

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Spartanburg County  
J. Derham Cole, Circuit Court Judge

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AUG 04 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ROBERT ODELL BROWN,

APPELLANT

APPELLATE CASE NO. 2013-001411

MOTION TO UNSEAL EXHIBIT

Appellant moves this Court to unseal an exhibit to allow for inspection of the exhibit by Appellant's counsel and a representative of the Attorney General to determine whether any issue relating to the exhibit should be filed as part of Appellant's direct appeal.<sup>1</sup> In support of Appellant's motion, Appellant provides this Court with the following exhibits: Exhibit #1, Appellant's Motion to Compel; Exhibit #2, Appellant's Memorandum in Support of his Motion to Compel; Exhibit #3, transcript of the hearing on the motion on May 9, 2013; Exhibit #4, redacted trial transcript pages 1, 51-59, 100-143; and Exhibit #5, redacted email from Judge Cole's law clerk, Lauren Ward. Appellant has discussed this matter with Salley Elliott, Esquire of the Attorney General's Office. Ms. Elliott does not consent to the unsealing of the documents.<sup>2</sup>

<sup>1</sup> Appellant has moved for transport of the sealed items to the Court of Appeals, and that matter will be handled separately from the unsealing of the items.

<sup>2</sup> Ms. Elliott has consented to the transportation of the sealed items pending resolution of the motion to unseal.

Appellant was charged with failure to stop for a blue light, resisting arrest with the use of a deadly weapon, attempted murder, and possession of a weapon during the commission of a violent crime. Prior to trial, Appellant moved to compel disclosure of potential impeachment evidence. Exhibit #1 (motion to compel). Specifically, Appellant moved for portions of the personnel records of Brad James, Jason Bryant, and Lorin Willaims containing impeachment evidence as those officers were involved in Appellant's arrest. In fact, James was the officer allegedly shot by Appellant. Appellant also filed a memorandum in support of his motion. Exhibit #2 (memorandum).

On May 9, 2013, the Honorable J. Derham Cole heard the motion. Judge Cole took the matter under advisement. Exhibit #3 (transcript from May 9, 2013). Subsequently, Judge Cole ordered the prosecutor to obtain the files, review them, and provide any items subject to discovery to Appellant. After reviewing the files, the prosecutor submitted several items to Judge Cole for an in camera review. Judge Cole reviewed the items and determined the items were not subject to disclosure. Exhibit #4 (Trial transcript page 52, lines 1-13). However, Judge Cole placed the items under seal for review on appeal. Judge Cole has maintained custody and control of those items under seal in his chambers. Exhibit #4 (Trial transcript page 53, lines 12-17). Appellant has confirmed that Judge Cole continues to possess the sealed items. Exhibit #5 (redacted email from Judge Cole's law clerk).

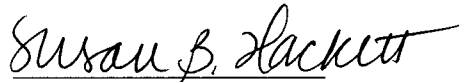
As expected, Brad James was the prosecution's chief witness. James claimed Appellant shot him during a foot chase. James further claimed that after being shot, he fired at his assailant nine times. Appellant was shot that evening. Some evidence in the record indicated James was aggressive and may have shot Appellant prior to James being shot. Additionally, James testified to many facts not contained within his written report. His credibility of was of the greatest importance. Also, his prior record of aggressiveness or use of force was important to Appellant's defense. Exhibit #4 (Trial transcript pages 100-143). Jason Bryant and Lorin Williams were key witnesses

for the prosecution as well due to their participation in the investigation and subsequent arrest of Appellant.

In order to determine whether to raise the issue concerning disclosure in his brief, Appellant needs to review the documents to determine whether such an issue has merit. It is in the best interest of all parties to have Appellant's counsel review the documents prior to deciding whether to raise the issue on appeal. Raising a clearly non-meritorious issue wastes the time of all parties involved.

Appellant respectfully requests the sealed documents be unsealed for inspection and review by Appellant's counsel and a representative of the Attorney General's Office. Further, Appellant respectfully requests the timelines for filing the initial brief of Appellant and designation of matter be held in abeyance pending resolution of this motion.

Respectfully submitted,



Susan Barber Hackett  
Attorney for Appellant

August 4, 2014

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

ROBERT ODELL BROWN,

APPELLANT


APPELLATE CASE NO. 2013-001411

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Motion to Unseal Exhibit in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, S.C. 29201, this 4th day of August, 2014 and Robert Odell Brown #296975, Tyger River Correctional Institution at 200 Prison Road, Enoree, South Carolina 29335-9308.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 4th day of August, 2014.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 30, 2022.

