also, I -- I beg the Court to
21 reconsider the matter of him -- his bond being revoked.
22 He's telling me that I will not be able to reach his
23 witness, but he can.

24 THE DEFENDANT: I -- I just came from Mental Health
25 and ---

1 THE COURT: If you would, sir -- I'm not -- don't mean
2 to cut you off, sir, but if you would, speak to your
3 lawyer.

4 MS. RIVERS: Also, Your Honor, he's begging the Court
5 to be able to go back to Mental Health. He had to cut his
6 visit short today to come to court. He said they were
7 prescribing -- they were at the point they were doing --
8 making prescriptions for him and he had to leave and come
9 over here. And he needs his medication.

10 THE COURT: All right. About the best I can do at
11 this stage is, Ms. Rivers, if you want to get the
12 information to his doctors, or whoever medical
13 professionals were that he was seeing at Mental Health, and
14 see what they would need from you to -- or someone from
15 your office, or get a family member of his to try to obtain
16 his prescription medications. And then if you are able to
17 get them, you can give them to the local jail.

18 If they are not in a position to administer them, I
19 will be more than happy to direct the jail to give him
20 whatever medications that a licensed physician or medical
21 professional would want him to have.

22 MS. LEE: And Judge, if I -- I may -- I'm sorry. Mary
23 Johnson Lee. The jail also has transport officers who are
24 employed for that purpose. And if we are not having court
25 tomorrow and he needed to go, they could transport him

1 directly to Mental Health for that purpose.

2 THE COURT: All right. Then let's -- if in fact, he
3 needs to get back over there, that would be a wise thing to
4 do, to try to get him to his mental health appointment back
5 over there. Thank you, ma'am.

6 All right. Thank y'all very much.

7 One more thing before we go off the record. Sir, I
8 need to instruct you you remain under oath. You are still
9 in the process of testifying, so you cannot have any
10 discussions with anyone about the substance of your
11 testimony.

12 MR. VAUGHN: Yes, sir.

13 THE COURT: Thank you, sir.

14 MR. JOYNER: Thank you, Judge.

15 MR. ROWELL: Thank you, Your Honor.

16 **State vs Billy Lisenby - Day 2**

17 THE COURT: Anything before we bring the jury back?

18 MR. JOYNER: Nothing from the State, Judge.

19 MS. RIVERS: No. Nothing, Your Honor.

20 THE COURT: All right. Well, where is your witness?
21 All right. Come on back around, sir. Sir, I will remind
22 you that you remain under oath having been sworn
23 previously.

24 (Officer Vaughn retakes the stand.)

25 THE COURT: All right. Let's bring the jury back.

1 (The jury enters at 1:33 p.m.)

2 THE COURT: Ready for your cross-examination?

3 MS. RIVERS: Yes, Your Honor.

4 THE COURT: Yes, ma'am.

5 **CROSS-EXAMINATION BY MS. RIVERS:**

6 Q Mr. Vaughn, how did you come to be at the location you
7 were when you saw Billy Lisenby?

8 A On Snow Hill Road -- I had left the jail, filled up
9 with gas and rode up to Snow Hill Road area. And I had
10 pulled over on the little pull-off place there. I was
11 putting in some tickets where I had wrote previously in the
12 computer, when I got in the car.

13 Q Okay. You were doing paperwork?

14 A I was -- each time we write up a ticket, whether it's
15 criminal domestic violence or whatever -- speeding or -- we
16 have a sheriff's bank in the computer we have to put it in
17 the computer and synchronize here at the office. And
18 that's what I was doing then.

19 Q Okay. In your incident report, you said on the date
20 listed, "I was sitting on the side of the road running
21 radar."

22 A Well, as I -- I had the radar on in stationary mode --
23 is what I testified to earlier. And as I said also, I was
24 chewing tobacco and reached down and got my spit bottle to
25 spit in. As I looked up, I seen a car coming. But I'm

CROSS-EXAMINATION BY MS. RIVERS - SPENCER VAUGHN

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1 capable of doing two things at two times. The radar has a
2 -- an audible sound to it, to where it's the doppler, when
3 it -- makes different noises depending on the speed of the
4 car. And as I was putting speeding -- I mean, speeding
5 tickets in in the computer, I was running radar at the same
6 time.

7 Q Okay.

8 A It's got a holding instrument button on it.

9 Q You also said that the driver was a white male.

10 A No, ma'am. I said a black male with a white shirt and
11 a black stocking thing on his head.

12 Q Okay.

13 A What I ---

14 Q All right.

15 A --- testified to earlier.

16 Q All right. Now, his crime that he committed was
17 speeding.

18 A That's what the primary reason I was stopping him for.
19 You know, I believe it was 71 in a 55.

20 Q Okay. And I think -- I have it written down somewhere
21 -- when you -- you -- you got behind him right off, right?

22 A Well, I had to -- I was parked in the direction of
23 Zoar Road, and he was coming from Zoar Road. So as he
24 passed me, I -- of course, I had to -- as I testified to
25 earlier, I had to save what I was doing in my computer, had

1 to set it in the seat. So as he went by me, I started
2 doing all that. So I had to pull out. Of course, I had to
3 turn in the road to go the same direction he was going.

4 So it took me a little bit of time to catch up with
5 him. And there's a sharp curve there, before you get to
6 Crawford Loop, where it loops around, comes back onto Snow
7 Hill Road in front of Robert's Rib. And he got on the
8 crest of the hill, so as I topped the crest of that hill, I
9 could see him, you know, going toward the stop sign.

10 And that's when I actually started making visual
11 contact with him again, you know, since -- after -- since
12 after he had passed me.

13 Q But early on, you were right on his tail.

14 A No, ma'am.

15 Q You weren't?

16 A I didn't get -- I didn't get right there on top of him
17 until after I turned right on 145, as the video will show.
18 And then that's when as I started getting closer -- that's
19 when I called his tag in and what-have-you. Because I
20 didn't get on, you know, close to him until after I got to
21 145 and turned onto 145 off of Snow Hill Road.

22 Q Well, if you -- if you weren't close to him, how did
23 you call his tag in?

24 A As I got closer to him, I caught up with him. On 145,
25 there about where Freeman Logging is, is where I started

1 getting close enough to be able to read his license tag.

2 Q At what point did you engage the blue light?

3 A Well, when my blue -- when you turn your blue lights
4 on, your camera automatically come on with the -- start
5 recording. I don't know exactly how it works. I didn't
6 install it, but that's how it does.

7 So you can see in the video as I'm come -- coming to
8 the -- to the stop sign there at Snow Hill Road and 145,
9 the camera is on -- and it starts coming on, so it's in
10 that time period with that.

11 Q Okay. So early on, your camera engaged the video?

12 A As I'm trying to catch up with him, and then, you
13 know, I turned my blue lights on, and that's when the
14 camera comes on. But as I'm sitting on the side of the
15 road putting in tickets, my camera's not recording, and I'm
16 not sitting there with my blue lights flashing.

17 Q Okay. But -- but early on, you started getting a
18 picture of him.

19 A As he went by me is when I see him, and I looked over
20 there. The reason being as I explained earlier, when
21 someone -- during the -- obviously I see during the
22 daytime. You can't see anybody in the dark. But when I
23 seen two passengers go by, from my experience -- I've done
24 this for 12 years. I've had a lot of people run from me.
25 I've probably had over 30 car chases.

1 And I've had a lot of people "bush bomb," and some of
2 you may not know what that is. When you -- you go to stop
3 someone, they jump out the car and run in the woods. So
4 when somebody comes by me, if I see two people, and -- and
5 further being fairly close to the state line, you -- you
6 won't have to have somebody try to get away to go across
7 the state line.

8 So as he came by me, I looked at him just if -- if he
9 did decide to jump out the car and run, I'd get the right
10 one. It won't do me a bit of good to lock up the
11 passenger, because he wasn't the one driving.

12 You know, it's not against the law to just jump and
13 run, if a passenger is in the car and just runs or
14 whatever. But you got to have a reason to arrest someone,
15 and then -- and if the driver's running, then I need to be
16 chasing him more so than I do the passenger.

17 Q How long was it before you determined that the driver
18 was Billy Lisenby?

19 A Oh, it was -- it was probably 15 or 20 minutes into
20 the ordeal. I run his tag through Anson County, I believe
21 it was. And I believe when they called me on the radio,
22 they told me that they couldn't get it back or something or
23 another. And I asked them to call my dispatcher, that I
24 didn't have time to flip the channels because I was trying
25 to drive.

CROSS-EXAMINATION BY MS. RIVERS - SPENCER VAUGHN

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1 So they came back to me at some point. I was on 1003.
2 I do remember it was on 1003 Road, which, you know, runs
3 basically all the way through Anson County. And they told
4 me that it came back to a Billy Lisenby. But I didn't --
5 at the time, when they first told me that, I -- I still
6 didn't -- didn't know 100 -- 100 percent sure if he was the
7 one driving. But on down a little bit further, I seen him.
8 Of course, he made a real sharp turn in front of me, and I
9 seen his side profile as well. And that's -- you know, I
10 knew it was him as well.

11 And I believe there was one place in there I got close
12 enough I seen him looking in the side mirror. And I -- I
13 believe the first time I actually knew it was him. But I
14 think I actually said it on the radio. And -- but up until
15 then, I first thought it was Clarence Smith. Which I think
16 I said that on the radio as well, because I hadn't been too
17 terribly long last year chased him in a brown Ford product.
18 And I thought it might have been him again. But then later
19 on, that's when it was determined to be Billy Lisenby.

20 Q Okay. But in any event, as this tape goes on and on
21 and on, it -- it was a short matter of time before you
22 found out who was driving the car, you had the tag numbers,
23 and you had a video.

24 A Yes, ma'am.

25 Q What else do you need to prove speeding?

1 A You don't -- a video -- don't -- is not proof of
2 speeding. I mean, I didn't need no more proof. I had an
3 accurate-running radar. It's been tested every day that I
4 work. You know, but as far as, you know, what I need for,
5 you know, whatever, I mean, I just need for him to pull
6 over. That would have been the -- would have been the
7 final thing that I needed.

8 Q Are you saying then right now that when you started
9 chasing him, you didn't know he was speeding?

10 A No, ma'am. I -- I said that's why I was stopping him.
11 As I was chewing my tobacco -- which I know is bad for me --
12 - I reached down and got my spit bottle, and looked up,
13 seen the car coming, I activated the radar. The doppler
14 tone come on. I visually tracked the vehicle coming
15 towards me, and as he went by me, that's when I made my
16 attempt to stop him.

17 Q Well, the reason I'm asking you this -- I may be
18 crazy, but have I not heard of people just getting a ticket
19 in the mail because they drove through -- through some
20 intersection and they were speeding?

21 A Well, ma'am, I don't know that that's practiced around
22 here or not. I couldn't tell you. They mail tickets to
23 people that's running red lights with them cameras to the
24 registered owner of the vehicle, but that alone can't prove
25 who's driving the vehicle. They just mail it to the

CROSS-EXAMINATION BY MS. RIVERS - SPENCER VAUGHN

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1 registered owner of the vehicle. Because I might be
2 driving my daddy's truck and they send the ticket to my
3 daddy, so I don't think that's a practice that's done much.

4 Q Have you any indication that Billy Lisenby had done
5 anything but speed? Like had he robbed a bank or committed
6 a burglary or stolen a car?

7 A No. All I was doing was stopping him for speeding.

8 Q I mean, well, isn't it true that most of the -- the --
9 all these car chases we see on TV are -- are usually for
10 something like that?

11 A Well, I would imagine that's probably the majority of
12 it, some type of minor traffic offense.

13 Q Okay. Did you have any reason to believe that he
14 wouldn't stop?

15 A Not when I first went to pull out. I had no -- you
16 know, as I seen him make that right turn on 145 is when the
17 -- the car that was already established at the stop sign,
18 there across from Robert's. When I seen him go between
19 that car and the stop sign through the grass median, I
20 started assuming that that's what he was doing, as I seen
21 him turning towards 145.

22 And then as I made my turn, somewhere there about
23 between there and Freeman's Logging Timber Company, where
24 you -- you know, where they do trees at, that's when I told
25 my dispatcher that I was ten-zero and -- and I was going in

1 the direction of Anson County.

2 MS. RIVERS: I have no further questions.

3 THE COURT: Any re-direct to what she went into?

4 MR. JOYNER: No, Your Honor.

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

6 MR. JOYNER: Judge, the State would call Officer Wayne
7 Jordan to the stand, please.

8 THE COURT: Come on around, sir.

9 WAYNE JORDAN, being first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. JOYNER:

12 Q Afternoon.

13 A Good afternoon.

14 Q Please state your name for the jury.

15 A Sgt. Wayne Jordan, J-o-r-d-a-n.

16 Q And how old are you, Mr. Jordan?

17 A Thirty-six.

18 Q And where are you from?

19 A Cheraw.

20 Q How long you lived there?

21 A All my life.

22 Q And tell me about your family.

23 A I have a wife, two kids -- a nine-year-old son and a
24 two-year-old daughter.

25 Q And tell me about your job.

DIRECT EXAMINATION BY MR. JOYNER - WAYNE JORDAN

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1 A I'm presently employed by the Chesterfield County
2 Sheriff's Office. I'm a sergeant in the criminal
3 investigations unit.

4 Q And what does that -- what do you do?

5 A Investigate burglaries, homicides, assaults,
6 robberies.

7 Q How long you been in law enforcement?

8 A I been in law enforcement going on 16 years.

9 Q Thank you. I want to take you back to March 4th of
10 this year. Do you remember where you were that morning?

11 A Yes, sir. I was -- I was on duty with the sheriff's
12 office, just doing normal stuff. I was doing some follow-
13 ups at the county jail. Heard radio traffic that one of
14 our traffic units was in -- in a car chase, going around
15 the Snow Hill area/Anson County area, up at the state line.

16 Then I heard the car chase come back into South
17 Carolina through the Pageland area. So -- started easing
18 towards that way, but I really wasn't headed that way.

19 Then I heard the car chase coming in towards -- from
20 Pageland, down towards the Ruby/Mount Croghan area where I
21 was at. And I heard Sgt. Vaughn asking for anybody with
22 stop sticks to assist him trying to stop this vehicle.

23 We have a deputy that lives on 265 at 109 at the
24 crossroads. I was going to stop by his residence --
25 because I did have a little bit of time -- to see if he had

1 any stop sticks to -- I was going to get his stop sticks to
2 deploy them. He was not at home. And at this time, they
3 were crossing 265 at Fairview Church. And -- and again, I
4 was at 265 and Highway 109, which is only about seven/eight
5 miles in front of me.

6 Q And let me -- is that up near Jefferson?

7 A That's -- yes, sir. Near Jefferson. Come down
8 Airport Road and they were -- they were on Airport Road
9 crossing -- coming up to Fairview -- coming up 265 on
10 Airport Road. Coming by Central High School on Airport
11 Road, coming up to the stop sign and that would be 265 --
12 the big Fairview Church would have been off to you diagonal
13 left.

14 Q Okay. Okay. Thank you for ---

15 A And I was about -- I was about seven/eight miles back
16 towards Chesterfield at 265 and Highway 109. And that's
17 where one of our deputies lived, right there at that
18 intersection.

19 Q Okay. Now, did you get any stop sticks?

20 A No. He was not home, and I could not get in his
21 vehicle.

22 Q What did you do after he wasn't home?

23 A I got back in my vehicle and I started going down 109,
24 because at this time, Sgt. Vaughn said that they had
25 crossed over 265, headed towards Woodard Mill. And at that

DIRECT EXAMINATION BY MR. JOYNER - WAYNE JORDAN

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1 time, I knew I would be coming up on them on Highway 109 at
2 -- I knew Woodard Mill would run into Highway 109.

3 Q Okay. And by the way, what were you driving?

4 A I was driving -- I was driving an unmarked hunter
5 green Ford Explorer, and I do have blue lights on -- in my
6 vehicle.

7 Q Okay. What type of car is a Ford Explorer?

8 A It's a SUV.

9 Q SUV. Okay. And continue on.

10 A I was driving down 109, and at this time, I had passed
11 Woodard Mill because I was not sure which -- which -- which
12 road Woodard Mill was. But I did pass Woodard Mill, and I
13 circled around in the -- in -- in the road, and was coming
14 back towards Woodard Mill and Highway 109, when I heard
15 Sgt. Vaughn say they were turning onto -- taking a right
16 turn onto 109. So that way, I would be passing them. And
17 I was in my lane of traffic, and I had my blue lights on,
18 and the next thing I know, I looked up, and a vehicle --
19 the brown vehicle -- coming into my lane was dead in my
20 lane head-on with me. And I took evasive action and went
21 up into the -- and up to the embankment to avoid getting
22 hit head-on.

23 Q About how fast were you going at that time?

24 A I had just turned around, so I may have gotten back up
25 to 30/35 miles an hour, if I had gotten up that fast.

1 Q And what were the road conditions?

2 A Oh, it was -- it was a nice day -- clean. The road
3 were dry. No -- no weather.

4 Q What about the lines? Were they ---

5 A A double yellow line, if I remember correct. They
6 were perfect. I mean, nice big yellow -- double yellow
7 lines.

8 Q And I'm going to ask you to estimate about how fast
9 did it look like the car was coming towards you?

10 MS. RIVERS: Objection. Calls for speculation.

11 MR. JOYNER: Judge, he's a lay witness. He can -- the
12 Supreme Court has held ---

13 THE COURT: I -- I will not allow arguments in front
14 of the jury.

15 MR. JOYNER: I'm sorry.

16 THE COURT: All right, sir. I'm going to allow this -
17 - allow him to answer. Go ahead.

18 A I'd guess anywhere between 50 to 60 -- in that
19 ballpark.

20 Q Okay. And about how much time did you have to react
21 to --

22 A Seconds; just seconds. I really didn't have that much
23 time to react.

24 Q And what -- what lights were activated on your car?

25 A I had all my -- I had a front corner strobes. I have

1 wood-wagon headlights and I have a blue light across the
2 top of my rear-view mirror -- that's a blue light over my
3 rear-view mirror to the front. And then to the back, I
4 have strobe lights on the reverse lights. I have two
5 hanging lights, plus a middle light.

6 Q Okay. What was going through your mind at the time?

7 A I thought he was going to kill me, to tell you the
8 truth. After all that I'd been listening to on the radio,
9 I did hear the -- about the incident -- the Anson County
10 part. Would not stop for the stop sticks, going around the
11 stop sticks. He was -- he -- he had squared me up head-on,
12 and you know, I just thought I was fixing to be hit head-
13 on. So I didn't have any choice but to make an evasive
14 move to the ditch.

15 Q And by "evasive movement," I mean, in plain terms,
16 what -- what does that mean?

17 A I grabbed my steering wheel and jerked it hard to the
18 right, and went down into the ditch and went up an
19 embankment. And of course, the video doesn't show me going
20 up into the embankment, because Sgt. Vaughn had already
21 come by me and then I made a chance to turn around and I
22 got -- I was about the fifth car in the chase after that.

23 Q Okay. Thank you, Officer Jordan.

24 MR. JOYNER: I have no further questions.

25 CROSS-EXAMINATION BY MS. RIVERS:

1 Q Mr. Jordan, the encounter between you and the
2 defendant was at about 9:38 on that video; is that correct?

3 A Yes, ma'am. That -- that's probably right. I didn't
4 take a chance to look at my clock.

5 Q So when looking at the video at 9:38 ---

6 A Yes, ma'am. Whatever the video says, that's got --
7 got to be right.

8 Q Okay. And that video is going to show that you had
9 your lights on; you had lights flashing?

10 A Yes, ma'am.

11 Q And that you went down an embankment?

12 A Like I said, it probably is not going to show me going
13 down the embankment. It's probably going to show you --
14 show you -- show that I'm going off the road. Because like
15 I said, Sgt. Vaughn was -- he was two cars behind me. He
16 wasn't that far behind me, so therefore the video wouldn't
17 show me going down the embankment and up the embankment and
18 turning around, because I was already passed him.

19 Q Well, where was the embankment?

20 A Off the -- off the shoulder of the road. It had --

21 Q Okay. Toward the center or the side?

22 A Towards the right-hand side. It was on my right-hand
23 side.

24 Q Okay. So you were called to come to this area?

25 A No, ma'am, I wasn't.

CROSS-EXAMINATION BY MS. RIVERS - WAYNE JORDAN

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1 Q You just happened there?

2 A I was -- like I say, I was on normal routine, fixing
3 to work on some other cases that I have. And I heard that
4 Sgt. Vaughn was headed back from Pageland, down Airport
5 Road, back towards the Chesterfield area. And I was
6 working in that area, and therefore, I could assist.
7 Because I'm a -- that's -- that's my job, assisting in any
8 kind of -- you know, the laws of -- of Chesterfield County.

9 Q Okay. Are there other vehicles that have lights and
10 these things that you say you had? There other vehicles
11 that we encounter on the highway?

12 A Yes, ma'am. My lieutenant has a black Ford Explorer
13 just like mine, with the same light system on it. We have
14 another co-worker, Sgt. Burch. He has a black Ford
15 Explorer just like mine. The sheriff has a black
16 Expedition.

17 Q And they're not marked?

18 A They're not marked. Major ---

19 Q They have no markings on them?

20 A --- Major Dixon has a black F150 four-door. My
21 captain has a black Dodge Magnum. My -- another uniformed
22 lieutenant, Don McLauren, has a Crown Vic.

23 Q Okay. How did Mr. Lisenby know that you were in that
24 car?

25 A I have no idea if he even knew I was in that car. I

1 knew -- he -- he saw me head-on, and I know he had to see
2 my lights because they were flashing.

3 Q Okay.

4 A I don't know that -- I don't know if Mr. Lisenby knew
5 -- knows what I drive. I have no idea.

6 Q Okay. And you mentioned that stop sticks had been put
7 down before this.

8 A Yes. And the video shows where Anson County tried --
9 attempted to put stop sticks down.

10 Q Now, what are stop sticks?

11 A The -- they're sticks that uniformed -- or officers
12 throw out in front of the vehicle to puncture their tires
13 and stop the vehicle to deflate the tires so it'll slow the
14 vehicle down.

15 Q Well, if you're going at a high rate of speed and you
16 blow out all the car's tires, that may result in more than
17 the car slowing down, may it not?