# Exhibit 1

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF GENERAL SESSIONS  
Indictment No. 2012-GS-42-0358, 2012-GS-42-0359,  
2012-GS-42-0360

The State )  
v. )  
Robert Odell Brown, )  
Defendant. )

**MOTION TO COMPEL  
DISCLOSURE OF POTENTIAL  
IMPEACHMENT EVIDENCE**

**TO: BARRY J. BARNETTE, SOLICITOR, SEVENTH JUDICIAL CIRCUIT:**

YOU WILL PLEASE TAKE NOTICE THAT the undersigned Attorney for the Defendant will move before the Presiding Judge on May 9, 2013, at 9:00 a.m. or as soon thereafter as this matter may be heard, for an Order directing that the above-named Solicitor to reveal and disclose any information contained in the personnel files, internal affairs files, and any other evidence of prior conduct of Brad James, Jason Bryant, and Lorin Williams which may demonstrate their character of credibility and which may be favorable to the Defendant.

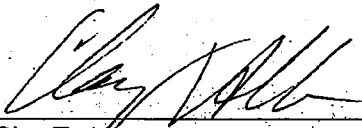
This motion is based on *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Bagley*, 473 U.S. 667 (1985); and *Brady v. Maryland*, 373 U.S. 83 (1963).

This motion is based upon the following facts:

1. The Defendant, Robert Odell Brown, is charged with Attempted Murder, Assaulting a Police Officer while Resisting Arrest, and Failure to Stop for Police Office, which is alleged to have occurred on or about November 6, 2011. The State alleges that the Defendant shot Deputy Brad James after the Defendant failed to stop and while resisting Deputy James's attempt to arrest him.
2. After the Defendant's arrest, he is alleged to have made certain statements to investigators Jason Bryant and Lorin Williams. None of the interviews with investigator Bryant and Williams were recorded by audio tape or video tape.

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SPARTANBURG COUNTY  
MAY 9 2013

- #2
3. In investigating this case, the undersigned has asked the Solicitor to provide the undersigned the portions of the personnel records of Brad James that would contain information concerning Mr. James's credibility. The Solicitor has refused to provide this information absent an order of the Court.
  4. The undersigned believes that he needs access to the personnel records of the above-named officers in order to investigate their credibility. To a certain extent, the basis of the State's case against the Defendant on the above-listed charges will be based on the testimony of the above-listed officers. If the Defendant is denied the access to the personnel records, internal affairs records, training records, and other evidence in the possession and custody of the Sheriff's Office and/or Spartanburg Department of Public Safety, then the Defendant will be denied the access to favorable information and denied the ability to adequately investigate and/or present the Defendant's case.

  
Clay T. Allen  
Circuit Public Defender  
336 North Church Street, Suite 3000  
Spartanburg, South Carolina 29303  
(864) 596-2561

May 6, 2013  
Spartanburg, South Carolina

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M. HOPE BLACKLEY

# Exhibit 2

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF GENERAL SESSIONS  
Indictment No. 2012-GS-42-0358  
2012-GS-42-0359, 2012-GS-42-0360

The State of South Carolina, )  
 )  
vs. )  
 )  
Robert Odell Brown, )  
 )  
Defendant. )  
\_\_\_\_\_ )

DEFENDANT'S MEMORANDUM IN  
SUPPORT OF MOTION TO COMPEL  
DISCLOSURE OF POTENTIAL  
IMPEACHMENT EVIDENCE

To supplement the Defendant's oral argument, which was made at the hearing on the Defendant's Motion to Compel Disclosure of Potential Impeachment Evidence on May 9, 2013, this memorandum is submitted for the Court's consideration. As the Court will recall, the Defendant has moved for an order directing the Solicitor to reveal and disclose any information contained in the personnel files, internal affairs files, and any other evidence of prior conduct of Brad James, Jason Bryant, and Lorin Williams which may demonstrate their character for credibility and which may be favorable to the Defendant.

The undersigned defense attorney has been informed that at least one of the above-named officer, Brad James, has been disciplined in at least one of his employments with law enforcement agencies. The defense attorney is seeking information which may be contained in his personnel files and which may either reflect on his lack of credibility or may lead to other admissible evidence which may reflect on his lack of credibility. Because he was previously employed by the City of Spartanburg Department of Public Safety and because he is currently employed with the Spartanburg County Sheriff's Office, his personnel files are in the possession of agencies for the State of South Carolina. Deputy James is expected to be the only prosecution witness who will testify about the incident which led to the Defendant's charges of Attempted Murder and Resisting

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Arrest. Furthermore, the undersigned defense attorney seeks information which reflects on the credibility of Spartanburg County Sheriff's investigators Jason Bryant and Lorin Williams because they interrogated the Defendant without recording the interrogation or interview by either audiotape or videotape. Any statement which they claim was made by the Defendant, therefore, is based solely upon their testimony; therefore, their credibility will become an issue for the jury to determine.

The United States Supreme Court in *Brady v. Maryland*, 373 U.S. 83 (1963), required the prosecution to disclose to the defense information which is both favorable to the defendant and "material to either guilt or to punishment." In *Giglio v. United States*, 405 U.S. 150 (1972), the Supreme Court extended the rule to include impeachment evidence as well. The Court stated, "When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within the general rule [of disclosure]." In *United States v. Bagley*, 473 U.S. 667 (1985), the Court stated that "a constitutional error occurs... only if the evidence is material in the sense that its suppression undermines confidence in the outcome of the trial." It is interesting to note that in *Giglio*, the evidence withheld from the defense was a prosecutorial promise of leniency to a cooperating co-conspirator who testified for the Government. Also, in *Bagley*, the evidence withheld from the defense was payment to undercover agents for the Government. All of this evidence dealt with bias or interest of a prosecution witness, which directly related to their credibility.

In *Kyles v. Whitley*, 514 U.S. 419 (1995), the Court again ruled that the prosecutor's failure to disclose potentially impeachment evidence to the defense warranted a new trial. In reaching its conclusion, the Court stated that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police."

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SOUTH CAROLINA

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This statement places on the prosecution the duty to reasonably discover evidence favorable to the defense and to disclose it.

In the case at bar, the Defendant has specifically requested information which is contained the personnel files and other department records of three law enforcement officers, who will testify in the State's case in chief. Although the Solicitor may not have the requested information in his possession, this information is in the possession of law enforcement agencies, which are agents of the State or prosecution. Furthermore, the Solicitor has declined the Defendant's request to seek out this information and to allow the Defendant's attorney to review the records for the information.

The requirement of *Kyles* appears to require the State to learn of the favorable evidence, especially since the defense has made a specific request for that information.

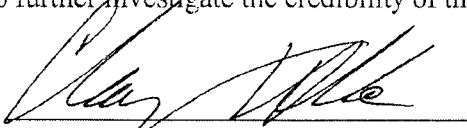
*PA*  
*H3*  
In his oral argument, the Solicitor appeared to be concerned with the burden placed on the State in this or future cases if similar requests become routine. This argument attempts to seek an exception to the *Brady*, *Giglio*, *Bagley*, and *Kyles* requirements on a theory of convenience to the State. This has never been a concern of the Supreme Court. The inquiry of these cases have been whether "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.

During oral arguments, the Court asked for the undersigned attorney's reasons for believing that favorable evidence existed in the personnel files and what type of information the undersigned expected to receive. Although it is difficult to predict, especially where access has been denied, what is expected, the undersigned tried to explain that he had heard from some persons about the reputation of Officer James in making arrests and stopping others. Since that oral argument, the undersigned has been provided several documents involving the discipline and termination of the Officer James from the Spartanburg Public Safety Department. These documents were provided to

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another attorney, whose client had obtained the documents from yet another individual who had, apparently, received the documents from some source. The documents, copies of which are being provided to opposing counsel, indicate that Officer James was terminated from the Department of Public Safety in 2008, in part, for violating the departmental policies for honesty. It is therefore even more important that the undersigned attorney be allowed to review the personnel, departmental, and internal affairs files of the officer in order to determine the legitimacy of the document the undersigned has received and to further investigate the credibility of this witness.

#4



Clay T. Allen  
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Seventh Judicial Circuit Public Defender Office  
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(864) 596-2561

June 7, 2013  
Spartanburg, South Carolina

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# Exhibit 3

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STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG ) IN THE COURT OF GENERAL SESSIONS

The State, )  
-vs- ) TRANSCRIPT OF RECORD  
Robert O. Brown, ) 2012-GS-42-0359-0360  
Defendant. ) May 9, 2013  
Spartanburg, South Carolina

B E F O R E :  
HONORABLE J. DERHAM COLE, JUDGE

A P P E A R A N C E S :  
BARRY JOE BARNETTE, ESQUIRE  
Attorney for the State  
CLAY ALLEN, ESQUIRE  
Attorney for the Defendant

Linda D. Moffitt  
Circuit Court Reporter

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INDEX

Motion -- page 2.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: Robert Odell Brown.  
2 Mr. Allen, this is your motion to compel disclosure of  
3 evidence?