18 A Well, we don't blow the tires out. Those -- they
19 deflate the tires. They slowly deflate the tires. They --
20 they insert ---

21 Q Okay.

22 A --- puncture holes or needles into the -- into the
23 tires, which lets the tires slowly deflate the vehicle so
24 the vehicle will slow down on its own, and it'll come to a
25 controlled stop. Unless the -- the driver does not stop

CROSS-EXAMINATION BY MS. RIVERS - WAYNE JORDAN

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1 the vehicle and run it on its rims, and then that way, it's
2 going a maximum 30/40 miles an hour.

3 Q But ---

4 A So we do not ---

5 Q --- what I'm asking you is ---

6 A --- we do not puncture tires. We do not -- we do not
7 blow tires out.

8 Q Stop sticks do.

9 A No, ma'am. They don't. They -- like I said, they
10 insert -- they insert needle-like things into the tires to
11 deflate the tires, to let the air gradually come out of the
12 tire to deflate the tire to slow the vehicle down.

13 Q How long is it going to take those tires to deflate?

14 A I'm not a tire expert, ma'am.

15 Q Is it possible that the driver and the passenger in
16 that car could have gotten killed due to those stop sticks?

17 A I don't have an answer to that. I don't know.

18 Q So even though your intent -- what you're thinking up
19 here was to slow him down, something much worse than that --
20 -- do you deny that something much worse than that could
21 have happened?

22 A Ma'am, I've been involved in a car chase where four
23 people's gotten killed before. So therefore, ma'am -- and
24 it wasn't stop sticks involved. It was a reckless driver
25 that killed four other people in his reckless intent.

1 Q Well, how about stop sticks? What has happened before
2 with them?

3 A I -- I don't have any -- I don't have any knowledge of
4 stop sticks killing anybody. I have knowledge of stop
5 sticks ---

6 Q So if your tires ---

7 A --- slowing people down ---

8 Q --- blow out ---

9 A --- and stopping.

10 Q --- and you're speeding, there's no danger of you
11 getting killed?

12 A Again, we don't blow the tires out. Stoop sticks do
13 not blow tires out. Stop sticks deflate the tires.

14 Q However you want to put it, you're not going to have
15 any tires, right?

16 A At one point -- at a point you won't have any tires.

17 Q And there's a reason we have tires on our car.

18 A Yes, ma'am.

19 Q And you're going down the highway with four tires
20 deflated, you could get killed. Do you deny that?

21 A A driver with common sense would stop their car when
22 he sees their tires deflated.

23 Q So you don't consider putting those stop sticks in the
24 highway to be dangerous?

25 A No, ma'am, I don't.

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1 Q Okay. And you are aware that other than Mr. Lisenby
2 in that car, there's a passenger in that car who is not
3 driving a car.

4 A There was another passenger in the car, yes, ma'am.

5 Q And that passenger, you have no evidence that he
6 committed any kind of crime.

7 A No, ma'am, I didn't.

8 Q He's just sitting in the car.

9 A And again, a driver with common sense would have
10 stopped their car.

11 Q Okay. Were you going in the direction that you went
12 in when you met Mr. Lisenby?

13 A When I met Mr. Lisenby, I was going in the direction -
14 - he came into my lane. Yes, ma'am.

15 Q Okay. What happened when he met you?

16 A When he met me?

17 Q Did he hit you?

18 A No, ma'am, he didn't.

19 Q Did he do anything to try to damage your car?

20 A He came at me head-on, fixing to -- fixing to try to
21 take my life.

22 Q He was trying to take your life? And what evidence do
23 you have of that?

24 A If he would have hit me head-on, that -- it could have
25 constituted killing me.

1 Q But he didn't hit you head-on. Didn't he go ---

2 A Because I ---

3 Q --- out of the way?

4 A No, ma'am. He did not go out the way, ma'am. I went
5 out of my way, went out of my lane of traffic. I took
6 evasive moves so I would not -- because I have a family to
7 go home to.

8 Q So you're saying at that point, at about 9:38 on that
9 video, he kept going right straight towards you and made no
10 efforts to avoid you?

11 A That's right. He made no efforts to avoid my vehicle,
12 in my lane of travel.

13 Q Okay. And he had no idea who you were?

14 A I have no -- I don't -- I don't know if he knew who I
15 was.

16 Q And your evidence is that -- or your testimony is that
17 you were going 30 to 35 miles an hour?

18 A Yes, ma'am. Because I had just turned around, because
19 I missed my turn on Woodard Mill and 109.

20 Q And you ---

21 A So I turned around, because at this point, I did not
22 know which way he was going to go. I knew he had to take a
23 right; I knew he had to take a left; or he would have went
24 straight into an embankment, up some -- up some trees into
25 the woods.

CROSS-EXAMINATION BY MS. RIVERS - WAYNE JORDAN

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1 Q And was there conversation between you and whoever on
2 this video that this driver was coming and that you were
3 going that way and that you would try to stop that car?

4 A Sgt. Vaughn never made direct radio contact with me.
5 No, ma'am. He asked for a person or a unit with stop
6 sticks to try to get on Woodard Mill or 109 to deploy stop
7 sticks.

8 Q And you tried to get stop sticks.

9 A And I found them. Yes, ma'am, I did.

10 Q So you were answering to that unit that was going to
11 have the stop sticks?

12 A I never made direct radio contact. No, ma'am. But I
13 took it -- I took it -- I took it upon myself as a duty, as
14 a law enforcement officer, to do what the sergeant asked
15 somebody to do.

16 Q Okay. So you were trying -- you were in the effort to
17 stop the car.

18 A Yes, ma'am. There was about 15 other officers in the
19 effort to slow his car and stop this car.

20 MS. RIVERS: No further questions.

21 THE COURT: Any re-direct?

22 MR. FRANKLIN: None from the State, Judge.

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

24 Is the State ready to call their next witness?

25 MR. ROWELL: Yes, Your Honor. The State calls Robert

1 Winburn to the stand.

2 ROBERT WINBURN, being first duly
3 sworn, testifies as follows:

4 DIRECT EXAMINATION BY MR. ROWELL:

5 Q Please state your name for the record.

6 A Robert Winburn, W-i-n-b-u-r-n.

7 Q Mr. Winburn, how old are you?

8 A Pardon?

9 Q How old are you?

10 A Fifty-nine.

11 Q And tell me about your family life. You married?

12 A Been married 41 years.

13 Q You have any children?

14 A Yes, I have one child and three grandchildren.

15 Q Where do you work at, Mr. Winburn?

16 A Chesterfield County Sheriff's Office.

17 Q How long you been working there?

18 A Over three years.

19 Q And what are your job duties at the sheriff's office?

20 A Transport officer and courthouse security and assist
21 any other officer that may need help in whatever area they
22 need help.

23 Q Let me take you back to March 4th of this year. What
24 were you doing?

25 A I was just riding around patrolling the area.

DIRECT EXAMINATION BY MR. ROWELL - ROBERT WINBURN

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1 Q Did you have any occasion to be involved with the
2 police chase that day?

3 A As I was following the movement of the defendant and
4 Officer Vaughn, at the point that I got involved was when I
5 heard them coming down 109 and 145. I happened to be in
6 that area, so I positioned myself on up 109 to block the
7 traffic coming from either direction on 145, to try to
8 protect the innocent people that could very easily be hurt
9 by a troubled driver. And part of our duties are to
10 protect the public, as well as the individual and
11 ourselves.

12 Q Was this a coordinated effort? Did somebody tell you
13 to position yourself there?

14 A I talked with Officer Vaughn, and he said just make
15 sure that I was in a position that I could observe them
16 coming; and to block the traffic so that no innocent person
17 coming up 145 would be -- be injured.

18 Q And was there, in fact, traffic on ---

19 A Pardon?

20 Q Was there, in fact, traffic on 145?

21 A Yes, sir. I observed a State yellow dump truck going
22 south on 145, and I positioned myself, in the event that it
23 was going to be in danger of the patrol officers and the
24 victim himself, to stop that dump truck.

25 Q At some point while you were blocking 145, did you see

1 a car heading towards you?

2 A I did.

3 Q And what kind of car was that? What color car?

4 A I was -- I was watching both. And all I could see was
5 the car and the patrol officer with the blue lights behind
6 him. And I was watching both directions to make sure that
7 I wasn't distracted by missing the dump truck. So I think
8 it was a green or brown. I can't say for sure. It was a
9 dark color.

10 Q What were the road conditions like where you were at
11 that day?

12 A It was a beautiful day.

13 Q Okay. Tell me about -- when the car was heading
14 towards you, how fast do you believe the car was going?

15 A Just looking at it, I would ---

16 MS. RIVERS: Objection, Your Honor.

17 A --- say between ---

18 MS. RIVERS: Calls for speculation

19 A --- 60 and 70 miles an hour.

20 THE COURT: Sir, whenever -- whenever there's an
21 objection ---

22 A Oh, I'm sorry.

23 THE COURT: --- stop so I -- I can rule on it.

24 I'm going to allow it. You might want to lay a
25 foundation.

DIRECT EXAMINATION BY MR. ROWELL - ROBERT WINBURN

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1 Q Mr. Winburn, you said that you were positioned on 145
2 and you -- you did know the pursuit was ongoing that day,
3 right?

4 A Pardon? I couldn't ---

5 Q You -- you knew about the police chase that was going
6 on that day?

7 A Yes, sir. I did.

8 Q And that's why you were positioned yourself?

9 A That's why I positioned myself there.

10 Q Now, how -- when you saw the cars coming, about how
11 long would you say -- would you say that you saw the car
12 coming toward you?

13 A Probably between a minute and a minute and a half.

14 Q So you ---

15 A I could see it down 109 probably a minute.

16 Q So you -- you observed for approximately a minute the
17 car heading towards you?

18 A Yes, sir.

19 Q And at that time, you know, how fast would you
20 estimate the car was going, when it was heading toward you?

21 A Looking head-on at it, I -- I was going to say between
22 60 and 70 miles an hour, at least, because it's a
23 straightaway pretty much.

24 Q And what actions did you take? The car was heading
25 directly towards you, correct?

1 A He changed lanes. He got in the lane because if -- if
2 you're looking at 109 coming south, it should have been in
3 the right-hand lane. I positioned myself in the left-hand
4 lane so that he would have a way to escape.

5 Q So ---

6 A And that's why I pulled out in front on 145, to ensure
7 that that dump truck didn't come on down through there.
8 And it didn't.

9 Q So what actions would you describe that you had to
10 take to avoid the collision?

11 A I had to pull out in a hurry because he was coming at
12 a high rate of speed. And I guess he saw I wasn't going to
13 move, so he hit his brakes and he even left skid marks --
14 I'd say 20 -- 20 feet.

15 Q What was going through your mind when you saw that car
16 heading towards you?

17 A What was going through my mind? The safety of
18 everybody involved and whatever I could do to avoid anybody
19 from being hurt or killed is what my option was -- my
20 position was, to include the defendant.

21 Q You ---

22 A I positioned myself in a position that I could move
23 out of his way. Which I wasn't in his way, really. He
24 changed lanes. But I also wanted to protect everybody
25 involved, to include the innocent.

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1 Q And was there a collision that day? Did you actually
2 -- I mean, did you, in fact, protect everybody on 145?

3 A I felt like I could. I felt like I could protect
4 everybody.

5 Q Okay.

6 A Not only that, he had -- he had an opportunity to move
7 back into the correct lane and go by me.

8 Q Thank you, Officer Winburn.

9 MR. ROWELL: No more questions, Your Honor.

10 CROSS-EXAMINATION BY MS. RIVERS:

11 Q Mr. Winburn, you said you work at the courthouse?
12 What is it that you do?

13 A I provide security for the courthouse and the judges
14 and everybody involved in the procedure here at the
15 courthouse.

16 Q So you run the detector out here -- the ---

17 A I ---

18 Q --- metal scanners?

19 A --- I haven't for the last six months, but yes, ma'am,
20 I have.

21 Q But you said that day you were just out riding?

22 A Yes, ma'am.

23 Q And you were on the job?

24 A Yes, ma'am.

25 Q And what about running the security thing involved ---

DIRECT EXAMINATION BY MR. ROWELL - ROBERT WINBURN

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- 1 A Mr. ---
- 2 Q --- out riding?
- 3 A --- Mr. L. C. Coates was running that.
- 4 THE COURT REPORTER: L. -- I'm sorry -- L. C.?
- 5 THE WITNESS: L. C. is all caps. L. C. Coates.
- 6 THE COURT REPORTER: Last name?
- 7 THE WITNESS: C-o-a-t-e-s.
- 8 Q So while he's running the scanner, you just take the
- 9 county car and you're out riding?
- 10 A No, ma'am. I -- I transport patients. As a matter of
- 11 fact, soon as this court's over with, I'm going to take one
- 12 to William S. Hall today.
- 13 Q Who ---
- 14 A I transport patients ---
- 15 Q Who were you transporting?
- 16 A --- to and from the prisons. Who am I transporting
- 17 today?
- 18 Q No, that day.
- 19 A I wasn't transporting anybody that day.
- 20 Q So you were just out riding?
- 21 A Right. And assisting anybody that -- a call came out
- 22 that needed assistance.
- 23 Q Okay. And you heard the communication?
- 24 A Yes, ma'am.
- 25 Q You had your radio on?

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1 A On the radio.

2 Q And you knew that a car was being chased?

3 A Yes, ma'am. I did.

4 Q Now, how is it that you went to where that was going
5 on?

6 A When I heard them getting on 109 headed towards 145, I
7 happened to be in this area. So I moved on down to 109 and
8 145, because I knew there was an intersection and this
9 individual had been running stop signs and driving in an
10 unsafe manner. And I was going down there to protect the
11 public and him.

12 Q How were you going to protect the public?

13 A Because it's an intersection, ma'am, and it's traffic
14 going south and north on 145. And the stop sign is coming
15 from 109, cross 145. And if anybody's traveling on 145 and
16 don't have a radio, and knowing that this deranged driver
17 is out there, it could kill innocent people.

18 MS. RIVERS: Objection, Your Honor.

19 THE WITNESS: Pardon?

20 MS. RIVERS: Deranged driver.

21 THE WITNESS: Well ---

22 THE COURT: He's answering you. He -- he's answering
23 your question. Go ahead.

24 A I -- I mean, ma'am, I hear on the radio that he's
25 constantly running stop signs, will not stop for a blue

1 light, and there's public out there. And -- and I have an
2 obligation as a sworn officer to protect the public, as
3 well as myself and that -- the defendant.

4 Q All right.

5 A So you know, had you been driving down 145 and not
6 known this, it could have very easily been you or your
7 grandchildren.

8 Q Now, Mr. Lisenby and his car did not have that radio,
9 did he?

10 A No, ma'am. He didn't have a reason to have a radio.
11 He -- all he had to do was stop.

12 Q He had no way of knowing that you were coming to block
13 that intersection?

14 A That doesn't change the law, ma'am. I mean ---

15 Q I'm not asking ---

16 A No. He has no -- no, ma'am. He had no way of knowing
17 ---

18 Q Would you please just answer the question?

19 A Yes, ma'am.

20 Q Did he have any way of knowing that you were coming to
21 block that intersection?

22 A No, ma'am. He didn't, but he had plenty of time to
23 see ---

24 Q That's ---

25 A --- down 109. I said it was about a minute to a

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1 minute and a half.

2 Q Mr. Hendrix [sic], would you please just answer the
3 question?

4 A Yes, ma'am. I'll be glad to.

5 Q Okay. And you put your car in that road sideways; is
6 that correct?

7 A Yes, ma'am.

8 Q Okay. Now, did you put a stop strip down?

9 A No, ma'am. I don't have any.

10 Q Was there a stop strip there?

11 A No, ma'am. There was not.

12 Q Okay. Now, you saw the car approaching you?

13 A Yes, ma'am.

14 Q And you had chosen to sit in your car in the road; is
15 that correct?

16 A Yes, ma'am.

17 Q And Mr. Lisenby was giving a left-turn signal to turn
18 left?

19 A Not that I saw. I mean, I didn't see it.

20 Q Well, you saw all these other lights. You didn't see
21 his turn signal?

22 A Well, a blue light -- there's about 10 blue lights on
23 the top of a car. It's a lot easier to see than a little
24 signal light on the car.

25 Q So it's your testimony you had no way of knowing that

1 he was making a signal to turn left?

2 A Well, at that rate of speed, if he was going to turn
3 left, he would have rolled over. He would have stopped
4 then.

5 Q That's not what I'm asking you. I asked you did you
6 see a left-turn signal that he was giving, that he was
7 planning to turn left where you were sitting?

8 A No, ma'am. I did not see one, and that doesn't mean
9 there was a left-turn signal on.

10 Q And you were sitting blocking that turn?

11 A No, ma'am. Look at the video.

12 Q Okay.

13 A I was on the south side of 145 ---

14 Q Did you not ---

15 A --- not on his side.

16 Q Did you not move your car?

17 A Yes, ma'am. I did.

18 Q Okay. How many times did you move your car?

19 A Just the one.

20 Q And you knew this car was coming down the road, right?

21 A Yes, ma'am.

22 Q And you knew he was coming to an intersection?

23 A Yes, ma'am.

24 Q But you never saw him giving a signal that he was
25 trying to turn left?

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- 1 A Not at that rate of speed. No, ma'am.
- 2 Q And where you were sitting, he could not make that
- 3 left turn.
- 4 A Yes, ma'am. He could have made a left turn.
- 5 Q And you did nothing to prevent him from making the
- 6 turn he was trying to make.
- 7 A No, ma'am. I did nothing to prevent him ---
- 8 Q Okay.
- 9 A --- from making the turn.
- 10 Q Now, you said that he applied brakes and swerved.
- 11 A I said he applied the brakes.
- 12 Q You didn't say he swerved?
- 13 A No, ma'am. I did not.
- 14 Q Okay. Now, so it's your testimony that he was trying
- 15 to hit you?
- 16 A I didn't say he was trying to hit me. I just said ---
- 17 Q Okay.
- 18 A --- it was about a two-second span there that one of
- 19 us had to give.
- 20 Q Okay.
- 21 A And we both gave.
- 22 Q So you're not saying that he had any intention to hit
- 23 you?
- 24 A Ma'am, I can't read his mind. I do know he had no
- 25 intention of stopping.

1 Q Okay.

2 A That's obvious.

3 Q Even though he was giving a signal to turn?

4 A I never said he was giving a signal. He said he was
5 giving a signal. I'm assuming he told you. That's
6 speculation.

7 Q Okay. And he did apply his brakes. Do you deny that?

8 A Of course he applied his brakes. I saw the smoke.

9 Q Okay.

10 MS. RIVERS: No further questions.

11 THE COURT: Any redirect on any of what she went into?

12 MR. ROWELL: No, Your Honor.

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

14 MR. JOYNER: Judge, that concludes the State's case in
15 chief.

16 THE COURT: All right. Ladies and gentlemen, we have
17 now concluded -- the State has now concluded presenting its
18 case to you. This is one of the times there are matters
19 that I need to address with the lawyers, outside of your
20 presence.

21 Again, I'm going to instruct you and remind you you
22 are not to have any discussions among yourselves or with
23 anyone else about anything involved in the case.

24 We'll get you back just shortly. If you'll go with
25 the bailiff.

1 (The jury exits at 2:13 p.m.)

2 MS. RIVERS: Your Honor, I would do a motion for a
3 directed verdict on the assault with intent to kill.

4 Number 1, the State has offered no evidence that the
5 defendant intended to kill anybody.

6 Also, this assault with intent to kill is a crime
7 against a person, and there's no evidence been presented
8 that he knew who was driving these cars. The last witness
9 even testified that he slammed on brakes, trying to avoid
10 killing this person.

11 And there is also -- I think the evidence of the
12 element of malice and -- aforethought, and there's no
13 evidence that he could have formed that intent, not even
14 knowing that these cars were coming.

15 MR. JOYNER: Judge, I think Ms. Rivers is wrong. You
16 don't have to have the actual intent to kill. Our Supreme
17 Court has already ruled on that. It's still good law. All
18 you have to have is an attempt to commit a violent injury
19 with malicious intent, with the ability to complete the
20 act.

21 The third element is thrown out with ability to
22 complete the act. He was driving a big car, weighs 2000
23 pounds. It's a motor -- it was a driving bomb. He
24 obviously had the ability to complete the act.

25 Was there malicious intent? Malicious just means that

1 it's intentional and wrongful. If you look at the tape,
2 Judge, he's driving straight down the road, and he does not
3 turn left and swerve into Officer Jordan until Officer
4 Jordan is right there. And it's obvious there was an
5 intent for him to pull the wheel over and hit him. If --
6 without just cause, the other portion of malicious.

7 Certainly, there's no just cause for driving at a high
8 speed with all these cop cars behind you, asking you to
9 stop, but you don't.

10 And finally, Judge, the attempt to commit bodily
11 injury. Why else would he pull his truck -- his car over
12 in front of him and not move and go through the exact line
13 of traffic that the SUV was traveling in, and would have
14 hit it but for the SUV pulling off?

15 Your Honor, I believe that it's clear that assault
16 with intent to kill has been proven by the tape, and also
17 by the testimony of all the officers here.

18 THE COURT: But you have two charges of assault.

19 MR. JOYNER: The second charge, Judge, is the same
20 exact thing. He -- there was a car in the left lane. The
21 right lane is where we travel in the United States of
22 America. If he had a turn signal on, it's illegal to cross
23 -- to go over into the left lane to make a turn.

24 Judge, he drove at a high rate of speed, got into the
25 left lane when he saw the car in the left lane. So they

1 were stopped there to stop traffic from coming both ways.
2 I mean, the facts are the same. Everything he did was
3 intent to hit this car. And he went straight through the
4 line of traffic just like he did with Officer Jordan in the
5 SUV with the white SUV that Officer Winburn was in, because
6 Officer Winburn had to slam on the gas and -- and drive out
7 of the way. And when his car barely did make it out of the
8 way, he drove right through the same exact place that the
9 car was parked.

10 THE COURT: But that officer -- if I remember the
11 testimony correctly -- purposely had this vehicle placed in
12 that position in anticipation of the chase, as opposed to
13 the second officer was riding down the road in -- in an
14 area where, you know, he would be traveling anyway. And
15 then he was -- had to take evasive action to get off the
16 road. Isn't there a difference?

17 MR. JOYNER: No, sir. In the second case, Officer
18 Winburn had his car parked in the left lane, because as I
19 said, the legal lane to drive in is the right. So he said,
20 "This high-speed chase is going on. I'm going to give this
21 guy a lane to travel in, so that he doesn't hit me. I'm
22 going to set my car up here, turn the lights on and the
23 sirens on to stop traffic from coming this way."