4 MR. ALLEN: Yes, Your Honor, it is.

5 THE COURT: Okay.

6 MR. ALLEN: Essentially, Your Honor, we're seeking  
7 evidence from the personnel files, internal affairs files  
8 and any other evidence of prior conduct of Brad James,  
9 Jason Bryant and Lorin Williams which may demonstrate their  
10 character of credibility which may be favorable to the  
11 defendant in his case.

12 I've spoken with the solicitor again a few minutes  
13 ago. It's my understanding that their position is they --  
14 and I believe the sheriff's department's position is --  
15 that they oppose my being able to review, inspect and look  
16 into personnel files or information which may relate to the  
17 credibility of these particular witnesses.

18 I've indicated these particular witnesses. There's a  
19 number of officers involved in this case, but from my  
20 discussions with my client -- and I don't really want to  
21 get into the details, what my client had to say if the  
22 Court please, however we do take issue with certain  
23 material facts related by the officers, these particular  
24 officers.

25 Mr. James is the -- from what I understand about the

1 case -- the only witness the state has to call to testify  
2 about the specific conduct which has led rise to the  
3 charges of my client where he is alleged to be the victim,  
4 specifically the charges concerning the resisting arrest  
5 and the attempted murder.

6 Secondly, investigators Bryant and Williams were the  
7 officers who interrogated my client. There was no  
8 recording, audio or otherwise, of this particular  
9 interrogation.

10 And, again, we question some of the information  
11 contained in their writeups of what my client -- or what  
12 they did, what my client is alleged to have said.

13 I'm basically trying to investigate my client's case,  
14 and I'm trying to determine if there's any information in  
15 these files that may indicate these officers have had  
16 previous writeups, disciplinaries or any other actions that  
17 may relate to their credibility which may lead us to  
18 additional evidence which may be admissible evidence in the  
19 case as, again, as it relates to the officers' credibility.  
20 And I ask the Court to allow me or help us devise some  
21 other fashion where I can seek this information out.

22 I have suggested that the solicitor and I can together  
23 look through these files with the solicitor, and if they  
24 want the county attorney involved -- I mean, me and the  
25 county attorney if they want the county attorneys involved

1 it's all right -- to review these files and see if we can  
2 agree as to the information which should be turned over to  
3 me as it relates to these officers' credibility if there is  
4 any.

5 I'm not looking for strictly personal information.  
6 I'm not trying to get the birthdates; I'm not trying to get  
7 dependents' information. I'm not trying to get any of that  
8 information.

9 I only look for information that may relate to the  
10 credibility and may lead us to admissible evidence that can  
11 be used in his -- in my client's case and in this  
12 particular case, which I understand is scheduled for the  
13 week of June 17th. And that's all I'm trying to do.

14 I don't -- my understanding is Mr. Barnette does not  
15 agree with that procedure, so I'm sort of a loss to  
16 determine what I can do to investigate my client's case.  
17 And I'm asking that they in some fashion be required to  
18 turn this information over to me.

19 THE COURT: Mr. Barnette.

20 MR. BARNETTE: Thank you, Your Honor.

21 Our position is, Your Honor, obviously we object to  
22 the motion.

23 First thing, these are personnel files of these  
24 individual officers. This is something that's their -- I  
25 mean, they're entitled to some confidentiality from that

1 standpoint.

2 I don't understand the relevance of it. He says  
3 potential evidence.

4 What stops us from on every case asking for the  
5 officers' personnel file on each one of them?

6 First thing, I wouldn't see how it would be relevant  
7 to any situation involved in this. And I -- and the Court  
8 probably knows the facts of the case, but Officer Brad  
9 James went to make a traffic stop of this individual. It's  
10 a failure-to-stop case. He catches up with the individual.  
11 The individual shot Brad James. Brad Jones also shot him.

12 There's D.N.A. evidence that shows that the defendant  
13 was at the scene. We have evidence, and we even have a  
14 witness, about how he escaped trying to leave the area and  
15 so forth. And he ran from the police in Virginia and was  
16 caught in a vehicle up there.

17 But the issue, we have, Your Honor, is first -- well,  
18 first thing, I don't even know what's in the personnel  
19 files because we don't keep them. Obviously, the county  
20 keeps their personnel files, and the city keeps theirs.  
21 But there has not been anything presented to this Court  
22 showing anything to be of any relevance out of these  
23 personnel files.

24 Even if there was something potentially that was  
25 relevant, the prejudicial effect of that would be huge

1 because it has nothing to do with this event. I don't see  
2 any connection between anything from their personnel file  
3 that could be matched to this.