24 So he's got a free way to pass through. He was only
25 there not to stop him; he was there to protect the people

1 going this way so there wouldn't be any collisions with him
2 running through a stop sign.

3 THE COURT: So you see no difference? In fact, one of
4 the officers had -- knew what was going to happen,
5 purposely places the vehicle in the -- we'll say "pathway
6 of danger," you know, so that it was -- the police officer
7 anticipated that this was going to happen by placing his
8 car there; as opposed to the other officer, where it was a
9 -- you know, he was ran off the road basically?

10 MR. JOYNER: No, Your Honor. I -- I would
11 respectfully disagree with the Court. Because we are bound
12 by the elements that the Supreme Court has said. There are
13 three elements. And under the circumstances, all of the
14 actions that Mr. Lisenby displayed, on the tape and through
15 testimony, indicated that we have met the level of proof
16 required for each element. And that's why I believe that
17 the jury certainly has enough evidence to go back and find
18 beyond a reasonable doubt that he committed an assault with
19 intent to kill, as it pertains not necessarily with the
20 intent to kill, but as it pertains to the actual law of the
21 title 17-25-30. I believe he meets the elements on both
22 counts, Your Honor.

23 THE COURT: And you see no difference between the two?

24 MR. JOYNER: I mean, factually they're obviously
25 different, but legally, no. I see no difference. I -- I

1 believe he's met the facts in both.

2 And another thing, Judge, is to -- to distinguish what
3 Your Honor is -- is saying, is that Officer Winburn was in
4 the left lane. That -- that was the safe place to be.
5 That was out of the line of danger. He could stop traffic
6 and still -- Mr. Lisenby still had a place that he could
7 speed on through, without there being any collision. And
8 Mr. Lisenby went over into the left lane where that car was
9 parked. That -- that's why I believe it's so obvious that
10 it's an assault with intent to kill.

11 And he didn't change his course of travel. He -- he
12 stayed in the left lane, and Officer Winburn slammed on the
13 brakes according to the video and got -- I mean, excuse me
14 -- slammed on the gas and flew out of the way. If he kept
15 going in the left lane, I mean, it -- I don't see how it
16 could be any more intentional than that.

17 THE COURT: Well, at this stage we're not looking for
18 absolute conclusions. We're looking for inferences.

19 MR. JOYNER: Yes, sir.

20 THE COURT: All right. Yes, ma'am?

21 MS. RIVERS: Your Honor, if we're to believe that
22 Billy Lisenby was trying to kill anybody, it would appear
23 that the person who was completely innocent and did not put
24 himself in jeopardy of being hit, is the passenger in his
25 car. And no charge has been brought about -- against him

1 about trying to kill his passenger. Only these people that
2 were radioed and decided to come to that scene and put
3 themselves in jeopardy. It would seem curious.

4 Also, as an after-thought, he would have killed
5 himself, too, if he's using that car as a vehicle to try to
6 kill people. He would also have died, and so would his
7 passenger. No charges were ever filed about him trying to
8 kill the passenger. Either his life didn't matter, or the
9 State doesn't believe these charges.

10 THE COURT: Doesn't that go to the credibility though
11 of the State's position, and not to the existence of the
12 evidence?

13 MS. RIVERS: Your Honor, any instance where he'd have
14 tried to hit these cars, he'd -- he'd have harmed his
15 passenger, too, at any one of those instances. But the
16 warrants only state that he tried to kill a law enforcement
17 officer by colliding, never the other passenger.

18 THE COURT: All right. Well, as both the State and
19 the Defense knows that this stage that we're up now in the
20 trial, I have to view the evidence that has been presented
21 in a light that is most favorable to the State, and draw
22 inferences -- draw reasonable inferences that can be drawn
23 from that evidence in favor of the State. It's not
24 necessary, and I think there are some cases up there that
25 suggest that I cannot engage in -- weigh the evidence or

1 judge any credibility of the evidence as long as the
2 inferences created from that evidence is reasonable.

3 And I find that I would have to deny the motions made
4 by the Defense. I believe there is sufficient evidence in
5 the record from which a jury could infer assault with
6 intent to kill on both of the instances that have been
7 testified to in this trial.

8 Yes, ma'am?

9 MS. RIVERS: Thank you, Your Honor.

10 THE COURT: Do you -- is the Defense ready to proceed?

11 MS. RIVERS: Yes, Your Honor.

12 THE COURT: Have -- are you in a position to -- or is
13 your client in a position to know whether or not he has
14 made the decision to testify? Or is going to testify?

15 MS. RIVERS: I haven't asked him this morning. We did
16 discuss that yesterday afternoon, Your Honor, but I will
17 ask him again.

18 THE COURT: All right.

19 (Sotto voce discussion between
20 Ms. River and the defendant.)

21 MS. RIVERS: He does wish to testify, Your Honor.

22 THE COURT: All right. If he decides to testify, has
23 the State any prior record issues that the Court needs to
24 be aware of? That the State would -- can cross-examine him
25 on?

1 MR. JOYNER: Judge, there is a prior incident where he
2 -- where he was charged with failure to stop for a blue
3 light, and ultimately, that charge was nolle prossed. The
4 incident did happen -- that the prior bad act of him
5 failing to stop did happen, but the charge was nolle
6 prossed.

7 So I believe that if they open the door in any way, I
8 certainly think that is -- that as well as the rest of his
9 record -- if they open the door, Judge, I certainly plan on
10 exploring his prior record.

11 THE COURT: But if they don't open the door, simply
12 because he's testifying, you don't intend to go into it?

13 MR. JOYNER: No, sir.

14 MS. RIVERS: Your Honor, even if he does open the --
15 the door, they just said it was nolle prossed. I would
16 assume that was by the State, and I would assume that they
17 didn't think it was true. And now they're trying to use it
18 against him? They threw it out.

19 THE COURT: Well, he would still have to get it in.
20 He didn't -- I didn't say I would let it in. He would
21 still have to lay the proper foundation and convince me of
22 the admissibility of it.

23 MR. JOYNER: Yes, sir.

24 THE COURT: But he's placed you on notice, so make the
25 appropriate objection at the appropriate time.

1 MS. RIVERS: Yes, sir. Thank you.

2 THE COURT: Does the Defense anticipate having any
3 other witnesses besides the defendant?

4 MS. RIVERS: No, Your Honor.

5 THE COURT: All right. Is any -- I'm going to go
6 ahead and ask him questions concerning his right to
7 testify, unless there is any objection to doing it at this
8 time.

9 MS. RIVERS: No, Your Honor.

10 THE COURT: All right. Thank you.

11 Sir, if you will please stand. All right. Sir, if
12 you would, I'm going to need for you to please raise your
13 right hand. The clerk needs to swear you in.

14 BILLY LISENBY, being first duly
15 sworn, testified as follows:

16 THE COURT: All right. Mr. Lisenby, if you would,
17 please stand. All right. Mr. Lisenby, at this time, I am
18 going to explain to you certain of your rights. If you do
19 not understand anything that I say, please let me know.
20 And if you want me to explain anything in more detail,
21 please let me know that as well. Okay?

22 A Yes, sir.

23 Q Now, sir, I just need to remind you that this lady
24 right here in front of you, she's the court reporter.
25 She's making a recording of everything that happens.

1 A Yes, sir.

2 Q Unfortunately, you do not have access to a microphone,
3 and you are some distance away. So I need you to really
4 speak up whenever you're addressing me so that both she and
5 I can hear you. If ever you can't hear me, let me know and
6 I'll speak up as well. All right?

7 A Yes, sir.

8 **DIRECT EXAMINATION BY THE COURT:**

9 Q Thank you. Sir, we have now reached the stage of the
10 trial where you may present your defense. You have the
11 right to claim protections given to you by the Fifth
12 Amendment to the Constitution of the United States. This
13 amendment states in part (as read): "No person shall be
14 compelled in any criminal case to be a witness against
15 himself."

16 Now, this means that you cannot be required to testify
17 in this case. And you have the right to testify on your
18 own behalf; however, no one can make you testify. This is
19 a personal right, and no one can waive this right except
20 you.

21 If you decide to testify, you will be subject to the
22 same rules that govern other witnesses; and you may be
23 examined and cross-examined on any relevant issue in this
24 case. In addition, if you have any convictions involving
25 dishonesty or a false statement or for crimes punishable by

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1 imprisonment for more than one year, and this Court
2 determines that the probative value of admitting the
3 evidence outweighs its prejudicial effect to you, the
4 solicitor will be able to introduce your record to attack
5 your credibility.

6 If you decide to testify, this decision on your part
7 must be freely, voluntarily, and intellectually made with
8 knowledge of the protections given to you by the Fifth
9 Amendment and the consequences of your decision to testify.

10 If you decide not to testify, I will instruct the
11 jurors that they cannot give the fact that you did not
12 testify any consideration whatsoever, and that there is to
13 be absolutely no prejudice to you because you did not
14 testify. It is left entirely up to you to whether or not
15 you testify. Now, you may talk to your attorney, your
16 family, and friends, or anyone else. The final -- but the
17 final decision will be left entirely up to you.

18 Now, do you understand what I have just explained to
19 you?

20 A Yes, sir.

21 Q Do you have any questions about what I have explained
22 to you?

23 A No, sir.

24 Q Have you discussed with your lawyer whether you should
25 or should not testify?

1 A Yes, I have.

2 Q Do you wish to speak to your lawyer anymore on this
3 issue?

4 A No, sir.

5 Q Then sir, what is your decision concerning your right
6 to testify?

7 A I want to testify.

8 Q All right. Now, sir, in order to make -- in reaching
9 this decision, has anybody threatened you in any way? Made
10 any promises to you?

11 A No, sir.

12 Q You've made this decision freely and voluntarily on
13 your part?

14 A I have.

15 Q All right. Thank you, sir. You may be seated.

16 THE COURT: I'll find that the decision to -- his
17 decision to testify has been made freely, voluntarily,
18 knowingly, and intellectually by him. And therefore, we
19 will proceed with the -- with the taking of the testimony.

20 Sir, if ever before you begin testifying change your
21 mind, just let your lawyer know, and you may step down.

22 MR. LISENBY: Yes, sir.

23 THE COURT: Anything else before we bring the jury
24 back?

25 MR. JOYNER: Nothing from the State, Judge.

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1 MS. RIVERS: Your Honor, could I have a moment?

2 THE COURT: All right.

3 MS. RIVERS: Before we begin?

4 THE COURT: All right. I'm going to step down for a
5 couple of minutes. I'll be -- I'll be back.

6 (The jury is seated at 2:39 p.m.)

7 THE COURT: Is the Defense ready to proceed?

8 MS. RIVERS: Yes, Your Honor.

9 THE COURT: All right. We're ready. Go ahead and
10 call your first witness.

11 MS. RIVERS: We call Billy Lisenby, Malik Al-Shabazz.

12 THE COURT: Come on around, sir. Just stand right
13 there. She needs to swear you in. I'm sorry.

14 BILLY LISENBY, being first duly
15 sworn, testifies as follows:

16 DIRECT EXAMINATION BY MS. RIVERS:

17 Q Would you state your name, please?

18 A Billy Lisenby, Jr.

19 Q And Billy, you also go by the name --

20 A Malik Al-Shabazz.

21 Q Malik Al-Shabazz. Okay.

22 A Yes, ma'am.

23 Q Billy, first thing I want to do is get some
24 information on you for the jury. They don't know you.

25 A Okay.

1 Q How old are you?

2 A Thirty-two years old.

3 Q Thirty-two?

4 A Yes.

5 Q And where do you live, Billy?

6 A Chesterfield, South Carolina. Right across the street
7 from the courthouse.

8 Q Okay. How long have you lived in Chesterfield County?

9 A All my life.

10 Q All your life? And do you have children?

11 A No, ma'am.

12 Q No children. Are -- are you married?

13 A No, ma'am.

14 Q Okay. And you went to -- am I correct in assuming you
15 went to Chesterfield schools, then?

16 A Chesterfield High School. Yes, ma'am.

17 Q Okay. Now, Billy, let's start at the beginning. And
18 I apologize if I ask you some dumb questions, but I'm
19 trying to give the jury an indication of what happened that
20 day. Okay?

21 A Okay.

22 Q So there'll be no gaps. This was on -- it was in
23 March, this year.

24 A Yes, ma'am.

25 Q About a month ago?

DIRECT EXAMINATION BY MS. RIVERS - BILLY LISENBY

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- 1 A Yes, ma'am.
- 2 Q Do you remember the exact day?
- 3 A March 4th, if I'm not mistaken.
- 4 Q March the 4th?
- 5 A Yes.
- 6 Q What were you doing on that day?
- 7 A I was -- I was traveling down the road ---
- 8 Q No. No, wait. Start at the beginning of the day.
- 9 A I woke up that -- that morning. I took my medication
- 10 and I went over to Chad Coit's house.
- 11 Q What kind of medication do you take?
- 12 A Xanax and Pravidual.
- 13 Q And what?
- 14 A Pravidual.
- 15 Q Okay. Are you prescribed that?
- 16 A Yes, ma'am.
- 17 Q Okay. And then what did you do?
- 18 A I went over to Chad Coit's house and we fed the dogs
- 19 and we got in the car. And was on our way back to
- 20 Chesterfield, taking the back way; and that's when we
- 21 passed Officer Spence Vaughn.
- 22 Q Okay. So you said you were with Chad Coit?
- 23 A Yes, ma'am.
- 24 Q And you fed his dogs?
- 25 A Yes, ma'am.

1 Q Okay. Now, what kind of mood were you and Mr. Coit
2 in?

3 A Well, I was in kind of a bad mood, because I had just
4 learned that I had a -- a brain disorder the day before --
5 less than 24 hours before then -- from boxing. And I was
6 in kind of a bad mood. And he was going to my house, where
7 we were going to clean the cars and stuff -- my dad's cars
8 that were out in the yards.

9 Q Okay. Had you committed any crimes that day?

10 A No, ma'am.

11 Q Okay. So what time was it when you said you were
12 going over to your house to work on the car?

13 A Between 8:30 and nine o'clock a.m.

14 Q A.m.?

15 A Yes, ma'am.

16 Q Okay. Did you do that?

17 A No. I didn't make it back to the house, because on my
18 way is when the officer got behind me.

19 Q All right. Now, when the officer got behind you, who
20 was driving the car?

21 A I was.

22 Q Okay. And then I would be right to assume Chad Coit
23 was the passenger?

24 A Yes, ma'am.

25 Q Was he sitting in the front seat with you?

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1 A Yes, ma'am.

2 Q Okay. Now, at some point, did you happen to see a
3 blue light?

4 A Yes, ma'am. I -- I observed the blue light as I was
5 going across the North Carolina line. I did see the car
6 sitting beside the road; but the way it was sitting, it
7 wasn't really visible. And ---

8 Q But -- I'm sorry. Billy, can you please slow down and
9 -- and I missed several words you said there. I know you
10 talk fast, but try to slow down, will you?

11 A Okay. Well, that morning, I didn't notice the blue
12 light until I was about to cross the North Carolina line.
13 I knew ---

14 Q What -- excuse me. What road were you on?

15 A I think that's Snow Hill Road.

16 Q Okay.

17 A I'm thinking. That could not be true. I don't know.

18 Q Okay. But anyhow, you were close to the North
19 Carolina line?

20 A Yes, ma'am.

21 Q Okay. And how far is that from your home?

22 A Approximately -- probably 11 miles.

23 Q Okay. Now, at some point, you did see blue lights?

24 A Yes, ma'am.

25 Q All right. Now, what did you do when you saw the blue

1 lights?

2 A Well, as always, I panicked when I saw the blue
3 lights, and -- because ---

4 Q Stop right there. Why would you panic? I mean, just
5 because you --

6 A Now, I've had a lot of bad experiences with law
7 enforcement, as far as jumping on me, you know, from my
8 scars -- permanent scars and stuff like this. And I sued
9 them -- sheriff department here in Chesterfield in 1995 --
10 in 1995, for beating me. And I just had a experience in
11 '06, the same way, you know, jumping on me -- another scar
12 on my back here that I received from them. And I just --
13 you know, when they got behind me, I -- I was scared, I
14 mean, to be honest with you.

15 And so I had planned to stop the entire time, but I
16 wanted to stop in a area where there's a lot of people. So
17 when I went through the North Carolina area, I didn't know
18 anybody in that area. It was all woods. We -- we didn't
19 go in an area where it was populated, white nor black. We
20 were in back roads, curving roads and everything.

21 So at this time, I started calling my family members.

22 Q Wait a minute. Slow down just a minute now.

23 A Uh-huh.

24 Q Let's go back over this. You had had a bad experience
25 from being stopped?

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1 A Yes, from being stopped. Officers jumped on me and
2 beat me.

3 MR. JOYNER: Your Honor, I would -- I would object to
4 the relevance. I mean, I haven't --

5 MR. LISEBY: All right.

6 THE COURT: I'm going to allow her to go into it a
7 little bit, but we're -- one thing for both of you, we're
8 not going to retry these other issues.

9 MS. RIVERS: Yes, sir.

10 THE COURT: We're trying this -- this case.

11 Q But I'm trying to get at the reason you did not stop,
12 and -- and you said you felt a ---

13 A I feared for my life. And I've said it at the drunk
14 tanks before, they was beating me. And didn't even see
15 anybody, and -- and that time the solicitor, he was -- J.R.
16 was my attorney. They wouldn't even allow him to see me.

17 Q Did you intend never to stop that day?

18 A No. I -- I was planning to stop once I got around
19 someone that could be witness to what was going on -- to --
20 to them stopping me and I did get jumped on.

21 Q But how did you plan to get around some witnesses?

22 A Well, see, my whole plan was to make it back to the
23 Chesterfield area, and by them blocking me off at the North
24 Carolina line, I had to go around through Pageland. So I
25 was calling my family members on the phone, telling them to

1 be on standby, near my grandmother's house when I get
2 there.

3 Q Okay.

4 A And ---

5 Q Now, wait a minute. Why were you telling your family
6 members to be at your grandmother's house?

7 A Because I wanted witnesses when they stopped me, so
8 they wouldn't beat the crap out of me.

9 Q Okay. But nobody had told you that they were going to
10 do that.

11 A I been told that for years. I mean, just -- just
12 recently in December, I was told -- told that they -- how
13 they'd love to catch me with a gun so they could beat my a-
14 s-s.

15 MR. JOYNER: Judge, I would object again.

16 THE COURT: I'll sustain that objection.

17 MS. RIVERS: Okay.

18 Q All right. Now ---

19 THE COURT: Ladies and gentlemen of the jury, you'll
20 be instructed to disregard that last statement.

21 Go ahead, ma'am.

22 Q So if I heard you right, you just said you were on a
23 telephone?

24 A Yes.

25 Q So you had a cell phone in your car?

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1 A Yes, ma'am.

2 Q Okay. And who were you calling?

3 A My cousin, Gregg Melton, at the time. I called Gregg
4 Melton and Noah, and had him -- told him to meet me in --
5 in Grandma's area.

6 Q Where does your grandmother live?

7 A On -- she lives on David Mumford Road, but it's right
8 on Ted Melton -- Ted Melton Road, where I surrendered
9 myself. Right on the road, right there.

10 Q So what you're telling me, or all of us, is that you -
11 - you were trying to get to a -- a certain place to stop?

12 A Yes. Even if you look at the video, when I was
13 running from them, I mean, I was putting on signal lights
14 and everything. Every turn I made, I used signal lights.
15 I used everything. I was on the phone with my family at
16 that time.

17 My family was calling up to the dispatcher's office
18 and everything to find out what was going on. And I was
19 trying to get my cousin to get a camcorder from my house.
20 But by the time he was -- he drives a truck. He was coming
21 from the Bennettsville area. And my other cousin, Noah,
22 was coming from the Monroe area. And by that time they
23 were notifying other family members, because I could only
24 use Alltel phone, because my minutes were gone.

25 Q What? What? I didn't hear that.

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1 A I could only use my Alltel phone. I could only call
2 people with Alltel phones.

3 Q Okay.

4 A Because my minutes were gone.

5 Q Oh, oh. So your minutes were gone?

6 A Yes. I could talk to Alltel customers free of charge.

7 Q Okay. So anybody like -- that had Cingular, you
8 couldn't talk to them?

9 A No, ma'am. I could really only talk to Noah and Gregg
10 and my mother.

11 Q Okay.

12 A And so at this time, I'm calling them, telling them
13 I'm coming in with a lot of police behind me. I said, "I
14 want y'all to have a camera and stuff out there so they
15 won't jump on me, right?"

16 And like I said, every turn that I made -- you know, I
17 made left turns and everything.

18 And like when I was in North Carolina, I was coming
19 through. Well, maybe he was scaring me is when the sheriff
20 tried to ram me, you know. You know, I was thinking about
21 pulling over right when I crossed the North Carolina line.
22 But the sheriff tried to ram me at this time, and then when
23 the North Carolina police got involved -- I came across
24 South Carolina line, I went towards my grandmother's. And
25 when I went toward my grandmother's, Chad Coit was telling

DIRECT EXAMINATION BY MS. RIVERS - BILLY LISENBY

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1 me to pull over. At this time, he was telling me to pull
2 over, he grabbed the steering wheel and tried to cut the
3 car off. That's how I almost ran into whoever was driving
4 the Ford Explorer -- who was driving the Ford Explorer.
5 That's how I almost ran into him.

6 I grabbed the steering wheel and went back into the
7 driver's lane, and Chad told the officer that he -- he cut
8 the car off three times. He told the officer that and they
9 -- that's why they let him go. He told them he cut the car
10 off three times that day.

11 And of course, just like you -- you tried to get him
12 to come to court today. And there's no -- I wasn't due to
13 come to court until May 21st. We had no time to set up any
14 arrangements. My court date -- I made bond last week. I
15 have the paperwork right here from my aunt, Madge Lisenby,
16 gave me the paperwork to be in court on May 21st. My first
17 court date ---

18 MR. JOYNER: Judge --

19 A --- when I walked in ---

20 MR. JOYNER: I -- again, Judge, I object to the
21 relevance of this.

22 THE COURT: All right. I'll sustain the objection.

23 A When you notified me, I was at mental health.

24 MR. JOYNER: Judge, again, I would object.

25 THE COURT: All right. Ma'am, you want to move on.

1 Ask him a question, please.

2 MS. RIVERS: Okay.

3 Q What you're getting into now is trying to explain why
4 you weren't here yesterday.

5 A Why I wasn't here on Monday.

6 Q Okay. Okay. But that has nothing to do with what --
7 let's -- let's stick to what was happening that day. Okay?

8 A Basically, what I'm saying, I was showing where the --
9 the controversy with me and the officers stand at. This
10 case is less than a month old. I'm here on trial.

11 Q Okay.

12 MR. JOYNER: Judge, again ----

13 Q Well, let's ----

14 MR. JOYNER: ---- I mean -- I ----

15 THE COURT: I'll sustain the objection.

16 Ma'am, ask him a question and let's move on. Not any
17 editorial comments. Get straight to the question, please.

18 Q All right. Now, it's -- it's your testimony that the
19 entire time you were driving ---

20 MR. JOYNER: Judge, I'm going to also object.

21 THE COURT: I'm going to allow it. It's just a
22 transitional question.

23 Q You're saying that the entire time you were driving,
24 you were trying to get to your grandmother's?

25 A Yes, ma'am.

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1 Q And that whoever it was you said you were calling,
2 they're trying to get a crowd there?

3 A Yes, ma'am.

4 Q Okay. So what you were wanting was witnesses?

5 A Yes. I wanted witnesses when they pulled me, because
6 I believed that they would -- that they would beat the crap
7 out of me like they done before.

8 Q Okay. All right. Now, in your -- you used an Alltel
9 telephone.

10 A Yes.

11 Q And -- and Chad Coit was with you?

12 A Yes.

13 Q Now, what was he doing? You said he cut the car off?

14 A Yes. He cut the car off because he was trying to get
15 me to pull over. I said, "No. I done been beat by these
16 people before. I'm not going to pull over out here in the
17 middle of nowhere, in these woods, you know, not even in
18 the town limits. No witnesses. I'm not going to pull over
19 here."

20 Q Okay.

21 A I told him, "As soon as I get to Grandma's area, I
22 will pull over."

23 Q And did you do that?

24 A Yes, I did.

25 Q Where does your grandmother live?

1 A On -- on Ted Melton Road. She lives on David Mumford
2 Road, but it's -- her house straddles Ted Melton and David
3 Mumford Road. If you look on the video, you can see my
4 grandmother's house where -- whenever I got out of the car,
5 my grandmother's house and a crowd of people standing down
6 there looking -- looking on. And ---

7 Q Wait a minute. When you got to that area, you saw the
8 crowd of people?

9 A Yes. You could see them -- you could see them on the
10 video.

11 Q Okay. Well, is that the crowd of people -- a crowd of
12 people, or the crowd of people that you were trying to ---

13 A It was my family.

14 Q Pardon me?

15 A It was my family, the people I was trying to get
16 together.

17 Q So they were all there when you stopped?

18 A Yes.

19 Q All right. What did you do when you stopped?

20 A Well ---

21 Q Or what did you do when you got to your grandmother's
22 house?

23 A I got out of the car and that's when I laid down and
24 Spence came, handcuffed me, and jerked me up, threw me in
25 the car. And then Wayne Jordan came around and stuck his

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1 forearm in my throat, choking me.

2 Right after that, they had Chad down on the ground,
3 putting their knees on his back and stuff. But --

4 Q All right. When you stopped, on that video, can the
5 jury see your grandmother's house?

6 A Yes.

7 Q And can you ID that house for them?

8 A Yes.

9 Q What is it?

10 A It's a yellow -- it's a yellow house with a high roof.
11 It looks like a two-story house, but it's not. It's got a
12 high roof and high ceiling. It's been remodeled. It's
13 really the only house that you can see on the video. You
14 can look dead at it on the video.

15 Q All right. What side of the road is it on?

16 A The left side.

17 Q It's on the left side?

18 A Uh-huh.

19 Q Did you go all the way up to the house?

20 A No, ma'am. I went probably from here to right here.

21 Q Were there people in the road?

22 A Yeah. They're standing in the road. You see them
23 walking across, back and forth. And in -- next to -- the
24 only thing -- when the police start coming in the opposite
25 direction. But you can see them walking across the road in

1 the video.

2 Q So they were all coming toward where you were?

3 A Yeah. They came as far as they could. Officer Byron
4 Chapman stopped them from coming any further. They came as
5 far as they could. Byron Chapman made them back up.

6 Q All right. So if I may sum this up, you're saying
7 that you -- you -- you saw the blue lights.

8 MR. JOYNER: Objection.

9 A Yes.

10 THE COURT: Grounds?

11 MR. JOYNER: I object to the leading nature of the
12 question; also to the summarizing.

13 THE COURT: I -- I'll sustain the objection.

14 Q Did you know you were supposed to stop?

15 A Yes, I know I was supposed to stop. But I was
16 planning on stopping the entire time. I was not being -- I
17 was just scared. I -- I -- like I said, I didn't want the
18 crap beat out of me, like I'd been done before. I mean,
19 it's a psychological thing for me now. Whenever I get -- I
20 get nervous when I see police in Wal-Mart. You know, it's
21 a psychological thing now, especially when they're behind
22 me.

23 Q All right. Did you intend to stop?

24 A Yes. The whole time I intended to stop.

25 Q Did you stop?

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1 A Yes.

2 Q Okay. And at the time that you stopped, were you
3 assured that you were safe?

4 A I figured I was safe, but really I wasn't. I still
5 got -- I still got roughed up real bad.

6 Q Okay. All right. Now, let's get to the charge of
7 assault with intent to kill. All right.

8 A During the entire chase ---

9 Q Wait. Let me ask the questions now.

10 A Yes.

11 Q Okay. Did you at any time when you were driving
12 intend to harm anybody?

13 A No, ma'am. The entire -- during the entire chase, my
14 only -- the only thing I wanted to do was get to an area I
15 was safe. Just like I said, that's why I used signal
16 lights and everything. I didn't -- if you look at -- on
17 the video right now, and when I was coming toward a lot of
18 cars, cars started pulling on the side of the road, I was
19 in the right lane.

20 The officer -- officers was side-by-side. That's why
21 when you look at the video a lot of cars was pulling off to
22 the edge of the road -- were coming toward them. I had no
23 intention of hurting anyone. All I wanted to do is get
24 back and be safe. I had no intentions. If I drove 68
25 miles and didn't hit anything -- if I had intentions of

1 hitting him, I could have easily done it. I had no
2 intention of hurting anybody.

3 And as Mr. Wayne Jordan stated, he had his blue lights
4 on. If you look at the video, he did not have anything on.
5 How would I -- just out of everybody in 68 miles, out of
6 the blue try to ram him? He did not have his blue lights
7 on. Chad Coit grabbed the steering wheel --which he told
8 them on that day that he grabbed the steering wheel and he
9 -- he cut that car off three times: At the 109
10 intersection, right there where -- what's the name? Mr.
11 Jordan or whoever got the black SUV or gray, whatever it
12 was. He cut it off then and grabbed the steering wheel,
13 and right there on Elmo McFarland Road, he did it again.

14 Q Okay. Now --

15 A And I told -- I told him this. Why would you charge
16 me with this? I'm telling you in front of this man that
17 he's the one did this. He's the one that grabbed the
18 steering wheel. I told him right there in the county jail,
19 in front of all the officers and J.R., that what happened,
20 and they still charged me with that.

21 Q Okay. What -- what reason did he have for -- for
22 grabbing the steering wheel?

23 MR. JOYNER: Objection, Your Honor.

24 A He wanted me to stop.

25 Q He wanted you to stop?

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1 MR. JOYNER: Objection.

2 THE COURT: I'll allow it. Go ahead.

3 Q Was he trying to talk you into stopping?

4 A Yes. And I told him, "You don't understand. You
5 never been beat. You never have been beat by officers and
6 held in a holding cell for four days. You don't
7 understand."

8 Q Okay. Now, what was -- can you tell me when all this
9 was going on, how -- were you -- how were you feeling?

10 A I was scared. I mean, during the entire time, I was
11 scared. But I know I had to stay calm to get to a safe
12 place, because I didn't want to -- I didn't want to mess
13 around and wreck -- to wreck, hurt myself, and still get
14 beat up. So I said once I get to a safe area -- like I was
15 talking to my cousin saying, "We're all down here. Come
16 on."

17 That's the reason I went in the way I did. But I was
18 trying to make a left turn. If you look at the video, I
19 tried to make a left turn. And Mr. Vaughn stated that on
20 the video I tried to make a left turn at Angeles Road; I
21 was going too fast.

22 And I didn't even know the area that well, but I knew
23 the road that would take me back to Chesterfield, once I
24 seen a road sign and stuff. I tried to make the first
25 left. Then when I went down to Winburn, Winburn had the

1 area blocked. I was trying to make a left turn to go to
2 where my grandmother's -- 109 would have took me straight
3 there. I had to end up going all the way to Saint -- Saint
4 John's Road and make a left and then come down, and that --
5 109 would have took me directly there with one right turn.

6 Q So at that time when -- when Mr. Winburn was there,
7 your -- your -- were you giving a signal to let him know?

8 A I was giving a left signal. I had no idea there were
9 ---

10 Q Is that evident on the tape?

11 A Yes. You can see -- you see where the signal light is
12 on.

13 Q And was that road the route to your grandmother's
14 house?

15 A Yes. All I had to do is go down and make one right
16 and it took me straight in to my grandmother's.

17 Q Do you know Mr. Winburn?

18 A No. The first time I met Mr. Winburn was probably
19 about 14/15 days after the incident occurred. I didn't
20 even know who he was when I saw him working.

21 Q Have you and Mr. Winburn ever had words?

22 A No, ma'am.

23 Q Have you ever formed an opinion of -- of him that is
24 negative?

25 A No, ma'am.

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1 Q Do -- have you ever harbored the thought of wanting to
2 do him harm?

3 A No, ma'am. As I said, I don't know him.

4 Q And why did you encounter him at that point?

5 A Because like I said, I thought he was a -- I thought
6 he was a civilian. He was in a white Cherokee. My dad has
7 one identical to it. I thought he was just a civilian. So
8 that's the reason I -- I hit -- hit the lights, to make the
9 left turn. I had to give the turn signal to make the left
10 turn. And when I went to make the left turn, he was coming
11 toward me and coming from the -- blocking the lane coming
12 towards me. And then when I tried to go through and hit
13 the brakes, I slid from probably here to that brick wall
14 over there, trying to miss him. But when I stopped on
15 brakes, when I slid, I stopped. I would have slid past my
16 left turn. I missed my left turn. You know, I couldn't
17 turn.

18 And then that's when Chad grabbed the -- cut the car
19 again and Spence tried to come up beside me. I put it in
20 neutral, cranked it up, and took off again.

21 Q Why did you drive so far?

22 A Because I just -- the only way I could go was in a
23 circle. It's a entire circle. If you come off Snow Hill
24 Road, coming to -- going to -- by Robert's Rib up to Morven
25 -- that's the way I was going when he got behind me. In

1 order to get back to my grandmother's, I would have to go
2 all the way around, because the officers was at the
3 crossroads and in Pageland.

4 So I rode across and I came down to Pageland. And all
5 it was was a circle, entire circle. And like I said, I
6 made a wrong turn on the road and you hear Mr. Vaughn says
7 on there, "He doesn't know where he's going. He doesn't
8 know where he's going."

9 Q "He doesn't know where he's going"?

10 A Yeah.

11 Q Okay. Did you in every instance try to get that car
12 back to 102? Or wherever that is, that area in 102?

13 A Yeah. Not 102, 109. I was trying to ---

14 Q I'm -- I'm sorry -- 109.

15 A I was trying to get back to 109. Yes. And like I
16 said, on numerous occasions, I mean, I could have put his
17 life in danger as far as going on the wrong side of the
18 road, ramming in front of people. I would have gone off on
19 the grass -- on the grass and rode past. I was going to go
20 straight around the trucks head-on other cars and tell them
21 to come on. I wasn't doing anything like that. I wasn't
22 trying to put anybody's life in danger.

23 Q Okay. I want to ask you again: Did you at any time
24 form the opinion that you would like to kill somebody?

25 A No, I didn't.

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- 1 Q Did you -- you said Mr. Coit was your friend?
- 2 A Yes.
- 3 Q Would you harm Mr. Coit?
- 4 A No. No. Never.
- 5 Q He was in the car with you?
- 6 A Yes, ma'am.
- 7 Q Okay. And he was trying to get you to stop?
- 8 A Yes, ma'am.
- 9 Q Okay. And you did not heed his warnings to stop?
- 10 A No, ma'am.
- 11 Q Okay.
- 12 A I told him he didn't understand.
- 13 Q Did he understand what was going through your mind as
- 14 the reasons not to stop?
- 15 A Well, he had -- he had heard of the -- that -- what
- 16 had went on. I was trying to explain it to him, but I was
- 17 more into trying to talk to my cousins on the phone, as
- 18 well as I had him calling, too, you know, at times I
- 19 couldn't call. I was -- I explained to him briefly, but
- 20 you know, he didn't understand.
- 21 Q All right. Let me -- again, you're also charged with
- 22 trying to kill Mr. Jordan. That was a -- what kind of car
- 23 was that? Or do you know now what kind of car that was?
- 24 A I think it was a Explorer -- an Expedition -- a black
- 25 Explorer Expedition.

1 Q Now, what was happening when you got to that place in
2 the road?

3 A Oh, I had just made the right turn. I had just made a
4 right turn, and like he stated, I was going 55 to 60. I
5 mean, my four tires -- I don't care if you got a four tire
6 show, you won't do but zero to 60 in 5.4 or 5.6 seconds. I
7 was driving a V6 Ford Taurus. He said I was going 60 miles
8 per hour. I didn't even -- I mean, you -- I -- there's no
9 way I could have got zero to 60 that fast, you know.

10 And Chad -- when I made the right turn, Chad -- he --
11 Mr. Jordan made the statement that if I had went straight,
12 I went into a embankment. No. If I'd had went straight, I
13 went to a dirt road, which was a dirt road.

14 And Chad was telling me, "Man, go down that dirt road
15 and let me out this car."

16 And I made the wrong -- I went ahead and made the
17 right turn, trying to go down to Angeles Road, and make the
18 left turn to get back onto 109 that way.

19 Q Okay.

20 A And I didn't -- and he -- that's when Chad grabbed the
21 -- the steering wheel. And you -- if you look good, you'll
22 see Chad. If you're looking at the video good, you'll see
23 Chad come over to my side.

24 Q Okay. So you did -- did you know at the time that
25 happened who was driving either one of those cars?

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1 A No. And if you look at the video -- me and Ms. Pam
2 looked at the video as well as you. We looked at the video
3 over and over yesterday, and he did not have any blue
4 lights -- he did not have blue lights on whatsoever or
5 siren.

6 Q Okay. You've watched -- you've had the opportunity
7 now to watch this video?

8 A Yes.

9 Q Okay.

10 A And even with Mr. Winburn, like I said, I didn't even
11 know this was an officer. And I never tried to -- to hit
12 this man. It just so happened, just like he said, both of
13 us gave. I was going his way to make a left turn, and he
14 was trying to get out my way. Both of us moved at the same
15 time.

16 And just like he stated, he -- he can't read my mind.
17 There's no way -- he don't know if I tried to hit him, and
18 I didn't. I never tried to hit him.

19 Q All right. Since you've watched that video and your
20 recollection of what you were doing, have you come to any
21 conclusions that anybody was thinking about killing anybody
22 that day?

23 MR. JOYNER: Objection.

24 A Yes.

25 THE COURT: I sustain the objection.

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1 Q Okay. Okay. It's your testimony that you had no --
2 no intention of hurting anybody?

3 A No. I had no intention of hurting anybody.

4 Q But you ---

5 A Look ---

6 Q --- you do admit that you were driving -- what we
7 could probably consider reckless driving?

8 A Yes. Yes. I -- I was driving reckless. And -- but
9 like I said before, I mean, look at the video, I mean, what
10 puzzled me more -- and I mean, I'm kind of glad that I kept
11 going until I got to the area. Spence made a statement at
12 9:38, I believe, asked permission "to take me out." And at
13 9:38 or 9:45, he -- he said, "May I have permission to take
14 him out?"

15 Q Okay.

16 A And that puzzled me. What did that mean? You know,
17 did I make the right decision by going on down to my
18 grandmother's? Was that the right decision? I mean, he
19 said he was going to take me out. So maybe I made -- I
20 think maybe even though I'm sitting here before this court,
21 maybe I did make the right decision.

22 What did he mean by "taking me out"?

23 Q Okay. All right.

24 MS. RIVERS: I have no further questions.

25 CROSS-EXAMINATION BY MR. JOYNER:

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- 1 Q Mr. Lisenby, you were driving the car?
- 2 A Yes, sir.
- 3 Q And you didn't stop?
- 4 A Yes, sir.
- 5 Q And you said that you had been drinking or you were
- 6 taking Xanax?
- 7 A Prescribed Xanax and Pravidual.
- 8 Q Does that make you "wasted"?
- 9 A It -- it makes -- it can cause confusion.
- 10 Q I mean, does it make you so that you would be
- 11 intoxicated?
- 12 A No. I've been taking them. They don't -- they don't
- 13 bother me. They just supposed to calm me down. But ---
- 14 Q Well, let me -- this -- this is why I want to know.
- 15 The effect that alcohol and drugs have on a person when
- 16 they drive a car ---
- 17 A I don't drink.
- 18 Q --- does this -- does this have that effect on you?
- 19 A I don't drink. From -- from -- it just causes
- 20 confusion, because I had found out since I been out that
- 21 Pravidual ---
- 22 Q Whoa -- whoa -- stop. I'm just asking were you
- 23 wasted? Could you -- would -- could -- were you -- were
- 24 you legally operating the car?
- 25 A Yes.

1 Q You were capable to drive?

2 A Yes.

3 Q Okay. I mean, your -- was your mind clouded? Could
4 you see? Were you vision blurry?

5 A Yeah. Yeah. I went 68 miles; of course I could see
6 where I was going.

7 Q Okay. Okay. And you agree that the chase lasted
8 almost an hour, right?

9 A Oh, yes.

10 Q And you agree with ---

11 A But ---

12 Q --- that this ---

13 A --- but an hour --

14 Q You agree that you drove into the left-hand lane many
15 times?

16 A Oh, yes, I agree. But I didn't go into the left lane
17 to hurt anyone.

18 Q Do you also agree that you were talking on the cell
19 phone while the chase was going on?

20 A Yes.

21 Q So you were -- while you was driving, you was talking?

22 A Yes.

23 Q Or did you have the phone up like this and was driving
24 with two hands?

25 A I did have -- I'd be glad -- I'm under oath. I'll be

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1 glad to tell you that.

2 Q You used one hand driving?

3 A I -- if I remembered, I could tell you. I can't
4 really remember how I -- I'm under oath.

5 Q But you was talking on the phone ---

6 A Yes.

7 Q --- while you was driving. Okay. And at the very end
8 of the chase, you stopped the car and jumped out. Didn't -
9 - but you didn't really stop it, it was rolling?

10 A No. I tried to put it -- what happened the lever came
11 out of the car. The lever thing. And I was ---

12 Q Did you -- did you jump out when the car was still
13 rolling? Yes or no?

14 A No. When I looked at the car ---

15 Q The car was not rolling when you jumped out?

16 A I thought the car was parked, and I went to open the
17 door, it kept moving.

18 Q So the car was moving ---

19 A Yeah.

20 Q --- while you jumped out?

21 A Uh-huh.

22 MR. JOYNER: No further questions, Judge. Thank you.

23 THE COURT: Any re-direct limited to what he went
24 into?

25 MS. RIVERS: No, Your Honor.

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

2 THE COURT: The Defense -- call your next witness.

3 Ready?

4 MS. RIVERS: No, Your Honor. The Defense rests.

5 THE COURT: All right. May I see the lawyers for a
6 moment?

7 (Bench conference.)

8 THE COURT: Ladies and gentlemen, now that the Defense
9 has -- has rested, there is -- this is another one of those
10 opportunities where I have to address some issues of law
11 with the attorneys. So if you would, I'm going to instruct
12 you again not to have any discussions among yourselves
13 about anything involved in the case. Retire with the
14 bailiff, and we'll be back with you shortly.

15 (The jury exits at 3:10 p.m.)

16 THE COURT: All right. Anything that we need to take
17 on the record?

18 MR. JOYNER: Not from the State, Judge.

19 MS. RIVERS: Your Honor, I would renew my motion for a
20 directed verdict on the AWIK for the same reasons.

21 THE COURT: All right. And again, applying the
22 standard that this Court has to apply at junctures like
23 this during a trial, my reasons and -- I have to deny the
24 motion for the same reasons as I previously stated.

25 All right. The State had indicated in our bench

1 conference that they did not intend to call any reply
2 witnesses. Is that still the same?

3 MR. JOYNER: Yes, Your Honor.

4 THE COURT: All right. And y'all are ready to proceed
5 with the closing arguments?

6 MR. JOYNER: Yes, Your Honor.

7 MS. RIVERS: Yes, Your Honor.

8 THE COURT: All right. How long do y'all think?

9 MR. JOYNER: No more than 20 minutes for me, Judge.

10 MS. RIVERS: Probably the same here, Your Honor.

11 THE COURT: All right. So she's going to go first,
12 and you're going to close?

13 MR. JOYNER: Yes, sir.

14 THE COURT: All right. Let me tell -- tell you real
15 quickly, I'm going to charge duties of the judge -- the
16 jury and the trial judge. I will charge presumption of
17 innocence. I will charge both the short and the long
18 definition of "reasonable doubt" -- I mean, of "reasonable
19 doubt."

20 Do y'all know what those are?

21 MR. JOYNER: Yes, sir.

22 THE COURT: Okay. I will charge direct and
23 circumstantial evidence. I will charge assault with intent
24 to kill. Let me read that to y'all.

25 (Sotto voce discussion between the Court

1 and the Clerk of Court.)

2 THE COURT: Have you finished looking in the rule
3 book?

4 MR. JOYNER: Yes, sir.

5 THE COURT: All right. All right. What I'm going to
6 do is just let me just real quickly read to y'all the
7 assault with attempt to kill charge.

8 (As read): The defendant -- (coughs) excuse me -- the
9 defendant is charged with assault with attempt to kill. In
10 order to prove assault with intent to kill, the State must
11 prove beyond a reasonable doubt that the defendant with
12 malice aforethought unlawfully attempted or -- or offered
13 to commit a -- a violent injury upon another person, and
14 had the present ability to complete the attempted injury.