4 I mean, I can state Rule 403, the relevance of the  
5 prejudicial effect.

6 Even if it is character evidence, under Rule 404 it's  
7 very strict liability how it could be used. And I don't  
8 see how it could be used if it was determined relevant from  
9 that standpoint, under what situation involving it, which  
10 let them impeach about prior instances that may have  
11 happened where somebody may have complained on them or  
12 something like that. I don't know if there's any in there  
13 or not.

14 But it's incredible to me that if this procedure is  
15 done that we're going to have this on every case involving  
16 a police officer or anybody -- or anybody. It could be  
17 anybody's personnel file, say, they want to come and look  
18 at my personnel file because I'm the prosecutor in the  
19 case.

20 When do we stop it? Unless they have some evidence to  
21 prove there is something that is relevant there or have  
22 some reason to look at, I would say I don't see how the  
23 motion can go forward.

24 THE COURT: Well, Mr. Allen, what is it that you --  
25 not that you necessarily expect to find -- but what is it

1 that you believe? what's the type of information that  
2 would be in a personnel file that you think would be  
3 admissible in the course of the trial for the purpose of  
4 attacking the credibility of the witnesses?

5 MR. ALLEN: Well, having never seen one it's hard for  
6 me to state specifically what's in it. what I'm looking  
7 for --

8 THE COURT: I know you don't know what's in it. But  
9 what I'm saying is what is the type of information that you  
10 might expect to find in one that would assist you in  
11 attacking the credibility of the witness.

12 MR. ALLEN: There may have been -- or possibly  
13 writeups concerning officers' falsifying reports in the  
14 past.

15 There -- there may be information in a case like this  
16 about excessive use of force in other cases in the past,  
17 because there is some discussion in this particular case  
18 about the arrest and about what happened during the course  
19 of the arrest that may lead one to or lead me to be  
20 concerned about use of force.

21 I have heard from a number of individuals that -- that  
22 they have heard that there have been indications that at  
23 least one of these officers -- Mr. James in particular --  
24 has been known to use excessive force.

25 I don't know if there's anything in his personnel file

1 about that, any counseling information or anything like  
2 that. That may become relevant in this particular case,  
3 and I believe it will be relevant.

4 And/but that's the kind of information I'm looking  
5 for, any information that deals with the officers  
6 falsifying information, or in this particular case also  
7 concerning Mr. James' possible excessive use of force.

8 Do I know what's in the personnel files? No, I don't.  
9 But if I can't look I'll never know if it's there. So in a  
10 way the state's objecting -- objection is hampering my  
11 ability to investigate the case.

12 It's my understanding, Your Honor, from the prior  
13 Supreme Court cases cited in the motion, Kyles v. Whitley,  
14 specifically United States vs. Bagley, that we'll have --  
15 that we have the right to investigate even credibility  
16 issues. And the state has a duty of course to turn over to  
17 us information that may be -- that may tend to exculpate or  
18 may tend to mitigate the punishment.

19 But, furthermore, it's my understanding through Bagley  
20 and Kyles that we have to have the ability to investigate  
21 and they have to -- it's my understanding that they should  
22 be turning that information over to us as well.

23 So without either one of us knowing what's in there,  
24 then neither one of us knows if they don't know if they're  
25 inadvertently hiding information from us. And I don't know

1 officer. Obviously, that's not been brought to the Court.  
2 None of this stuff has. I mean, it's pure hearsay.

3 The second thing is, Judge, they simply have an  
4 obligation -- any witness that we have, that we've got to  
5 go check their personnel files and we've got to go look  
6 them up to try to find any potential?

7 I mean, the way I understand Rule 5 and Brady is  
8 obviously we have that information through police  
9 investigations, through whatever. Obviously, we give that  
10 over to them, because he's saying it's our obligation to go  
11 check every witness, their background, their personnel  
12 files, as well as the stop.

13 I mean, common sense has got to take over at some  
14 point. I mean, you just keep researching and researching  
15 and researching.

16 I mean, we've got to check everything to see if  
17 there's any possible evidence? I mean, obviously brought  
18 to our attention or we -- before that, obviously we're  
19 under obligation to do that. But to investigate every  
20 potential witness, police officer or any witness, I don't  
21 think that's our obligation, and obviously we don't have  
22 the personnel files. They're handled by the company or the  
23 entity that's hired them employs them.

24 MR. ALLEN: I don't know about their obligation to on  
25 their own go out and investigate, but here I am asking.

1           There are many officers that were involved in this  
2 particular case. I'm asking for three. So I think I am  
3 trying to be as reasonable as I can under the  
4 circumstances.