15 An assault is the intentional creation of a reasonable
16 fear of immediate bodily harm. It is not necessary that
17 the attempted injury or harm actually take place. For
18 example, I walk up to you and when we are within arm's
19 reach, I draw back to hit you, that is an assault.

20 Malice is hatred, ill will or hostility towards
21 another person. It is the intentional doing of a wrong act
22 without just cause or excuse, and an intent to inflict an
23 injury. Or under circumstances, the law will infer an evil
24 intent.

25 Malice aforethought does not require that malice exist

1 for any particular time before the act is committed, but
2 malice must exist in the mind of the defendant just before
3 and at the time the act is committed. Therefore, there
4 must be a combination of the previous evil intent and the
5 act.

6 Malice aforethought may be expressed or inferred.
7 These terms, "expressed" and "inferred," do not mean
8 different kinds of malice, but merely the manner in which
9 the malice may be shown to exist; that is either by direct
10 evidence or by inference of the facts and circumstances
11 which are proved.

12 Expressed malice is shown when a person speaks words
13 which express hatred or ill will for another, or when the
14 person prepared beforehand to do the act which was later
15 accomplished. For example, lying in wait for a person, or
16 any other act or preparation that will show that the deed
17 was within the defendant's mind, would be expressed malice.

18 Malice may be inferred from comments showing a total
19 disregard for human life. Inferred malice may also arise
20 when the deed is done with a deadly weapon. A deadly
21 weapon is any hardfast instrument or substance which is
22 likely to cause death or great bodily harm. Whether an
23 instrument has been used as a deadly weapon depends on the
24 facts and circumstances of each case.

25 The following examples are instruments which may be

1 deadly weapons: a pistol, a gunshot, a rifle, a dagger, a
2 knife, a slingshot, metal objects, a razor, gasoline, a
3 fire bomb, or a molotov cocktail and lighter fluid. A gun
4 may be a deadly weapon, even if it was not operating.

5 Ordinary objects may become deadly weapons when the
6 facts show that they have been used to inflict serious
7 bodily harm or death. If facts are proved beyond a
8 reasonable doubt sufficient to raise an inference of malice
9 to your satisfaction, this inference would simply be an
10 evidentiary fact to advise the jury under evidence in the
11 case that they may give it the weight you decide it should
12 receive.

13 A specific intent to kill is not an element of assault
14 with attempt to kill, but must be a general attempt to
15 commit serious bodily harm. Intent means intending the
16 result which actually occurs, not accidental or
17 involuntary.

18 Intent may be shown by acts of conduct of the
19 defendant in other circumstances, from which you may
20 actually and reasonably infer intent. Evidence of the
21 character of the assault, character of the instrument used,
22 the manner in which it was used, the purpose to be
23 accomplished, and the resulting wounds or injuries may be
24 considered in determining intent with which the assault was
25 committed.

1 Intent may also be inferred when it is demonstrated
2 the defendant arbitrarily and willfully committed an act,
3 the natural tendency of which is to destroy another's life.

4 Now, I will instruct the failure to stop for blue
5 light charge. I then will tell them that -- explain to
6 them that their verdict needs to be unanimous on each of
7 the charges. The clerk is preparing a verdict form that I
8 will show y'all before we send it back to the jury.

9 MS. RIVERS: Your Honor, may I -- is that -- is that --
10 - failure to stop, is that 56-5-750?

11 THE COURT: I'm sorry. Say again.

12 MS. RIVERS: That failure to stop, is that 56-5-750?

13 THE COURT: Yes, ma'am.

14 MS. RIVERS: And the reason I'm asking is I just got
15 my new book yesterday, and it has that phrase, "In the
16 absence of mitigating circumstances."

17 THE COURT: Now, let me -- let me read this to y'all
18 very quickly.

19 (As read:) The defendant is charged with failure to
20 stop for a blue light. In order to prove the crime, the
21 State must prove beyond a reasonable doubt: the defendant
22 was driving a motor vehicle -- that the defendant was
23 driving a motor vehicle on a road, street, or highway of
24 the state; the defendant was signaled to stop by law
25 enforcement by means of sirens or a flashing light; and

1 that the defendant did not stop.

2 In determining whether or not there are mitigating
3 circumstances which would justify the defendant's failure
4 to stop for a blue light, you may consider actual road
5 conditions, actual roadside conditions, other conditions
6 such as lighting and weathers -- lighting and whether
7 officer, driver, and/or passenger safety and other
8 circumstances you believe to reasonably mitigate the
9 alleged violation.

10 An official signal -- an official signaling -- an
11 official signal requiring a motorist to stop may be a siren
12 or flashing light, but both are not required. Attempting
13 to increase the speed of the vehicle or in some other
14 manner avoid the pursuit -- the pursuing law enforcement
15 vehicle when signaled by a siren or flashing light may be
16 considered as evidence of failure to stop for a blue light.
17 However, it is merely an evidentiary fact to be taken into
18 consideration by you alone with all the other evidence in
19 the case, and is to be given the weight you decide it
20 should receive.

21 All right. We are approaching that line of
22 demarcation, so we need to get going before we are in
23 violation of Chesterson's directions. Anything else before
24 we bring the jury back?

25 MR. JOYNER: Nothing from the State, Your Honor.

1 MS. RIVERS: No, Your Honor. It's -- I would -- I
2 would state that I just got this new motor vehicle handbook
3 yesterday. And my old statute on failure to stop did not
4 have that clause at the beginning: "In the absence of
5 mitigating circumstances."

6 So I assume that's something new that the legislature
7 has ---

8 THE COURT: Do you want me to take a look at it?

9 MS. RIVERS: Yes, Your Honor. THE COURT: All right.
10 I will make one change in the charge on the failure to stop
11 for blue light.

12 It will be that (as read): The defendant is charged
13 with failure to -- failing to stop for a blue light. In
14 order to prove this crime, the State must prove beyond a
15 reasonable doubt that the defendant, in absence of
16 mitigating circumstances, was driving a motor vehicle; that
17 the defendant was driving the motor vehicle on a road,
18 street, or highway of the state; that it was signaled to
19 stop by law enforcement vehicle by means of a siren or
20 flashing light; and that the defendant did not stop.

21 And then the rest of the charge will remain the same.

22 MR. JOYNER: No objection.

23 THE COURT: All right.

24 MS. RIVERS: Thank you, Your Honor.

25 THE COURT: Thank you. I'll let you have the book

1 back. All right. All right. Then let's bring the jury
2 back.

3 Are you going to -- either of you going to play this?

4 MR. JOYNER: No. I'm sure the jury will want to back
5 in the deliberation. I'm just going hold off right now.

6 THE COURT: I do not allow them to just generically --
7 just generally take a video or anything back in the back
8 with them. If they wanted to see it, they would have to
9 come back out here. I mean, you can send it back there
10 with them so they physically have the CD in their hands,
11 but I would want them to watch it out here.

12 MR. JOYNER: Yes, sir. I understand, Judge.

13 THE COURT: Okay.

14 (The jury enters at 3:30 p.m.)

15 THE COURT: All right. Ladies and gentlemen, we have
16 now reached the point of the trial where all of the
17 testimony and evidence has been presented as part of this
18 case. The remaining part of this trial will consist of the
19 closing arguments to be made by the attorneys, my
20 instruction on the law, and -- and then after that, you
21 will retire to the jury deliberation room to begin your
22 deliberations.

23 In just a moment we are going to receive the closing
24 arguments of the attorneys. As I informed you at the
25 beginning of the case, when we were going -- when we were

1 presenting -- the lawyers were presenting to you the
2 opening statements, the closing arguments made by the
3 attorneys is not to be considered as evidence in and of
4 themselves binding. It is simply an opportunity for both
5 the State and the Defense to be able to argue to you what
6 they feel the evidence has shown in this case.

7 I tell you that because in the event that one of the
8 lawyers argues facts that you do not recall having being
9 presented into evidence or argues an inference of facts
10 that you disagree with, that is within your prerogative as
11 jurors -- being the fact-finders in this case -- to either
12 not -- have to find that those facts do not exist or that
13 that inference from the facts is not reasonable.

14 But at this time, we will receive -- but I do want to
15 thank you for your attention and your work thus far. And
16 at this time, we will receive the closing arguments.

17 Yes, ma'am.

18 MS. RIVERS: And jury, I will reiterate what the judge
19 says, because sometimes I have a problem hearing. And if I
20 do misstate something, I apologize something. I'm telling
21 you what I thought I heard sitting over here. And you may
22 disagree with that, and I have no problem with that.

23 The first thing that I would like to remind you of is
24 that in a criminal trial, you have to do things differently
25 than you would do like in family court, divorce hearing; or

1 in the civil court, where you are suing somebody for money,
2 or a wreck or something like that.

3 We in this country, from the very get-go, from the
4 days -- and I've been watching this "John Adams" thing on
5 TV, and oh, God, I learned so much about my country, and
6 learned so much about how to more appreciate what I already
7 appreciated, and how to appreciate the Constitution, which
8 is our Bible in this country. It's tantamount to being our
9 Bible. And it was written so that everybody in this
10 country would get an equal shake -- equal protection under
11 the laws. No matter how rich, how poor; how old, how
12 young; how much money you got; what color your skin is;
13 you, under that Constitution, are as good as anybody in
14 this country, and no better than anybody.

15 The first thing you have to do in criminal court --
16 and this is because -- this is because our forefathers
17 thought this very important from the experiences they had,
18 and they had to live through. It's hard for us to
19 understand that now, because we have so much freedom, and
20 so many more liberties than they had.

21 When they wrote that Constitution -- when they wrote
22 the -- the laws, or when we made the laws on convicting
23 somebody of a crime in this country, this one phrase is in
24 there. There are two that I want you to remember:
25 "presumption of innocence." That means this guy sitting

1 right here, you have to believe that he's innocent. That
2 is hard to do. And I think about it so many times, because
3 when I'm at the line at Wal-Mart, I'm like Dolly Parton
4 once said. She said, "When I -- when I see the *"National*
5 *Enquirer*" and it's about somebody else, I believe
6 everything they say. But when it's about me, now, it's all
7 lies."

8 And that's -- that's the way we think. We believe
9 what we hear. We're not supposed to do that, but we do it.
10 It's human nature, you know, and it's just the way we
11 think. We always believe what we hear.

12 You can't do that. You can't say, "Well, I listened
13 to the State and I listened to the defendant, and I'll give
14 them both, you know, an opportunity; and then I'll decide
15 who's telling the truth.

16 You have to start out believing he did not do what
17 he's accused of doing, because you have to presume him
18 innocent, until you get to the point where you can no
19 longer believe that. Because it's been proved to you
20 beyond a reasonable doubt. You can't come up with any
21 excuse why that could not be true, you know.

22 All right. What I ask you to do is to take Billy
23 Lisenby's face off his shoulders and put your son, your
24 father, your brother. That's who's sitting there. Who
25 would you believe? If somebody came and told you something

1 about somebody that you know and love, and you know that
2 they wouldn't do anything wrong, how would you feel? You -
3 - you're going to have to show me. You're going to have to
4 convince me that's the truth. That's the mindset you have
5 to have. And I'm telling you this is the hardest job
6 you're ever going to have in your life, because you have to
7 do that. Somehow you have to do it.

8 Another thing I would like to remind you is that the
9 only evidence that you can consider is what you have heard
10 in this courtroom today. Nothing you've seen on TV,
11 nothing you've read in the paper, nothing you've heard
12 about anybody -- this solicitor, me, Billy Lisenby --
13 nothing can enter into your judgment except what has been
14 presented in this courtroom. And if it hasn't been brought
15 in here and proved to you, that's it. And it doesn't
16 matter what you think; it's what's been shown to you --
17 evidence.

18 Evidence is not what you think. It's not some
19 preconceived idea that you may have about any person. It's
20 got to have been right here. Okay? That's what I'm
21 begging you to try to do.

22 Now, the first thing that Billy Lisenby has been
23 accused of -- again, accused. He stands accused. He
24 stands innocent until you say he's guilty. And if you
25 don't say he's guilty, he's not guilty. And nobody can

1 ever question your decision in this case. We can. I can
2 as an attorney. I can be questioned. The judge can be
3 questioned, but not you.

4 There's a reason we have you here. It's because you
5 are Billy Lisenby's neighbors. You're people from the
6 community, and we believe in this country that you're in
7 the best position to make this decision.

8 Now, Billy Lisenby is first accused of failure to stop
9 for a blue light. I told you to start with, he didn't stop
10 for the blue light, and you've seen that. And the law says
11 that in the absence of mitigating circumstances, when that
12 blue light goes on, you are required to pull over and stop.

13 In the absence of mitigating circumstances. So
14 they're giving you an out there. What that is is that's a
15 clause that's been put in there by the legislature, who
16 makes the laws, that there are -- there can be instances
17 when you can fail to stop and still not be found guilty of
18 failure to stop. And that occasion would be when there is
19 a mitigating circumstance. I'm going to try to explain to
20 you how -- what I think is mitigating circumstances,
21 circumstances you may not agree with me. That's fine.
22 Because the judge is the one here who's going to tell you
23 what the law is, not me.

24 A mitigating circumstance is something that would
25 excuse your conduct, or maybe lessen the degree of

1 liability you might have. Now, what would be a mitigating
2 circumstance? All right. Suppose that you kill somebody.
3 The most mitigating circumstance in there would be self-
4 defense. Normally, if you kill somebody, you're going to
5 jail, right? But if you kill a person under the right set
6 of circumstances, then that can be presumed to be self-
7 defense. And even though you did it, you can be found not
8 guilty of killing that person. He's dead, but you're --
9 the circumstances under which you killed that person are
10 mitigated. All right? You're given some credit for
11 committing the crime.

12 Another one that I think about is driving under
13 suspension. It is against the law for you to drive a car
14 if you don't have a license. Okay? Sometimes it's driving
15 under suspension. I've seen people who drive and never
16 even have a license. Suppose you don't have a license.
17 Your license has been suspended, maybe for not paying
18 traffic tickets. Sometimes it's that simple.

19 And suppose you're at home alone with your child.
20 There's nobody else there. The car was sitting there and
21 you've got the keys. Something happens to your child that
22 could result in your child dying. So even though you know
23 it's against the law, and even though you know you
24 shouldn't be driving a car, there may be enough reason for
25 a jury to decide "yes," shouldn't have driven a car; "yes,"

1 it's against the law; but I'm not going to find the person
2 guilty, because there are mitigating circumstances.

3 Were I in the same position, would I drive the car to
4 protect a life? Yes, I would. That's another -- and --
5 and you know, there are all sorts of things, and the judge
6 may bring out more mitigating circumstances. That's the
7 ones that come to my mind.

8 Also, I've seen on TV where law enforcement even has
9 mitigating circumstances for doing things they shouldn't
10 do. Suppose a defendant is -- or somebody who has created
11 some -- or done some minor crime, like shoplifting, which I
12 -- you may not consider it minor, but in the big scope of
13 things, it is. And law enforcement shoots that man dead in
14 the back. First thing you're going to think about is,
15 "Unh-unh, you don't shoot nobody in the back. That's
16 murder. Unh-unh."

17 But suppose they come up with viable reasons why they
18 had to do that. Suppose they say, "Well, this man had just
19 turned -- you know, he turned around so fast. He was
20 facing me, but it just happened to hit him -- the bullet
21 hit him in the back. And he was shooting at me. And I
22 can't prove it, because he, you know, threw the gun or
23 whatever."

24 That would give that law enforcement officer reason to
25 shoot, which under normal circumstances, he couldn't do.

1 And -- and there are other things. And you can probably
2 think of more than I can. But I'm just trying to explain
3 to you what a mitigating circumstance could be.

4 Now, I'm doing this because in this case, even though
5 I told you, and even though Billy Lisenby admitted to you
6 that he did fail to stop for a blue -- blue light, he
7 offered an explanation for why he did it. Now, whether his
8 explanation is enough for you to excuse him, that's your
9 decision and yours alone. And if you make that decision,
10 we respect it, because you are the jury. All right.

11 Did he have enough reason to do this? If he did, then
12 even though he did fail to stop his car, that could be
13 excusable.

14 Can you believe him? Because it's his word, you know,
15 against -- well, really nobody. Because nobody said that
16 what he said happened to him hadn't happened. They just
17 said he didn't stop. He's the only one that offered an
18 explanation, and nobody argued that that had not happened.
19 He just made a statement that that had happened and that he
20 was horrified; and he was afraid that something bad would
21 happen to him if he stopped

22 And he also said that he never intended not to stop.
23 He intended to stop where he thought it was safe to stop.
24 And that when that happened, when he got within sight of
25 his grandmother's house and the people that he had called

1 to be there, that he thought maybe would -- would help him
2 out and prevent him from coming to some harm were there, he
3 stopped.

4 Now, it's a long drive for him to get there. And what
5 he said was that when he tried to -- you know, when he
6 would try -- first, he got way off into North Carolina and
7 had to get back to South Carolina. And his route -- every
8 time when he tried to turn to get there, something would
9 happen to keep him from being able to turn. But as soon as
10 he did, he did.

11 Okay. Now, the next thing that he's charged with is
12 assault with intent to kill. Now, you've probably heard of
13 assault and battery with intent to kill or assault and
14 battery. We started out with the lowest spectrum on that
15 is an assault and battery, and my explanation for that has
16 always been just a fistfight. When I was growing up, it's
17 everybody's fault. Now, you're not allowed to fight
18 anymore. And people get into a fight and they get arrested
19 for assault and battery, which is minor. Nobody gets hurt
20 -- they just get in a fight.

21 Then you go up a notch from that and you'll get
22 assault and battery high and aggravated. And what that
23 amounts to is an unfair fight. Whereas assault and battery
24 would be sort of an even fight, assault and battery high
25 and aggravated is uneven, where one person has an advantage

1 over the other. Like a man fighting his wife, or a grownup
2 fighting a child, or maybe fighting a disabled person or
3 something like that. That would be high and aggravated.

4 Then assault and battery with intent to kill. And in
5 all of these you have to have the assault, which is putting
6 the person in fear; followed by a battery, which is the
7 touching -- some sort of touching. Touching could be with
8 a bullet, you know.

9 Okay. Assault and battery with intent to kill would
10 mean you meant to kill somebody, but they didn't die.
11 Maybe you shot them and they lived. But that is an
12 assault: You put them in a fear of their life; you backed
13 that up by shooting them; the bullet hit them, but they
14 didn't die. So that's assault and battery with an attempt
15 to kill.

16 What we have here is the assault with no battery,
17 meaning there is no touching. Somebody was just put in
18 fear of their life. Like you shoot at them and miss. That
19 would be an assault with intent to kill, but no battery,
20 because they didn't get hit. You meant for them to die,
21 though, but they didn't.

22 All right. The question here is: Did Billy Lisenby
23 try to kill somebody? Now, he was driving a car and this -
24 - this is a traffic offense. And if you'll look up here,
25 this is the law which I always equate with *World Books* when

1 I was growing up. There is a volume on every different
2 thing. And there's a volume on traffic law, a whole book
3 of stuff that you can charge people with for driving.

4 Assault with intent to kill is not one of those. He
5 was not charged with any kind of driving offense. Reckless
6 driving would come to mind immediately. He's -- he's
7 accused of an offense against a person, that he tried to
8 kill a person. And that's why I was asking did he have
9 anything against this person that he's accused of trying to
10 kill. Did he have any reasons for wanting to -- Mr.
11 Windburn -- to -- to get rid of Mr. Windburn? Because
12 that's what that is. That's an assault against that
13 person. Okay? And he has told you "no." He didn't know
14 who those people were.

15 On that tape, you hear law enforcement talking to each
16 other and coming to the spot, you know, to try to stop this
17 car and all that kind of stuff. But you have to keep in
18 mind, he wasn't hearing any of that. He didn't know any of
19 those people were coming up. When Mr. Jordan drove up
20 there, he didn't know he was coming. That was a surprise
21 to him. It wasn't to Mr. Jordan, now. Mr. Jordan had
22 opportunity to take precautions, but Billy Lisenby didn't.

23 And I'm not saying he wasn't driving like a maniac;
24 I'm just saying that he had no plan in his mind to -- to
25 hurt Wayne Jordan or to hurt -- I think it's Mr. Winburn.

1 I always try to call him "Mr. Hendrix" for some reason --
2 it's "Winburn." Unless he did, is that assault with intent
3 to kill that human being? Certainly he could have. It
4 could have happened. But did he try to kill him?

5 There are two occasions that I saw on this tape -- and
6 I just watched it in the last few days -- where somebody
7 could have gotten killed, and you could say that there was
8 an assault with intent to kill, but it wasn't Mr. Lisenby.
9 When they were talking about putting that "tack strip" or
10 whatever that thing is in the highway, and I kept asking
11 him, "Could that hurt somebody," my feeling -- that could
12 have killed somebody. And that was put there for Mr.
13 Lisenby. That could have very easily resulted in him
14 dying, and that was planned in advance.

15 The other time is when the officer asked for
16 permission to "take him out." Now, I don't know what he
17 meant by "take him out," but you know, I watch *Law and*
18 *Order*. To me that would means get rid of him. Now, that's
19 two occasions that there -- there was a -- a plan to get
20 rid of somebody, a particular person, too. But it wasn't
21 Mr. Lisenby trying to do it to somebody.

22 The next thing I'd like for you to remember is this
23 was a speeding incident. Was all this necessary? Not --
24 I'm not saying that he shouldn't have done what he did, but
25 is there liability on the other side, too? I've gotten

1 speeding tickets plenty of times. I have a heavy foot, and
2 I admit it. But would it warrant this?

3 Mr. Lindsay said right in the tape that he saw the --
4 the tag. He had his tag number. He had a video. And he
5 saw who the driver was. Now, once he had all that, wasn't
6 it about time to just give this up and quit? What do you
7 need to prove somebody is speeding? How much evidence do
8 you need? Do you need to do all of this for speeding?

9 Now, I see all the time on TV -- I'm trying to watch a
10 program and they'll interrupt with some car chase. It's
11 all the time lately. But I cannot remember a single time
12 when they said they were chasing him and helicopters were
13 flying over and all this stuff because somebody was
14 speeding. In every incident I can remember somebody had
15 stolen the vehicle, they had harmed somebody, they had
16 committed some type of crime where they felt like they had
17 to catch this individual. And they had to catch him right
18 then.

19 I've also heard of people getting tickets in the mail
20 because they have cameras. When you go in certain places,
21 they take a picture of your vehicle and send you the
22 ticket. You were speeding. Or you didn't -- you ran the
23 light. Do you have to do all this? Isn't there enough
24 blame to go around here?

25 Again, I want to remind you, this man, you have to

1 assume he's innocent. You start your discussions and once
2 you discuss it and once you hash it out and once you come
3 to the conclusion, I cannot but come to the realization
4 that he had no reason not to stop that car and he was
5 trying to kill those two men.

6 And I want you to remember that he was in an
7 automobile and the inference here is that he's trying to
8 kill somebody with an automobile. If he's telling you the
9 truth, that he wanted to get to a safe place so he wouldn't
10 get hurt, would he be stupid enough to try to run his car
11 into somebody to hurt them? What's going to happen to him
12 when he does that? And what's going to happen to his
13 friend who's riding with him? Because that friend is going
14 to more than likely get killed, and so is the defendant.
15 And if you're trying to avoid the law so you won't get
16 hurt, why in the world are you going to try to run your car
17 into somebody? Why are you playing "suicide bomber" here?
18 Doesn't that defeat the whole purpose?

19 Another thing -- all these cars that are coming up
20 there to try to stop Billy Lisenby, all those tack strips,
21 all this being done -- he has a passenger in that car who
22 has done nothing but ride in that car. He has a passenger.
23 If that thing had blown out those tires and -- and he
24 assures me that nothing will happen except it'll slow you
25 down. Could that passenger, innocent person, have gotten

1 hurt?

2 Was all of this necessary? Is this what we need to do
3 in Chesterfield County when somebody is speeding? Is this
4 what somebody needs to do to your child? If he's in the
5 same position as Billy Lisenby says he was in, does
6 somebody need to do that to him? How would you -- if you
7 were his mother -- feel? Thank you.

8 THE COURT: Yes, sir.

9 MR. JOYNER: Thank you, Judge.

10 Ladies and gentlemen, thank you so much for your time
11 today that you've been here with us. Ms. Rivers just said
12 a lot of stuff. But I want to remind you of one thing: We
13 try a lot of cases up here in Chesterfield County, here in
14 this courtroom. People sit there and it -- it doesn't
15 matter about the case, really. I mean, because every case,
16 no matter how complex it is, and every case, no matter how
17 simple it is, it all comes down to one question. And you
18 remember this. Every case comes down to one question. And
19 that one question is: Who do you believe? Who do you
20 believe?

21 Now, I'm here to tell you, you can put a lot of people
22 up on the stand, and they can tell you a lot of different
23 things. Sometimes they can tell the truth; sometimes they
24 can lie; sometimes they can go somewhere in the middle and
25 tell you a little bit of truth and a little bit of lie.

1 They can tell you what you want to hear. But I'm here to
2 tell you, ladies and gentlemen, this video, this video does
3 not lie. The video has no friends to reward and it has no
4 enemies to punish. All it does is tell the truth.

5 And you all are going to have an opportunity, if you
6 want to, to see this video again. It's been put into
7 evidence, and you get to see all the evidence when you
8 deliberate. The video will go with you. If you choose to,
9 you have a right to watch it again. And the video does not
10 lie.

11 I want to talk about the law first, the law of failure
12 to stop for a blue light. It's very simple, and I'm not
13 going to spend a lot of time on it. No. 1, you're signaled
14 to stop by a law enforcement officer; and No. 2, you don't
15 stop. It's very simple. The blue lights were activated
16 the video shows; the testimony tells the same thing. The
17 blue lights were activated; he saw them; he didn't stop.
18 The chase lasted for 57 minutes, almost an hour. He didn't
19 stop. I'm not going to talk about it anymore, because it's
20 obvious. I mean, it's -- it's easily proven.

21 Next, assault with intent to kill. The first thing I
22 want to talk about assault with intent to kill is there
23 must be an attempt to commit a violent injury. Now, if you
24 remember when Officer Jordan was driving in his green SUV
25 in the left-hand lane, coming toward the chase -- as he was

1 coming toward the chase -- and I ask you, please, if you
2 are confused, watch the video again to confirm what I'm
3 telling you.

4 Billy Lisenby is in the right-hand lane the whole
5 time, and he intentionally pulls his car to the left-hand
6 lane where Officer Jordan is. And you can see that Officer
7 Jordan -- if he does not turn his car and swerve into the
8 ditch and up onto the embankment, he will be hit. And I
9 think we all know what happens when a car that's going
10 approximately 60 miles an hour this way, and a car that's
11 going approximately 30 miles an hour this way, hit head on.

12 The second thing is there must be malicious intent.
13 Now, malicious intent just means that it must be
14 intentional, and that it must be without just cause. And
15 now, intentional -- it -- it was obviously intentional. I
16 asked Billy himself when he was up on the stand, I said,
17 "Were you drinking? Did you take any drugs?"

18 He said, "Yeah, I took drugs."

19 But I specifically asked him -- and I did this on
20 purpose, ladies and gentlemen -- I said, "Was your mind
21 clear? Did you know what you were doing?"

22 He said, "Yes, I knew what I was doing. I knew
23 exactly what I was doing. I wasn't under the influence so
24 much that I couldn't operate a car."

25 The law requires that it be intentional and without

1 just cause. And when you watch the video, you will see
2 that it is an intentional pulling of the steering wheel
3 directly at Officer Jordan, and Officer Jordan pulling out
4 of the way.

5 Next, there must be an ability to complete the act.
6 And by "ability to complete the act" would mean if I stood
7 way over here and pointed my finger and said, "I'm about to
8 kill you all." Well, there's no assault with intent to
9 kill because I don't have any way to complete the act. I
10 don't really have a gun in my hand. I mean, nobody would
11 be afraid for their life. There would be no assault. But
12 if I put a gun in my hand and I say that, well, then,
13 there's been an assault with intent to kill. I've got a
14 way, as the law says, to complete the act.

15 Mr. Lisenby completed the act. He had a way. He had
16 a gun, ladies and gentlemen, but he didn't have a gun in
17 the normal sense. He had a 2,000 pound gun that was going
18 approximately 60 to 70 miles per hour, is what he had. The
19 car and the way he was driving it gave him the present
20 ability to cause a serious injury or death to Officer
21 Jordan, and also to the other officer who was there in the
22 road, trying to just keep citizens safe as traffic was
23 going by in both ways.

24 At that instance, ladies and gentlemen, you'll see the
25 same exact thing. You'll see that Mr. Lisenby is driving

1 on the right-hand side of the road when he recognizes that
2 there is a car -- a law enforcement car in the left-hand
3 side of the road. He magically just gets into the left
4 lane when he sees him and forces the law enforcement
5 officer to get in his car and drive it out of the way fast.
6 And Billy drives right on through where his car was parked.
7 I mean, the things he did were intentional and again,
8 ladies and gentlemen, the video will corroborate everything
9 I've said, because it's very, very obvious.

10 There's a few things I want you to remember. No. 1,
11 think of all the lives he put in danger. We're talking
12 about an hour-long chase at nine o'clock in the morning
13 that goes from South Carolina into North Carolina, around
14 North Carolina, back down around the North Carolina -- I
15 mean, around the county that he went into in North
16 Carolina, back into South Carolina, into Chesterfield
17 County. He drives over the entire county. And you saw the
18 video. He was going up to 120 miles an hour. The officer
19 said that the speedometer tops out. It won't let you go
20 any faster than 120. "And I just topped out, that's how
21 fast he was going."

22 Another thing I want you to remember is that -- it
23 stuck with me -- is when Ms. Rivers was up here, she said,
24 "I don't envy being you all today, because you got a hard
25 decision to make."

1 Well, I'm here to tell you, you do not have a hard
2 decision to make. Not on the facts that the State has
3 presented, and not after you look at this video; it is not
4 a hard decision whatsoever. It's a decision that I believe
5 you should welcome, because you will have a safe road now.
6 It's a decision I think you should welcome because of the
7 sheer simplicity of it when you watch the video. It will
8 be obvious that he's guilty of these charges.

9 The next thing is all of this talk of the stop strips
10 and how they could injure poor Mr. Lisenby. They're not
11 called "bomb strips," and they're not called "gun strips"
12 or "poison strips." They're not just going to -- you run
13 over them and your car magically explodes. Mr. Lisenby is
14 not the innocent person here, and the law enforcement
15 officers who risked their lives to protect citizens by
16 chasing this guy around, who's driving like a maniac, are
17 not the criminals here. It's reversed. He specifically
18 testified -- Officer Jordan did -- that stop strips are
19 made for the purposes of gradually allowing the air to
20 escape the tires so they don't explode. So they gradually
21 go out and the person is slowly brought to a stop. That's
22 why they're used by law enforcement.

23 Next, I want to talk to you briefly about some of the
24 quotes that came out during the trial. These are quotes
25 from people that got up on the stand. And I just want you

1 to remember these because I wrote them down as I heard
2 them. And I thought they were important for the jury to
3 remember.

4 The first thing is in Ms. Rivers' opening statement,
5 she admitted that what Billy did. She said, "We admit he
6 didn't stop. We admit that he failed to stop for a blue
7 light."

8 The second thing is Officer Jordan. If you remember
9 when he testified, I asked him -- I said, "How fast were
10 you going?"

11 He said, "Probably 30 to 35."

12 And I asked him how fast did it look like Mr. Lisenby
13 was coming at him. He said, "Probably 60."

14 And I said, "What went through your mind at the time
15 that you grabbed your car and swerved it off?"

16 He said, "Well, I only had a few seconds, but I was
17 afraid I was going to die."

18 He was worried that he was going to be hit head on by
19 a car coming 60 miles an hour, which is very likely to
20 cause a violent injury or death.

21 Next, everyone -- and this is a unique quote.

22 Everyone in this case wanted Mr. Lisenby to obey the law.

23 Everybody did, except for Mr. Lisenby. Law enforcement

24 asked him to stop; he wouldn't stop. He was asked multiple

25 -- they were asked for almost an hour by blue lights and

1 all of these cars passing him to please stop. He wouldn't
2 stop. Even his passenger asked him to stop, and he didn't
3 stop. He was the only person that made a conscious
4 decision to break the law, ladies and gentlemen. And his
5 quote was that, "Even my passenger wanted me to stop," and
6 he simply wouldn't do it.

7 Then, another quote that Billy gave while he was up on
8 the stand -- he said, "I knew that I was supposed to stop."

9 Everybody else wanted him to stop, and he knew he was
10 supposed to stop, but it was intentional that he didn't.
11 He just simply chose not to. He said something that, to
12 me, is one of the most unique statements that I may have
13 ever heard by a defendant. He said, "I wanted to get to a
14 safe place. I wanted to be safe."

15 What at all is safe on this video? When you watch
16 this video and you go back, tell me, please, what's safe.
17 There was not one thing. With all the people that was run
18 off the road, and all the officers' lives that was put in
19 danger, and you drive a car that's not designed to go a
20 hundred miles an hour, over a hundred miles an hour around
21 curves, while you're talking on the cell phone? I mean,
22 it's dangerous enough to drive the speed limit and talk on
23 the cell phone, much less driving 120 miles an hour and
24 talking on a cell phone?

25 Ladies and gentlemen, he said himself, "I was driving

1 recklessly." I mean, that -- that was obvious. And at the
2 end of the tape, you'll see, ladies and gentlemen, when you
3 watch it again, that he doesn't -- when -- when he finally
4 does get out of the car and -- and runs on foot from the
5 officers, he doesn't even stop the car. He just jumps out
6 while it's still rolling and runs off into the woods. But
7 again, it's on the video.

8 And ladies and gentlemen, I'm not going to take much
9 more of your time. I -- I want to tell you just a few more
10 things. No. 1 is I want you to think about common sense.
11 And one way I want you to think about common sense, first
12 of all, is the assault with intent to kill charges.

13 Assault with intent to kill is a title of a statute.
14 The statute is -- to be precise, it won't mean anything to
15 you, but it's 17-25-30. And one thing that's unique is
16 that you do not have to have the specific intent to kill a
17 person. You don't have to say, "I'm intending to kill him
18 when I do it," and -- and think that. Your actions just
19 have to have possibly caused a violent injury, is what the
20 law says. It must be a violent injury. And remember that,
21 please. There is no specific intent to kill.

22 The next thing I want you to remember is that when you
23 go back to deliberate that I want you to use your common
24 sense. Don't -- don't take your common sense like a coat
25 and hang it on the rack and then walk back into the jury

1 room to deliberate. Use it, please, when you deliberate.

2 And the final thing I want to tell you is Ms. Rivers
3 talked about the presumption of innocence. That's gone.
4 We -- the evidence -- there's no more innocence here,
5 ladies and gentlemen. He's guilty. The evidence showed
6 that.

7 But she also talked about reasonable doubt and about
8 what your job as jurors are. And I'm here to tell you that
9 your job as jurors is not to find reasonable doubt. You
10 don't go back there searching for reasonable doubt. Your
11 job as jurors is to go back as a unit and to search for the
12 truth. That's all you're supposed to do is find the truth.
13 And the truth in this case, ladies and gentlemen, is that
14 Billy Lisenby is guilty of failure to stop for a blue
15 light, and he's also guilty of assault with intent to kill.
16 And I thank you for your time.

17 THE COURT: All right. Ladies and gentlemen, I remind
18 you that during this trial, you and I have certain duties
19 to perform. As the trial judge, it is my responsibility to
20 preside over the trial of this case. And I also have the
21 duty to rule on the admissibility of evidence offered
22 during this trial.

23 Now, you are to consider only the competent evidence
24 before you. If there was any testimony ordered stricken
25 from the record during this trial, you must disregard that

1 testimony. You are to consider only the testimony which
2 has been presented from the witness stand and any exhibits
3 which have been made part of the record in this case.

4 Now, I have the additional duty to charge you with the
5 law applicable to this case. As the presiding judge, I am
6 the sole judge of the law in this case, and it is your duty
7 as jurors to accept and apply the law as I now state it to
8 you. If you already have any ideas as to what the law is
9 or what the law ought to be, and it does not agree with
10 what I now tell you the law is, you must abandon this idea,
11 because you are sworn to accept the law and apply the law
12 exactly as I state it to you.

13 Now, in every case tried in this court before a jury,
14 the jury becomes the sole and exclusive judge of the facts
15 in the case. A trial judge cannot intimate, state, comment
16 on, or make any statement to his trial jury about the facts
17 in a case. Since you, the jury, are the sole judge of the
18 facts in this case, you are not to infer from what I have
19 said during the progress of this trial in ruling on the
20 admissibility of evidence or otherwise, or anything that I
21 say now during the course of this instruction to you that I
22 have any opinion about the facts in this case.

23 The law does not allow me to have an opinion about the
24 facts in this case. This is a matter solely for you, the
25 jury, to determine. As jurors, it is your duty to

1 determine the effect, value, weight, and truth of the
2 evidence presented during this trial.

3 Ladies and gentlemen, the indictments in this case
4 allege several -- or at least two different offenses --
5 three different charges with two different offenses against
6 the defendant. The charges are: Two charges for assault
7 with intent to kill, and one charge for failure to stop for
8 a blue light. One charge of assault with intent to kill
9 involves that of Wayne Johnson, and the other assault with
10 intent to kill involves that of Robert Winburn.

11 Each of the indictments charges a separate and
12 distinct offense. You must decide each of the indictments
13 separately on the evidence and the law applicable to it,
14 uninfluenced by your decision as to any of the other
15 indictments. The defendant may be convicted or acquitted
16 on any or all of the offenses charged. You will be asked
17 to write a separate verdict of guilt or not guilty for each
18 of these indictments.

19 Now, the defendant has pled not guilty to each of the
20 indictments, and that plea puts the burden on the State to
21 prove the defendant guilty. A person charged with
22 committing a criminal offense in South Carolina is never
23 required to prove himself innocent. I charge you that it
24 is an important rule of law that the defendant in a
25 criminal trial, no matter what the seriousness of the

1 charge may be, will always be presumed to be innocent of
2 the crime for which the indictment was issued, unless guilt
3 has been proven by evidence satisfying you of that guilt
4 beyond a reasonable doubt.

5 Now, this presumption of innocence does not end when
6 you begin your deliberation. It accompanies the defendant
7 throughout the trial until you reach a verdict of guilt,
8 based upon the evidence satisfying you of that guilt beyond
9 a reasonable doubt. The presumption of innocence is like a
10 robe of righteousness placed about the shoulders of the
11 defendant, which remains with the defendant until it has
12 been stripped from the defendant by evidence satisfying you
13 of the defendant's guilt beyond a reasonable doubt.

14 Presumption of innocence is not merely legal theory.
15 It's not just a legal phrase. It is a substantial right
16 for which every defendant is entitled, unless you, the
17 jury, are satisfied from the evidence of the defendant's
18 guilt beyond a reasonable doubt.

19 Now, what is reasonable doubt in the law? A
20 reasonable doubt is the kind of doubt that would cause a
21 reasonable person to hesitate to act. The State has the
22 burden of proving the defendant guilty beyond a reasonable
23 doubt. Some of you may have served as jurors in civil
24 cases, where you were told that it is only necessary to
25 prove a fact is more likely true than not true, such as by

1 the greater weight or the preponderance of evidence.

2 Now, in a criminal case, the State's proof must be
3 more powerful than that. It must be beyond a reasonable
4 doubt. Now, proof beyond a reasonable doubt is proof that
5 leaves you firmly convinced of the defendant's guilt.
6 There are very few things in this world that we know with
7 absolute certainty, and in criminal cases, the law does not
8 require the proof -- does not require proof that overcomes
9 every possible doubt.

10 If, based on your consideration of the evidence, you
11 are firmly convinced that the defendant is guilty of the
12 crime charged, you must find him guilty.

13 If, on the other hand, you think there is a real
14 possibility that the defendant is not guilty, you must give
15 the defendant the benefit of the doubt and find him not
16 guilty.

17 There are two types of evidence which are generally
18 presented during the trial: direct evidence and
19 circumstantial evidence.

20 Direct evidence is the testimony of a person who
21 claims to have actual knowledge of the facts, such as an
22 eye-witness. It is evidence which immediately establishes
23 the main fact to be proved.

24 Circumstantial evidence is proof of a chain of facts
25 or circumstances indicating the existence of a fact. It is

1 evidence which immediately establishes collateral fact from
2 which the main facts may be inferred. Now, circumstantial
3 evidence is based on inference and not on personal
4 knowledge or observation. The law makes absolutely no
5 distinction between the weight or value to be given either
6 direct or circumstantial evidence, nor is a greater degree
7 of certainty required of circumstantial evidence than of
8 direct evidence.

9 You should weigh all the evidence in the case. After
10 weighing all the evidence, if you are not convinced of the
11 guilt of the defendant beyond a reasonable doubt, you must
12 find the defendant not guilty.

13 Now, the defendant is charged with assault with intent
14 to kill. In order to prove assault with intent to kill,
15 the State must prove beyond a reasonable doubt the
16 defendant, with malice aforethought, unlawfully attempted
17 or offered to commit a violent injury upon another person,
18 and had the present ability to complete the attempted
19 injury.

20 An assault is the intentional creation of a reasonable
21 fear of immediate bodily harm. It is not necessary that
22 the attempted injury or harm actually take place. For
23 example, if I walk up to you and when we are within arm's
24 reach, I draw back to hit you, that is an assault.

25 Now, malice is hatred, ill will, or hostility towards

1 another person. It is the intentional doing of a wrongful
2 act without just cause or excuse, and with an intent to
3 inflict an injury, or under circumstances that the law
4 would infer evil intent.

5 Malice aforethought does not require that malice exist
6 for any particular time before the act is committed. But
7 malice must exist in the mind of the defendant just before
8 and at the time of the act is committed. Therefore, there
9 must be a combination of the previous evil intent and the
10 act.

11 Malice aforethought may be expressed or inferred. The
12 term "expressed" and "inferred" do not mean different kinds
13 of malice, but merely the manner in which malice must --
14 I'm sorry -- in which malice may be shown to exist. That
15 is either by direct evidence or by inference from the facts
16 and circumstances which are proved.

17 Now, expressed malice is shown, a person speaks words
18 which express hatred or ill will for another, or when the
19 person prepared beforehand to do the act which was later
20 accomplished. For example, lying in wait for a person, or
21 any other act in preparation going to show that the deed
22 was within the defendant's mind would be expressed malice.

23 Malice may be inferred from conduct showing a total
24 disregard for human life. Inferred malice may also arise
25 when the deed is done with a deadly weapon. A deadly

1 weapon is an article, instrument, or substance which is
2 likely to cause death or great bodily harm. Whether an
3 instrument has been used as deadly weapon depends on the
4 facts and circumstances of each case.

5 The following are examples of instruments which may be
6 a deadly weapon: a pistol, a shotgun, a rifle, a dagger, a
7 knife, a slingshot, a razor, gasoline, fire bomb, a molotov
8 cocktail. A gun may be a deadly weapon even if it is not
9 in operation. Ordinary objects may become a deadly weapon
10 when the facts show that they have been used to inflict
11 serious bodily harm or death.

12 If facts are proved beyond a reasonable doubt
13 sufficient to raise an inference of malice to your
14 satisfaction, this inference would simply be an evidentiary
15 fact to be considered by you, the jury, along with the
16 other evidence in the case. And you may give it the weight
17 you decide it should receive. A specific intent to kill is
18 not an element of assault with intent to kill. But there
19 must be a general intent to commit serious bodily injury.

20 Intent means intending the result which actually
21 occurs, not accidental or involuntary. Intent may be shown
22 by acts and conduct of the defendant in other circumstances
23 from which you may acutally and reasonably infer intent.
24 Evidence of the character of the assault, the character of
25 the instrument used, the manner in which it was used, the

1 purpose to be accomplished, and the resulting wounds or
2 injuries may be considered in determining the intent with
3 which the assault was committed.

4 Intent may also be inferred when it is demonstrated
5 that the defendant voluntarily and willfully commits an
6 act, the natural tendency of which is -- is to destroy
7 another's life.

8 Now, the defendant is also charged with failing to
9 stop for a blue light. In order to prove this crime, the
10 State must prove beyond a reasonable doubt that the
11 defendant, in the absence of mitigating circumstance, was
12 driving a motor vehicle; that the defendant was driving a
13 motor vehicle on a road, a street, or a highway in this
14 state; the defendant was signaled to stop by a law
15 enforcement vehicle by means of a siren or a flashing
16 light; and that the defendant did not stop.

17 In determining whether or not there are mitigating
18 circumstances which would justify the defendant's failure
19 to stop for a blue light, you may consider actual road
20 conditions; actual roadside conditions; other conditions
21 such as lighting and weather; officer, driver and/or
22 passenger safety; and any other circumstances you believe
23 could reasonably mitigate the alleged violation.