5           And I'm asking, and I can't seem -- and I guess my  
6 concern is all I can do is ask and apply to the Court. And  
7 if the people who have the files are going to deny me that  
8 access, then I'm just being denied access to potentially --  
9 potential information that could assist my client in his  
10 defense, secondly.

11           And we're not talking about a private entity, Your  
12 Honor. We're talking about agencies of the State of South  
13 Carolina.

14           THE COURT: All right. I'll think about it and issue  
15 an order.

16           END OF REQUESTED TRANSCRIPT OF RECORD

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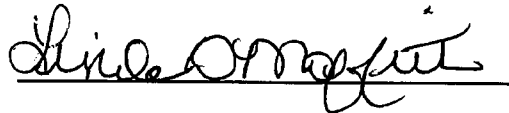
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 9th day of May 2013.

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

June 11, 2013



Linda D. Moffitt  
Circuit Court Reporter

# Exhibit 4

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF SPARTANBURG ) IN THE COURT OF GENERAL SESSIONS

3 The State, )  
4 -vs- ) TRANSCRIPT OF RECORD  
5 ) 2012-GS-42-358-360  
6 Robert Odell Brown and ) 2012-GS-42-324  
7 Shiquan Marquez Freeman, )  
8 Defendant. ) June 17 - 20, 2013  
9 ) Spartanburg, South Carolina

10 B E F O R E :

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury

12  
13 A P P E A R A N C E S :

14 BARRY JOE BARNETTE, ESQUIRE  
15 TIMI POULOS, ESQUIRE  
16 Attorneys for the State

17 CLAY T. ALLEN, ESQUIRE  
18 Attorney for Defendant Brown

19 ANDREW J. JOHNSTON, ESQUIRE  
20 Attorney for Defendant Freeman

21  
22 Linda D. Moffitt  
23 Circuit Court Reporter  
24  
25

1 do your own investigation or be exposed to any type of  
2 media coverage relating to the case.

3       Okay. So with that do have a good evening. Please  
4 report to your jury room at 9:30 in the morning, 9:30 in  
5 morning. Have a good afternoon.

6       (The following takes place outside the presence of the  
7 jury.)

8       THE COURT: All right. Now, let's address the issue  
9 of prior to today the defense has filed a motion to require  
10 the prosecutor to turn over personnel files of particular  
11 witnesses that are likely to be called during the trial of  
12 this case.

13       The solicitor objected to that disclosure, No. 1, on  
14 the ground that -- and y'all just correct me if I state  
15 anything incorrectly -- No. 1, on the ground that he  
16 doesn't have those records, they're not in his custody, he  
17 has no control over them, and therefore he cannot supply  
18 them to the defense even if he had them; and, secondly, it  
19 was the solicitor's position that there was nothing in the  
20 personnel file that would be admissible in evidence in this  
21 case or likely lead to admissible evidence.

22       So, over the weekend I instructed the solicitor to  
23 either obtain access to the personnel files of those  
24 witnesses or have the defense subpoena the custodian of  
25 those records and have those records brought to court.

1 I understand those files have been brought to court.  
2 At my request and direction the solicitor has reviewed the  
3 files in order to determine if in his opinion there is any  
4 information contained in those files that would be subject  
5 to disclosure pursuant to Brady vs. Maryland or Rule 5.

6 The solicitor has conducted that review.

7 There were two items that he submitted to the Court  
8 for an in-camera review that he out of an abundance of  
9 caution presented to me, because while he did not believe  
10 it was discoverable, it didn't have to be disclosed, it did  
11 not have to be provided to the defense, out of abundance of  
12 an caution he's presented it to me to see if I had a  
13 different view than what he had.

14 And so I have reviewed those particular documents, and  
15 I have also determined that they are not discoverable.  
16 They're not subject to disclosure pursuant to Rule 5 and/or  
17 Brady vs. Maryland and that the information if provided  
18 would not likely result in the finding of any other  
19 relevant information that might be used in the course of  
20 the trial.

21 Now, there was one sheet of paper which was taken from  
22 a personnel file in the custody of the sheriff's department  
23 and there were ten sheets of paper that were contained in  
24 the personnel file in the custody of the Spartanburg City  
25 Police Department.

1           My understanding is that seven of those sheets of  
2 paper are in the possession of the defense.

3           There are three sheets of paper that have not been  
4 provided to the defendant through counsel. One of those  
5 sheets is simply a letter that really has nothing to do  
6 with anything, sort of just an introduction of what's  
7 attached to it. And then the other two sheets of paper are  
8 matters contained in the personnel file, in a personnel  
9 file, but which I have reviewed and determined is not  
10 required to be disclosed pursuant to Rule 5 or Brady vs.  
11 Maryland.