24 An official signal requiring a motorist to stop may be
25 a siren or flashing light, but both are not required.

1 An attempt -- an attempt to increase the speed of a
2 vehicle, or in some other manner avoid the pursuing law
3 enforcement vehicle when signaled by a siren or flashing
4 light, may be considered as evidence of failure to stop for
5 a blue light. However, it is merely an evidentiary fact to
6 be taken into consideration by you, along with all the
7 evidence in the case, and to be given the weight that you
8 decide that it should receive.

9 Madam -- Madam Foreman, ladies and gentlemen of the
10 jury, there are three -- as I indicated -- three
11 indictments for you to consider. On each indictment, there
12 are two possible verdicts. One is "not guilty" and the
13 other is "guilty." I have had to place one before the
14 other, simply because you've got to put one of them before
15 the other on a piece of paper to give to you. The fact
16 that I have listed one before the other is of no
17 significance in your deliberations.

18 Again, you are to consider each of the indictments
19 separately, without consideration of the other indictments.
20 Each indictment must rest upon the facts as you see them in
21 this case.

22 Ladies and gentlemen, your verdict must be a unanimous
23 one on each of the indictments.

24 Madam Foreperson, when the jury agrees on the verdict,
25 you will write the verdict on this verdict form -- the

1 appropriate decision that's made by the jury, and you will
2 sign down here on the signature for -- on the line
3 indicated for your signature. You will then knock on the
4 jury room door and inform the bailiff that you have reached
5 the verdicts. Then we will receive you back into the
6 courtroom.

7 Madam Foreperson, ladies and gentlemen, I will
8 instruct you that you are only to engage in your
9 deliberations when all 12 members of the jury are present.
10 In the event that a member of the jury has to leave to go
11 to the restroom or make a phone call, for some reason
12 leave, then you are to cease your deliberations and not
13 begin them again until all 12 members of the jury has
14 returned.

15 Now, Madam -- members of the jury, I will ask if you
16 would now to go and return back to your jury deliberation
17 room, but do not begin your deliberations. I still have to
18 take up some matters with the lawyers, but the bailiff
19 should tell you shortly to begin. Thank you very much.

20 (The jury exits at 4:26 p.m.)

21 (Sotto voce discussion between the Judge and the bailiff.)

22 THE COURT: Any exceptions to the charges from the
23 State or Defense?

24 MR. JOYNER: None from the State, Your Honor.

25 MS. RIVERS: No, Your Honor.

1 THE COURT: All right. If y'all would -- now, we had
2 the CD. Any other items that were entered into evidence?

3 MR. JOYNER: No, sir.

4 THE COURT: All right. These are the verdict forms,
5 if y'all want to take a look at them. We'll send them
6 back.

7 (To the bailiff) If you will give them the verdict
8 forms and the CD and ask them to begin their deliberations,
9 and bring out the alternate.

10 (Sotto voce discussion between counsel and court reporter.)

11 THE COURT: Mr. Alternate, I want to thank you for
12 your participation during this trial. Fortunately, we did
13 not have any of the other jurors to become ill, or -- or
14 suffer an emergency that required them to be absent. And
15 so at this point, your obligation to the county and to the
16 state is -- is over. But I do want to thank you for your
17 service.

18 I will -- I'm going out on a limb, but I think I'm on
19 a pretty safe limb, that you do not have to come back
20 tomorrow for jury duty. So -- and even if we -- and even
21 if you did, I would instruct you you don't have to, so
22 you're excused. But I do want to thank you for your
23 service this week.

24 You'll be getting a check in the mail, I would assume,
25 from the county. It'll be a very small amount of money,

1 but at least it will be a token of our appreciation for
2 your service.

3 You're more than welcome to sit out there and wait, if
4 you want to -- if you want to hear the verdict, but yeah,
5 you're free to go as well. Thank you very much.

6 All right. We'll stand at ease.

7 (Off the record while the jury deliberates.)

8 THE COURT: Ms. Rivers and Mr. Solicitor, the jury has
9 sent a note out that reads they want to see the part of the
10 CD where (as read): Part where the car got in other lane -
11 comma - SUV. The beginning when started. Came to turn at
12 Campbell's crossroad.

13 CLERK OF COURT: Campbell's Crossroad.

14 THE COURT: Campbell -- Campbell's Crossroad.

15 MR. ROWELL: They -- they referring to the second
16 incident?

17 THE COURT: The last of tape.

18 (Sotto voce discussion between counsel.)

19 THE COURT: Do y'all have any --

20 (Sotto voce discussion between counsel.)

21 THE COURT: Do y'all understand what that means?

22 MR. JOYNER: Yes, sir. I -- we -- we've got --
23 there's -- we've got the -- the times set out on the video.

24 (Sotto voce discussion between counsel.)

25 THE COURT: Hang on a second. She's not listening.

1 MR. JOYNER: Okay. They want to see the beginning?

2 THE COURT: She's not listening.

3 MR. JOYNER: Ms. Rivers.

4 MS. RIVERS: I'm sorry.

5 THE COURT: All right. Tell us what you have.

6 MR. JOYNER: Okay. We're going to show -- they want
7 to see the beginning when it started; they want to see
8 where he got into the other lane and almost hit the SUV,
9 which would be the second incident -- Wayne's incident;
10 they want to show where it turned at Campbell's Crossroads,
11 which is where -- where Winburn was; and they want to see
12 the very end of the tape. Four -- these -- those four --
13 those four times.

14 THE COURT: Do y'all have those times set so you can
15 show it to them?

16 MR. JOYNER: Yes, sir. We -- I mean, we can just fast
17 forward up to it.

18 THE COURT: All right. Any -- any objection to what
19 the jury is requesting to see?

20 MS. RIVERS: No, Your Honor.

21 THE COURT: All right. You can bring the jury back.

22 MR. ROWELL: When you get Billy back?

23 THE COURT: Hang on. Wait, wait, wait. We need to
24 get the ---

25 MR. JOYNER: Yeah.

1 THE COURT: --- defendant.

2 MS. RIVERS: The defendant.

3 (Sotto voce discussion between counsel.)

4 THE COURT: All right. Y'all ready to bring the jury
5 back?

6 MR. JOYNER: Yes, sir. Yes, Your Honor.

7 THE COURT: All right. Bring the jury back.

8 (The jury enters at 5:15 p.m.)

9 THE COURT: Madam Foreperson, ladies and gentlemen of
10 the jury, I have taken your -- your note and I had the CD,
11 hopefully, positioned so that they can play the parts that
12 you had requested. I know that you know that you're --
13 you're not to engage in any discussions while you're out
14 here in -- in our presence. You're only to do that when
15 you go back into the jury deliberation room.

16 At this time, I will instruct the solicitor to run the
17 machine.

18 (DVD plays.)

19 MR. ROWELL: That's the beginning.

20 (DVD plays.)

21 JUROR: Can you play that back?

22 JUROR: Yeah.

23 JUROR: Could you stop it?

24 MR. ROWELL: Stop it right in there?

25 JUROR: No. No.

1 MR. ROWELL: Okay.

2 JUROR: Slow and easy.

3 (DVD plays.)

4 JUROR: It's the next scene.

5 (DVD plays.)

6 JUROR: Back it up a little bit.

7 (DVD plays.)

8 MR. ROWELL: Anybody need to see anything else?

9 JUROR: Let it play a little more, please.

10 (DVD plays.)

11 THE COURT: All right. Ladies and gentlemen, you may
12 now return back to your deliberation room and resume your
13 deliberations.

14 (Jury exits at 5:28 p.m.)

15 (Marked Court's Exhibit No. 2, juror note.)

16 THE COURT: See the lawyers for a moment.

17 (Conference in chambers.)

18 THE COURT: Bring the foreperson out.

19 All right. Madam Foreperson, I've -- I've received
20 y'all's note. I am -- I am not trying to be someone that
21 tortures jurors. I think that given the hour that it is,
22 and given the length that you've been in deliberations, I
23 am not inclined to give a break, to then say, okay, then
24 you can resume.

25 What I am inclined to do is either have y'all try to

1 conclude your deliberations, or that is now -- or I would
2 say let's take a break for the day and come back in the
3 morning, and let you resume your deliberations then.

4 At that time, I -- we could try to show you the two
5 items that have been listed on the note, being the two cars
6 that slow down, and then also the one that says "last of
7 the tape" when he comes to a stop. We can do those in the
8 morning.

9 Now, I don't want you to be alienated or gain favor
10 with any members of the jury back there. What I would like
11 from you is an idea as to which they may prefer, and I will
12 then instruct you to go tell them that I have decided this.

13 FOREPERSON: Okay.

14 THE COURT: Which do you think they would prefer?

15 JUROR: They're probably going to say to come back in
16 the morning.

17 THE COURT: Okay. All right. All right. Then what I
18 will instruct you to do is to go back to the jury room, and
19 you may tell them that I have made the call that we will
20 terminate the proceeding today. And we will return in the
21 morning.

22 (To the bailiff) Do -- when -- when they go to the
23 jury deliberation room, do they come through here, or is
24 there another door?

25 THE BAILIFF: Yes, sir. They come through here.

1 THE COURT: All right. Okay. What we will do is if
2 you would, we'll have the jury to be back at 9:30 in the
3 morning. And then as soon as y'all get back there, Mr.
4 Bailiff, they will resume their deliberations.

5 (To the Foreperson) If you will tell them -- let me
6 ask you one more question. The part where it reads, "Two
7 cars slow down," can you give me a little bit better idea
8 of where you're talking about?

9 THE FOREPERSON: Well, we've got some back there that
10 wants to see ---

11 THE COURT: Yeah. Don't --

12 THE FOREPERSON: Yeah.

13 THE COURT: Just tell me what part---

14 THE FOREPERSON: Just where one car is going, and then
15 the other car -- whatever he's doing on the wrong side of
16 the road.

17 THE COURT: Okay. The wrong side of the road car.

18 MADAM FOREPERSON: Yeah.

19 THE COURT: All right. We'll be able to find it from
20 that. All right. If you would, go and -- go and tell them
21 that. And I'm going to bring y'all right back out and give
22 you final instructions. Okay?

23 THE FOREPERSON: At 9:30 in the morning?

24 THE COURT: Right.

25 THE FOREPERSON: Okay.

1 THE COURT: Tell them it's my decision.

2 All right. Let's bring them out.

3 (The jury enters at 6:22 p.m.)

4 THE COURT: All right. Madam -- Madam Foreperson,
5 ladies and gentlemen, as the Forelady has informed you, I
6 have made the decision that we will terminate the
7 deliberations this evening. I want to thank you for your
8 work and service this week -- I mean, today.

9 I will ask if you would now, be back in here by 9:30
10 in the morning. At -- it's not uncommon that once you
11 start -- a jury starts their deliberation the next day,
12 then they sometimes come to decisions more quickly. And
13 that's one of the reasons why I have suggested to y'all to
14 take this break.

15 Once you arrive and all 12 of you are there, Madam
16 Forelady, you may begin your deliberations again. We will
17 give you a few minutes to see -- if you still wish for us
18 to show you the items on the videotape before we actually
19 bring you back out to -- to see them. But we will try to
20 have the videotape ready around 9:45/10 o'clock for y'all
21 to go. But you know, do start your deliberations to be
22 sure that you still want us to actually show you those
23 items.

24 Again, thank you very much. I will instruct you again
25 not to have any discussions among yourselves or with anyone

1 else about anything involved in the case, especially now
2 since you have begun your deliberations. So we'll see you
3 in the morning. Thank y'all very much.

4 (The jury exits at 6:24 p.m.)

5 THE COURT: Anything before we step out?

6 MR. JOYNER: Nothing from the State, Your Honor.

7 MS. RIVERS: No, Your Honor.

8 **State vs. Billy Lisenby - Day 3**

9 THE COURT: Is your client here, Ms. Rivers?

10 MS. RIVERS: Yes, Your Honor. He's in the back.

11 THE COURT: We have a -- the jury has sent out a note.
12 They have requested to (as read): Please explain the
13 charges explaining the assault to kill. So I would assume
14 what they want me to do is review with them the assault
15 with intent to kill charge.

16 MR. JOYNER: Yes, sir.

17 THE COURT: All right. Any objection to reviewing the
18 charges with them again?

19 MR. JOYNER: No, sir.

20 MS. RIVERS: No, Your Honor.

21 MR. JOYNER: Judge, are they asking for you to re-read
22 the jury charge? Okay. Yeah. No objection.

23 THE COURT: Okay. All right. While they bringing --
24 while they're getting him over here, do we want to go ahead
25 and do those lawyer appointments?

1 MS. RIVERS: He's here, sir.

2 THE BAILIFF: He's right back there in the back.

3 (Marked Court's Exhibit No. 3, juror note.)

4 (The jury enters at 10:23 a.m.)

5 THE COURT: Madam Foreperson, ladies and gentlemen,
6 received a note that has indicated to me that you would
7 like for me to re-instruct you on the law as it pertains to
8 the assault with intent to kill. And so I'm now going to
9 re-charge you just on that one section of the law.

10 The defendant is charged with assault with intent to
11 kill. In order to prove assault with intent to kill, the
12 State must prove beyond a reasonable doubt -- beyond a
13 reasonable doubt that the defendant, with malice
14 aforethought, unlawfully attempted or offered to commit a
15 violent injury upon another person, and had the present
16 ability to complete the attempted injury.

17 An assault is the intentional creation of a reasonable
18 fear of immediate bodily harm. It is not necessary that
19 the attempted injury or harm actually take place. For
20 example, if I walk up to you and when we are within arm's
21 reach, I draw back to hit you, this is an assault.

22 Malice is hatred, ill will, or hostility towards
23 another person. It is the intentional doing of a wrongful
24 act without just cause or excuse, and with an intent to
25 inflict an injury, or under circumstances that the law

1 would infer an evil intent.

2 Malice aforethought does not require that malice exist
3 for any particular time before the act is committed. But
4 malice must exist in the mind of the defendant just before
5 and at the time of the act is committed. Therefore, there
6 must be a combination of the previous evil intent and the
7 act.

8 Malice aforethought may be expressed or inferred.
9 These terms "expressed" and "inferred" do not mean
10 different kinds of malice, but merely the manner in which
11 the malice may be shown to exist. That is either by direct
12 evidence or by inference from the facts and circumstances
13 which are proved.

14 Express malice is shown when a person speaks words
15 which express hatred or ill will for another, or when the
16 person prepared beforehand to do the act which was later
17 accomplished. For example, lying in wait for a person, or
18 any other acts in preparation going to show that the deed
19 was within the defendant's mind would be expressed malice.

20 Malice may be inferred from conduct showing a total
21 disregard for human life. Inferred malice may also arise
22 when the deed is done with a deadly weapon. A deadly
23 weapon is an article, instrument, or substance which is
24 likely to cause death or great bodily harm. Whether an
25 instrument has been used as deadly weapon depends on the

1 facts and circumstances of each case.

2 The following are examples of instruments which may be
3 deadly weapons: a pistol, a shotgun, a rifle, a dagger, a
4 knife, a slingshot, a razor, gasoline or fire bomb or
5 molotov cocktail. A gun may be a deadly weapon even if it
6 -- even if it is not operated. Ordinary objects may become
7 a deadly weapon when the facts show that they have been
8 used to inflict serious bodily harm or death.

9 If facts are proved beyond a reasonable doubt
10 sufficient to raise an inference of malice to your
11 satisfaction, this inference would simply be an evidentiary
12 fact to be considered by you, the jury, along with the
13 other evidence in the case. And you may give it the weight
14 you decide it should receive. If specific -- a specific
15 intent to kill is not an element of assault with intent to
16 kill. But there must be a general intent to commit serious
17 bodily injury.

18 Intent means intending the result which actually
19 occurs, not accidental or involuntary. Intent may be shown
20 by acts and conduct of the defendant and other
21 circumstances from which you may actually and reasonably
22 infer intent. Evidence of the character of the assault,
23 the character of the instrument used, the manner in which
24 it was used, the purpose to be accomplished, and the
25 resulting wounds or injuries may be considered in

1 determining the intent with which the assault was
2 committed.

3 Intent may also be inferred when it is demonstrated
4 that the defendant voluntarily and willfully commits an
5 act, the natural tendency of which is -- is to destroy
6 another's life.

7 May I see the lawyers for a moment?

8 (Bench conference.)

9 THE COURT: All right. Ladies and gentlemen, I know
10 that you want to see sections of the video again. Out of a
11 matter just of being cautious -- being very cautious on my
12 part, I'm going to need for y'all to return back to your
13 jury deliberation room and we'll set it up, and get you
14 right back out here. So just be patient with us. It will
15 takes us probably maybe about a minute to get set up.

16 Madam Foreperson, if you will just wait right there.
17 Thank y'all very much. We'll get back with you shortly.

18 (Jury exits at 10:30 a.m.)

19 THE COURT: Madam Foreperson, help us a little bit.
20 Now, there's two sections on the video y'all want to see
21 again; is that correct?

22 THE FOREPERSON: Yes.

23 THE COURT: And explain to me just briefly what those
24 two sections are.

25 THE FOREPERSON: It's where he tried to hit the first

1 car and where he tried to hit the second car.

2 THE COURT: (To Mr. Joyner) All right. Does that
3 explain it?

4 MR. JOYNER: Yes, Your Honor.

5 THE COURT: All right. If you'll return back to the
6 jury, and we'll get you back out in just about 30 seconds
7 or so.

8 (The foreperson returns to the jury room at 10:31 a.m.)

9 MR. JOYNER: Judge, if the Court's ready, we're ready.

10 THE COURT: All right. Is the control operator ready?

11 MR. JOYNER: Yes. Yes, sir.

12 MR. ROWELL: Yes, sir.

13 MR. JOYNER: He's ready.

14 THE COURT: All right. Let's bring them out.

15 (Marked Court's Exhibit No. 4, juror note.)

16 (The jury enters at 10:32 a.m.)

17 THE COURT: You ready, Mr. Solicitor?

18 MR. ROWELL: Yes, Your Honor.

19 THE COURT: All right.

20 (DVD plays.)

21 MR. ROWELL: Anybody want to see it again?

22 JUROR: Yeah. Back it up some, please.

23 (DVD plays.)

24 MR. ROWELL: Anybody need to see it again? Okay.

25 (DVD plays.)

1 MR. ROWELL: Anybody need to see it again?

2 THE COURT: All right. Thank you.

3 Madam Forelady, and ladies and gentlemen, you may
4 return back to the jury deliberation room.

5 (Jury exits at 10:37 a.m.)

6 THE COURT: Anything from the lawyers concerning what
7 we've just done with the jurors?

8 MR. JOYNER: No, sir.

9 MS. RIVERS: No, Your Honor.

10 THE COURT: All right. All right. Then we will stand
11 down until we get another request or a verdict or something
12 from them.

13 MS. RIVERS: Your Honor, there is another matter.

14 THE COURT: Yes, ma'am.

15 MS. RIVERS: I got a call yesterday afternoon
16 concerning the defendant leaving the courthouse. As he was
17 being led out yesterday in handcuffs and shackles, it
18 appears that he ran into three jurors outside. And it
19 appears that could be very prejudicial to the defendant,
20 and I beg the Court for a mistrial or either dismissal on
21 those grounds.

22 THE COURT: Thank you, ma'am.

23 MR. JOYNER: Judge, I object. I mean, I -- there's no
24 proof that anybody's seen anything. No jurors have brought
25 it to our attention that they've seen anything. I should

1 say brought to the Court's attention.

2 MS. RIVERS: And I beg the Court to inquire of the
3 jurors as to that. Your Honor, he was brought over in
4 street clothes in order to prevent any appearance of
5 prejudice and then he's carried out in handcuffs and
6 shackles. And there are jurors outside could have seen
7 that.

8 MR. JOYNER: Judge, my only answer to that would be
9 that he's carried out this door where the van is parked.

10 THE COURT: All right. Now, we're making a record, so
11 when you say "this," you're going to have to be more
12 descriptive.

13 MR. JOYNER: Forgive me. He's -- he's carried out of
14 a door that is only used to take prisoners out of. It's
15 not a public entrance. And I mean, nobody else can even
16 come in or go out. There's no parking area up here that
17 would be next to the van where it's parked. And I just
18 don't know how anybody could have seen him, because when
19 the van is parked 10 feet away from the door, he's taken
20 right out, right to the van. It just seems ---

21 MS. RIVERS: He didn't go out that door.

22 MR. JOYNER: --- very unlikely to me.

23 MS. RIVERS: Your Honor, he went out the backdoor, the
24 door that was closer to the sidewalk coming off the street.
25 (Sotto voce discussion between Mr. Joyner and Mr. Rowell.)

1 THE COURT: All right. Well, let's -- I mean, I agree
2 with the State so far. I mean, there -- there's not --
3 other than an allegation of a possibility that something
4 has happened, there's not been anything presented to the
5 Court.

6 Let's assume for a moment that I engage in some type
7 of inquiry with the jury. I would not want to engage in an
8 inquiry of the jury that potentially might make an issue
9 that is detrimental to the protection of the rights of the
10 defendant by making the inquiry.

11 If I'm making myself clear, I would not want to engage
12 in a line of discussion with the jury that potentially
13 would lead to a prejudice to the defendant.

14 MS. RIVERS: Yes, sir. And that's the -- what I have
15 in mind. There's no way of -- of doing that without
16 tainting the jury more. And according to Mr. Lisenby, he
17 was there. He saw that they saw him. And whoever it was
18 that was transporting him saw it. And for that reason, I
19 think it would probably be better to start all over again
20 with a new jury. Because there is the possibility of this
21 one has already been tainted. And there is no way to -- to
22 -- to find that out without bringing it out, and without
23 disclosing that.

24 THE COURT: Well, I -- I'm probably not inclined to do
25 that at the moment based on what has been presented to the

1 Court. Otherwise, we would -- any court proceeding would
2 be subject to allegations of -- that a juror saw a
3 defendant being transported. And the -- even if the
4 allegations were true then there still have not been any
5 kind of prejudice that's been established. And I do take
6 very seriously the defendant's rights to receive a fair
7 trial, including the right that it not be used --
8 potentially be used by a jury the fact that he would be in
9 custody as some type of -- to create some type of
10 inappropriate inference that he has done something wrong,
11 and treat him less than -- than fair.

12 Let me take it under advisement. I will let you know
13 my final ruling on how we're going to proceed.

14 Let's move on to any other issues beside this -- this
15 issue before we step this down?

16 MR. JOYNER: No, sir. None from the State.

17 MS. RIVERS: No, Your Honor.

18 THE COURT: All right. I will -- I will let you know.

19 All right. They -- I've been informed that the jury
20 has a verdict -- received.

21 I have on the motion presently pending with the Court,
22 I'm going to deny the motion. I do not believe that at
23 this time there has been a sufficient showing.

24 Let's bring the jury back.

25

(Jury enters at 11:40 a.m.)

THE COURT: Madam Foreperson, ladies -- the bailiff informs me the jury's reached a verdict; is that correct?

THE FOREPERSON: Yes, sir.

THE COURT: If you will give that verdict form to the bailiff.

All right. The -- if you would, would the defendant please rise and will the clerk please publish the verdict forms.

CLERK OF COURT: State of South Carolina, County of Chesterfield. *The State vs. Malik Al-Shabazz, also known as Billy Lisenby* verdict form. As to the charge of assault and battery with intent to kill Robert Winburn, we the jury find the defendant not guilty. That's case no. 08-GS-13-350. April the 25th, Foreperson, Deborah O'Neal.

State of South Carolina, County of Chesterfield. The State vs. Billy Lisenby, Jr., also known as Malik Al-Shabazz, verdict form. Case no. 08-GS-13-352, we the jury find the defendant for the charge of assault to kill Wayne Jordan, guilty. April the 24th, 2008, Deborah O'Neal, foreperson.

State of South Carolina, County of Chesterfield. The State vs. Billy Lisenby, Jr., also known as Malik Al-Shabazz, verdict form. Case No. 08-GS-13-351. As to the charge of failure to stop for a blue light, we the jury

1 find the guilty -- the defendant guilty. Foreperson
2 Deborah O'Neal, April the 24th, 2008. The Honorable Mark
3 Hayes, presiding judge.

4 Madam Foreperson, is still your verdict.

5 THE FOREPERSON: (No audible response.)

6 CLERK OF COURT: Is this still your verdict?

7 THE FOREPERSON: Yes.

8 THE COURT: All right. Anything from the State or
9 Defense prior to dismissing the jury?

10 MR. JOYNER: Nothing from the State, Judge.

11 MS. RIVERS: No, Your Honor.

12 THE COURT: Thank you. You may be seated.

13 Ladies and gentlemen, I want to thank you for your
14 work this week. I've watched you this week. Y'all all
15 paid very close attention to the evidence, the lawyers, and
16 also to me during the course of this trial. We all
17 appreciate your work. Frequently I have heard that next to
18 service in the military in war time, jury service is the
19 highest call that a citizen can do for their country and
20 for their community. So I want to thank you on behalf of
21 all citizens of this community for your work this week.

22 The Clerk of Court has some pay for you.
23 Unfortunately it's not anywhere near an appropriate amount.
24 She will be mailing it to them?

25 CLERK OF COURT: Yeah. If they'll stop by my office,

1 it's ready -- should be ready.

2 THE COURT: If you would, the bailiff will show you
3 where the office is for you to pick up that check. Again,
4 it's not anywhere near what probably the citizens and I owe
5 you for your work. And again, I want to thank you.

6 I told you don't have any discussions with anybody
7 about anything involving the case? Well, now you are free
8 to have as much discussion as you want with anyone about
9 anything involving this case. I will also let you know,
10 though, that if anyone does approach you and either you
11 feel like not speaking with them and they want to talk to
12 you, or you actually start engaging in conversations with
13 them, and then you decide, well, this is getting to be a
14 little bit much for me. It's getting to be a harassment
15 for me. You may tell them to stop, and if they don't,
16 contact the clerk of court, the sheriff's -- or the
17 sheriff's office, and we will see to it that that type of
18 contact with you ceases immediately.

19 Again, you're more than free to stay with us for the
20 rest of the day. But I can definitely understand your
21 desire to if you don't want to. So if you want, you can
22 follow the bailiff and she will take you back. Thank you.

23 (Jury exits at 11:46 a.m.)

24 THE COURT: You might want to get the bailiff to get
25 the foreperson. She's got to sign the indictments.

1 THE COURT: Any reason -- any reason why we should not
2 proceed with sentencing?

3 MR. JOYNER: No, sir.

4 MS. RIVERS: No, Your Honor.

5 THE COURT: All right. (To Mr. Lisenby) Come on
6 around, sir.

7 (Sotto voce discussion between Mr. Joyner,
8 Ms. Rivers, and the defendant.)

9 THE COURT: Is the victim, Wayne Jordan --

10 MR. JOYNER: Yes, sir.

11 THE COURT: -- present?

12 MR. JOYNER: He's not.

13 THE COURT: All right. Does he want to be?

14 MR. JOYNER: Judge, I think it's okay. He had to go
15 to a -- to a U.S. Attorney hearing. Some Federal stuff in
16 Columbia.

17 THE COURT: He didn't request --

18 MR. JOYNER: No, no, sir. He didn't.

19 THE COURT: All right.

20 MR. JOYNER: I -- I can speak for him.

21 THE COURT: Okay. All right. Mr. Lisenby, I'll
22 remind you that remain under oath. All right?

23 MR. LISEBY: Right.

24 DIRECT EXAMINATION BY THE COURT:

25 Q Mr. Lisenby, I know you've probably given me some of

1 this information already through the testimony that you
2 presented during the trial. So I apologize if I'm asking
3 you questions you've already answered -- stated to me. But
4 I need to be sure that I'm -- I have the right information
5 myself.

6 How old are you, sir?

7 A 32.

8 Q How far did you go in school?

9 A Twelfth grade.

10 Q Did you get a diploma?

11 A Yes, sir.

12 Q And I believe you are single?

13 A Yes, sir.

14 Q Do you have children?

15 A No, sir.

16 Q And prior to your arrest, did you have a job?

17 A No, sir.

18 Q How were you supporting yourself financially?

19 A Disability.

20 Q You talking about from the Social Security
21 Administration?

22 A Yes, sir.

23 Q Did you -- were you ever employed?

24 A Years ago.

25 Q What kind of work did you do?

1 A I worked at Pepsi Cola plant in Cheraw.

2 Q Ever served in the military?

3 A No, sir.

4 Q And when you initially got arrested, how long a time
5 were you in jail before you got out on bond?

6 A March 4th to April 9th.

7 THE COURT: All right. (To Mr. Joyner) Yes, sir.

8 MR. JOYNER: Judge, I'd like to first talk about his
9 prior record. In 1993, he was convicted of pointing a
10 firearm for two counts and also robbery. He was given a
11 sentence in accordance with the Youthful Offender Act.

12 In 1994, there was a simple assault and battery. Also
13 in 1994, there was a possession of -- of a schedule 1 or 2,
14 first offense. He received two years.

15 In 1995, there was a common law robbery which he
16 received nine years for. Also a possession of cocaine that
17 was run concurrent with that nine years. And a possession
18 of a firearm by a convicted felon, which was also run
19 concurrent with those charges.

20 And in North Carolina, there was a charge for murder,
21 and he was found guilty to a lesser degree; involuntary
22 manslaughter. And he was confined for 25 to 30 months.

23 THE COURT: When was that?

24 MR. LISEBY: 1995.

25 MR. JOYNER: The disposition date was 10/7/96, Judge.

1 MR. LISEBY: I was convicted for that in '95.

2 MR. JOYNER: Your Honor, this record with the -- the
3 grossness of the tape and what he put the -- many law
4 enforcement officers through, the danger that he put
5 everyone else through, again, our request would be the same
6 as it was when our initial offer was made to him at his
7 initial appearance. We would ask for the maximum. We
8 would ask for 10 years on the assault with intent to kill,
9 three years on the failure to stop for a blue light, and
10 ask that this court run them consecutively, please.

11 THE COURT: Anything from the victim?

12 MR. JOYNER: No, sir. Officer Jordan is -- like I
13 said, he is in Columbia giving a statement. He's -- he was
14 actually compelled by subpoena to be there, and there's no
15 problem with me speaking on his behalf. He -- he certainly
16 concurs with the State's request.

17 THE COURT: Anything else from the State?

18 MR. JOYNER: No, sir.

19 THE COURT: Yes, ma'am.

20 MS. RIVERS: Your Honor, I don't remember when the
21 prosecution has asked for a consecutive sentence. What
22 they're trying to do here is get the time for the charge
23 that he was found not guilty on. And I do believe had the
24 jury understood that in the case of Mr. Jordan, the only
25 reason the defendant swerved toward Mr. Jordan was because

1 his passenger was fighting him over the steering wheel.
2 Buy it -- it appears that the prosecution is determined to
3 try to get him as much time as they can. In any other
4 event, it would be a concurrent sentence.

5 And again, I would beg the Court to consider the jury
6 acquitted him on that one AWIK. And I do believe the only
7 reason he was convicted of this one is because his car
8 swerved, which was not his fault. It was his co-defendant,
9 who I could not get to the court to testify to that fact,
10 because the short length of time I had to even get Mr.
11 Lisenby here. And Mr. Coit could not get away from his job
12 to be in court. He would have backed him up on that.

13 In any event, the fact have come out. And as I stated
14 later, he was -- he was speeding. This is a long-going
15 thing between law enforcement and Mr. Lisenby. They don't
16 like him because he stands up for his rights. When his
17 rights are violated, he -- he fights back. Every time he
18 steps out his door he is followed for one reason or
19 another. And this is one of those times. And I admire
20 him. I admire him because he has -- he has the audacity to
21 do what all of us should do when we're mistreated, and
22 that's to fight back.

23 Most people won't do it. They just go along with law
24 enforcement and allow them to do whatever they wish. He
25 fights back, and because of that he is constantly

1 suffering. Can't walk out the door without being followed
2 or remarks made to him. And I feel sure that he will
3 continue to do that, because he has that type of
4 personality.

5 As -- as for the other charges, I talked with him
6 about those charges. He had explanations for them, but I
7 just asked him if he wanted to explain those to the Court,
8 and he said "no."

9 But in any event, his last charge was in 1995. I have
10 been to magistrate's court with him. Anytime he's arrested
11 I volunteer my services and go to him -- with him to
12 magistrate's court. And he's had at least two charges this
13 year that have been dismissed, because he took counsel with
14 him and fought.

15 And again, this time I consider him a very good
16 friend, because I have a lot of admiration for him. I wish
17 -- I only wish there were more people around here like him.

18 THE COURT: Thank you, ma'am.

19 Mr. Lisenby, is there anything that you would like to
20 say or would like for me to know or consider?

21 MR. LISENBY: No, sir. I just -- I respect the
22 Court's decision. I respect it. I know I understand I
23 have my appeal rights. And respect Mr. Joyner. No hard
24 feelings for anyone. Whatever you give me, I have -- I
25 have to accept today.

1 THE COURT: On indictment 2003 -- I'm sorry -- 2008-
2 0352, the sentence of the Court is that the defendant will
3 be confined to the State Department of Corrections for a
4 period of 10 years. That will run consecutive with the
5 charge under 0351, which is that -- be the defendant will
6 be committed to the State Department of Corrections for a
7 period of three years. He'll receive credit on both of the
8 charges from March the 4th, 2008, to April 9, 2008. I've
9 indicated that on both of the sentencing sheets.

10 I have a -- I had a lot of respect for the way the
11 jury conducted themselves in this trial. I believe that
12 the manner in which they issued their verdict reflects that
13 they gave very high regard for the facts as relates to all
14 three of these charges. And followed my instructions that
15 they are to look at all three of the charges.

16 I myself viewed the video tapes when the jury viewed
17 them, and do feel like this was, based on the facts that I
18 viewed, the sentences are justified in these cases.

19 Good luck to you sir.

20 MR. LISEBY: All right.

21 MR. JOYNER: Thank you, Judge.

22 MS. RIVERS: Thank you, Your Honor.

23 -- END OF TRANSCRIPT OF RECORD --

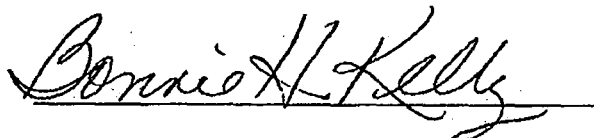
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CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE ELEVENTH 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 HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR CHESTERFIELD COUNTY, SOUTH CAROLINA, ON THE 21ST, 24TH AND 25TH DAYS OF APRIL, 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

A handwritten signature in cursive script, reading "Bonnie H. Kelly", written over a horizontal line.

BONNIE H. KELLY

COLUMBIA, SOUTH CAROLINA

JULY 27TH, 2008

RECEIVED
Case 5C

The South Carolina Court of Appeals 9/3/2008

The State,

Respondent,

WINSTON DEAN, JR.
et al.

v.

Billy Lee Lisenby, Jr., AKA Malik Al
Shabazz,

Appellant.

The Honorable J. Mark Hayes, II
Chesterfield County
Trial Court Case No. 2008-GS-13-00351

ORDER of DISMISSAL AND REMITTITUR

The above entitled case is pending on appeal in this Court. It appears that Appellant, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. This case is REMITTED to the Clerk of Court for Chesterfield County.

KAYE G. HEARN, CHIEF JUDGE

BY *Kenneth A. Chisholm*
Clerk

Columbia, South Carolina

9/2/2008

Original to: The Honorable Faye L. Sellers

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Salley W. Elliott
The Honorable J. Mark Hayes, II

State of South Carolina
County of Chesterfield

In the Court of General Sessions

Indictment # 2008-GS-13-0352, 2008-GS-13-0351

A True Copy Attest

Faye J. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

State of South Carolina

Vs.

ORDER

Billy Lee Lisenby, Jr.

This matter is before the Court on the motion of the Defendant, Billy Lee Lisenby, *pro se*, to reconsider his sentence. He was sentenced for Failure to Stop for a Blue Light and Assault With Intent to Kill on April 25, 2008 by the Honorable Mark Hayes II. He challenges the ten (10) year sentence for AWIK, contending that the Omnibus Crime Reduction and Sentencing Reform Act (Bill 1154-2009-10) changes the crime of AWIK to Assault and Battery, 2nd Degree with a maximum punishment of three (3) years.

Initially the Court would note that the generally Court has no jurisdiction to reconsider or amend a sentence more than ten (10) days after its imposition. Rule 29(a), SCRCrimP. A timely made motion would be heard by the trial judge. The only exception the ten (10) day rule is a motion for new trial based on after discovered evidence. Rule 29 (b), SCRCrimP.

The exact grounds of Lisenby's motion is unclear, except that he asserts he is entitle to resentencing because he contends the new law affects his sentence and entitles him to a new sentence. He also contends he should have been charged with reckless homicide rather than AWIK and that the sentence is unduly harsh.

Lisenby's positions are without merit. His contention that he was improperly charged or that his sentence was unduly harsh could and should have been challenged by a timely appeal, motion, or PCR.

182
JLK

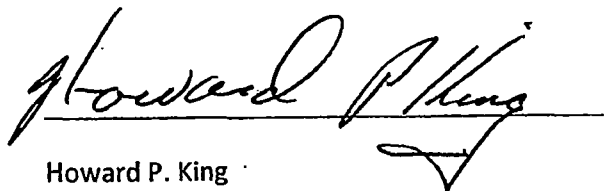
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CLERK OF COURT
CHESTERFIELD COUNTY, SC

The contention that he is entitled to resentencing due to a change in the law is incorrect. Absent a controlling statute, the common law requires that a convicted criminal receive the punishment in-effect at the time he is sentenced. *State v. Varner*, 310 S.C. 264, 423 S.E.2d 133 (1992). Here the common law at the time the defendant's sentence was imposed was up to ten (10) years for Assault with Intent to Kill. *State v. McKellar*, 85 S.C. 236, 67 S.E. 314 (1909). Furthermore, the Omnibus Crime Bill contains a savings clause which would make the old law controlling.

Accordingly, it is therefore ORDERED;

That the Motion to Reconsider the sentence is DENIED.

AND IT IS SO ORDERED!

A handwritten signature in dark ink, appearing to read "Howard P. King", is written over a horizontal line.

Howard P. King

Administrative Judge (GS); Fourth Judicial Circuit

Sumter, S.C.

September 15, 2011

WITNESSES

Wayne Jordan
Chesterfield Sheriff Dept.

Wayne (S)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

WITNESS:

C.C.C. PLS. AND G.S.

ARREST WARRANT #:
H708901

Arrested on March 04, 2008

ACTION OF GRAND JURY

True Bill

Foreman: *04-15-2008*
Dale Chalk
Grand Jury

VERDICT

Foreman

Rebecca Ornel
Petit Jury

Date:

4-25-08 *not guilty*

DOCKET #: 08GS13-0350

THE STATE OF SOUTH CAROLINA

County of Chesterfield

COURT OF GENERAL SESSIONS

Term: April, 2008

THE STATE

vs.

Malik Al-Shabazz

INDICTMENT FOR

0768

ASSAULT WITH INTENT TO KILL

17-25-30

A True Copy, Attest

Loye S. Liller

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)
)
County of Chesterfield) INDICTMENT #08GS13-0350

At a Court of General Sessions, convened on April 21, 2008
the Grand Jurors of Chesterfield County present upon their oath:

COUNT: ASSAULT WITH INTENT TO KILL
17-25-30

That Malik Al-Shabazz in the County of Chesterfield on or about March 04, 2008, did attempt to hit Deputy Robert Winburn, with intent to kill him, while Winburn was in his patrol vehicle assisting in a vehicle chase when the defendant came into Deputy Winburn's line of travel with his Ford Taurus and did fail to stop for a police blue light and siren in violation of Section 17-25-30 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 cases made and provided.

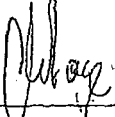
SOLICITOR:

Jaybridge

A True Copy, Attest
Layne S. Sellers
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

WITNESSES

JS Vaughn
Chesterfield Sheriff Dept.




After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

WITNESS:

C.C.C. PLS. AND G.S.

ARREST WARRANT #:
H708903

Arrested on March 04, 2008

ACTION OF GRAND JURY

True Bill

04-15-2008

Foreman:

Dale Cheek
Grand Jury

VERDICT

Foreman:

Dolores O'neal
Petit Jury

Date:

4-25-08 guilty

DOCKET #: 08GS13-0351

THE STATE OF SOUTH CAROLINA
County of Chesterfield

COURT OF GENERAL SESSIONS

Term: April, 2008

THE STATE

vs.

Malik Al-Shabazz

I N D I C T M E N T F O R

0065

FAILURE TO STOP FOR A BLUE LIGHT/SIREN

(56-5-750)

A True Copy, Attest

Loye S. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

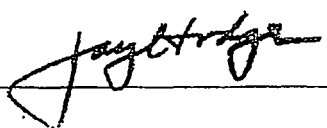
STATE OF SOUTH CAROLINA)
) INDICTMENT #08GS13-0351
County of Chesterfield)

At a Court of General Sessions, convened on April 21, 2008
the Grand Jurors of Chesterfield County present upon their oath:

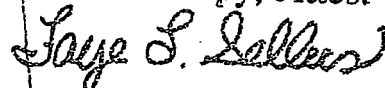
COUNT: FAILURE TO STOP FOR A BLUE LIGHT/SIREN
(56-5-750)

That Malik Al-Shabazz in the County of Chesterfield on or about March 04,
2008, violate Section 56-5-750 of the Code of Laws of South Carolina (1976), as
amended, in that while operating a motor vehicle upon the public streets or
highways in the State of South Carolina, the said defendant did fail to stop
when signaled to do so by means of a siren or flashing light.

Against the peace and dignity of the State, and contrary to the statute
in such cases made and provided.

SOLICITOR: 

A True Copy, Attest



CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

WITNESSES

Wayne Jordan
Chesterfield Sheriff Dept.

[Signature] 5

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

WITNESS:

C.C.C. PLS. AND G.S.

ARREST WARRANT #:

H708902

Arrested on March 04, 2008

ACTION OF GRAND JURY

True Bill

04-15-2008

Foreman:

Dale Creek
Grand Jury

VERDICT

Foreman:

Deborah Oneal
Petit Jury

Date:

4-25-08 *not guilty*

DOCKET #: 08GS13-0352

THE STATE OF SOUTH CAROLINA

County of Chesterfield

COURT OF GENERAL SESSIONS

Term: April, 2008

THE STATE

vs.

Malik Al-Shabazz

I N D I C T M E N T F O R

0768

ASSAULT WITH INTENT TO KILL

17-25-30

A True Copy Attest

Faye J. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

FILED
CLERK OF COURT
2008 JUN 21 AM 9 42

STATE OF SOUTH CAROLINA)
)
 County of Chesterfield)

INDICTMENT #08GS13-0352

A True Copy Attest
 J. J. O. J. J. J.
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

At a Court of General Sessions, convened on April 21, 2008, the Grand Jurors of Chesterfield County present upon their oath:

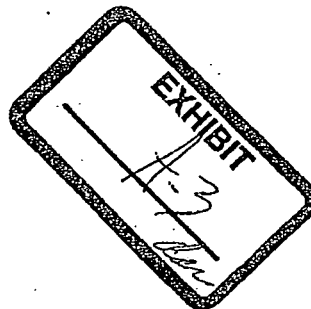
COUNT: ASSAULT WITH INTENT TO KILL
 17-25-30

That Malik Al-Shabazz in the County of Chesterfield on or about March 04, 2008, did attempt to hit Sgt. Wayne Jordan, with intent to kill him, with his brown Ford Taurus while failing to stop for another officer who signaled the defendant to stop by flashing a blue light and siren, and defendant did come into Sgt. Jordan's line of travel in violation of Section 17-25-30 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 cases made and provided.

SOLICITOR: _____

A True Copy Attest
 J. J. O. J. J. J.
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC



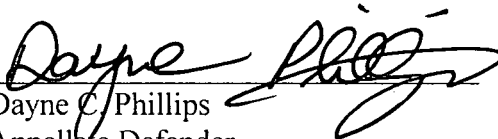
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 CLERK OF COURT
 2008 JAN 21 AM 9 41

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 18th, 2012


Dayne C. Phillips
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chesterfield County

Howard P. King, Circuit Court Judge

 ORIGINAL

RECEIVED
JUL 18 2012
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BILLY LEE LISENBY,

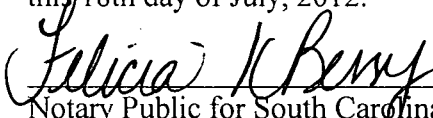
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at 18th this th day of July, 2012.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 18th day of July, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.