12           So those items, and only those items that were  
13 presented to me for an in-camera review that are not in the  
14 possession of the defense, will be placed into an envelope  
15 and sealed and be held in the custody of the Court in the  
16 event that somewhere down the line that those items need to  
17 be reviewed by anyone.

18           But they will not be introduced in the trial of this  
19 case because I've determined that they're not relevant to  
20 anything and not likely to lead to any relevant information  
21 that would be admissible in the trial. So I think that  
22 covers that issue.

23           Is there anything else that needs to be added to that,  
24 Mr. Barnette?

25           MR. BARNETTE: No, sir, Your Honor.

1 THE COURT: Mr. Allen?

2 MR. ALLEN: In addition to what Your Honor has  
3 indicated, it was my understanding that -- well, I think  
4 Your Honor did say it -- that the seven documents that I  
5 have copies of are actually in the personnel file. I think  
6 Your Honor did say that.

7 THE COURT: That's true. The seven -- well, I don't  
8 know if I said that or not, but that is a fact.

9 The seven sheets -- the seven sheets of information  
10 that I reviewed that the solicitor provided me of the ten  
11 sheets of paper in a personnel file -- seven of those are  
12 in the possession of the defense. You have those. And  
13 those sheets that you have were contained in that personnel  
14 file. They are the same, the only difference being is that  
15 there are three additional sheets that you do not have that  
16 are contained in that personnel file. One of those is  
17 simply -- I can't really say how to describe it. It's just  
18 a letter -- basically, it's just a letter. It's not -- it  
19 doesn't relate to anything that relates to this case or any  
20 other case or investigation engaged in or participated in  
21 by the person whose personnel file was reviewed.

22 There are two sheets of paper that -- that relate to  
23 the individual whose personnel file was reviewed, but those  
24 sheets of paper do not relate to this case in any way, nor  
25 do they relate to any other case or any other investigation

1 for which that individual was involved. And so I  
2 determined that that information was not relevant to  
3 anything that -- which related to this case.

4 Those are the -- those documents you do not have and I  
5 have determined do not need to be disclosed.

6 MR. ALLEN: Yes, Your Honor. And while it's been  
7 possibly implied, but just so the record is clear, the  
8 documents, seven documents, that I do have were not  
9 provided pursuant to the in-camera review, but these are  
10 documents that I have received from a different source that  
11 was referred to but separately.

12 Of course part of my concern was whether or not they  
13 were, you might say, genuine copies and I think that -- and  
14 the solicitor did advise the Court that those copies are  
15 actually in the file.

16 THE COURT: Of course -- all right. And I've not  
17 reviewed your documents --

18 MR. ALLEN: Okay.

19 THE COURT: -- but Solicitor Barnette has.

20 MR. ALLEN: That's correct.

21 THE COURT: He's seen what you have, and he represents  
22 to me and to you that those documents that you have are  
23 actual copies of documents contained in that personnel  
24 file.

25 MR. ALLEN: Yes, sir. I was just trying to make it

1 clear that these were not documents that were provided to  
2 me pursuant to the review.

3 I think Mr. Barnette continues to disagree that I  
4 should be able to use them. And I don't know if the Court  
5 has actually ruled on whether or not the documents I have  
6 had may be used.

7 THE COURT: I have not ruled on that because I have  
8 not even reviewed those documents.

9 I only reviewed those documents that the solicitor  
10 related to me that you did not have in order to determine  
11 if they should be disclosed. I didn't review those  
12 documents that you do have.

13 That was -- that's something that you and the  
14 solicitor and I can discuss, about the admissibility of  
15 that if you contend there's information in those documents  
16 that you believe should be allowed during the trial of this  
17 case. But we've not made that determination yet. That is  
18 correct.

19 MR. ALLEN: Yes, sir. I believe that will largely  
20 depend upon testimony, as it's presented. But of course  
21 since I know the solicitor disagrees with the use or  
22 admissibility of that information, I will certainly alert  
23 the Court and request a hearing outside of the presence of  
24 the jury before I intend to ask any questions that may  
25 relate to that.

1 THE COURT: I think that's appropriate.

2 MR. ALLEN: Yes, sir. I believe that's all I have got  
3 to add to Your Honor's.

4 THE COURT: All right. Mr. Barnette.

5 MR. BARNETTE: Your Honor, would you like to preview  
6 those pages so you'll have an idea of what they --

7 THE COURT: Why don't you let me have those, and I  
8 think look at them during the overnight recess so in the  
9 event that question comes up I will have already had a  
10 chance to look at them and know what they are.

11 MR. ALLEN: Yes, Your Honor.

12 MR. BARNETTE: And the other concern we had, obviously  
13 we don't know how. I know Mr. Allen has expressed that the  
14 concern we've got it's confidential forms. And obviously  
15 we don't know how. I'm not saying he got them illegally,  
16 but we don't know how they were gotten. And that's a  
17 concern of the state concerning that also. I think that's  
18 a matter to be taken up a later time but not in this court.

19 THE COURT: Yeah. I don't know. There's not much I  
20 can do about that. I don't have the slightest idea how he  
21 obtained those documents, but, I mean, there's no --  
22 there's no indication that Mr. Allen or any member of his  
23 staff has done anything inappropriate, is there?

24 MR. BARNETTE: No, sir. There's no allegation. I  
25 just don't know who got -- who the original person -- I

1 think they were supplied by a third party or whatever, but  
2 I don't know where that came from.

3 THE COURT: Exactly. But you're satisfied they came  
4 out of the personnel file.

5 MR. BARNETTE: No question. I mean, I'm not saying  
6 that they're not -- they are the copies of the documents.  
7 The concern I've got is maybe that's another matter dealing  
8 with another court, another place, but obviously somebody  
9 got them from somewhere.

10 THE COURT: Okay. All right. Anything else?

11 MR. BARNETTE: Your Honor, I'm going to take these  
12 documents. I think the clerk has got an envelope. I was  
13 going to put it in a envelope and give it to Your Honor, I  
14 guess.

15 THE COURT: Yes. Okay.

16 MR. BARNETTE: And then they'll be sealed at a later  
17 time, I assume.

18 THE COURT: Okay. Do you have an extra copy of those  
19 seven sheets that Mr. Allen has so I can look at those  
20 tonight?

21 MR. BARNETTE: Yeah. I put -- they're in here.

22 THE COURT: Okay.

23 MR. BARNETTE: And he's got copies, obviously copies,  
24 of those seven.

25 THE COURT: Yeah. Okay.

1 MR. ALLEN: So you got -- you're providing the Court  
2 copies of those seven pages?

3 MR. BARNETTE: Right.

4 THE COURT: I should have 11 sheets of paper there.

5 MR. BARNETTE: Yes, sir. That's correct. One of them  
6 is handwritten notes. That's the one from the county, and  
7 then the ones that are typed is from the city.

8 THE COURT: Right.

9 MR. ALLEN: Okay.

10 MR. BARNETTE: Your Honor, do you want this marked as  
11 an exhibit?

12 THE COURT: Well, I'll determine that. It depends on  
13 where it needs to be filed.

14 MR. BARNETTE: Yes, sir.

15 THE COURT: It might need to be filed with the case, a  
16 court's exhibit.

17 MR. BARNETTE: Yes, sir. Your Honor, these are copies  
18 of those documents obviously. These are not the originals.

19 THE COURT: Okay.

20 MR. ALLEN: If I may, Your Honor, make two additional  
21 points just so that the record is clear.

22 No. 1, of those documents that's been provided you  
23 that have not been provided to me, of course I have not  
24 been allowed to look at those documents either in-camera or  
25 in any other fashion. So those documents, although the

Brad James  
Direct examination by Mr. Barnette

1 MR. BARNETTE: May it please the court, Your Honor. I  
2 would like to call Deputy Brad James to the stand.

3 BRAD JAMES, having been first  
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BARNETTE

6 Q If you would, please, give your full name for the  
7 record.

8 A Brad James.

9 Q And where do you work at, sir?

10 A Spartanburg County Sheriff's Office.

11 Q And how long have you been in law enforcement, sir?

12 A Approximately ten years.

13 Q What's your position now, sir?

14 A I'm currently assigned to the canine division on  
15 routine patrol.

16 Q Back on November 6th of 2011, what was you working  
17 then, sir?

18 A I was working third shift on uniform patrol.

19 Q That night what shift was you on, sir?

20 A Third shift.

21 Q In your shift, what area was you working that evening?

22 A Roebuck-Arkwright, the south side of Spartanburg  
23 County.

24 Q And that evening was you working the area near  
25 Carolina Drive at that time?

Brad James  
Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q If you would, tell the jury about what happened that  
3 evening that drew your attention to the vehicle the  
4 defendant was driving.

5 A I had just come down Irwin Avenue and made it to South  
6 Church Street right at the intersection. As I turned  
7 around I parked for a few minutes. I decided to go back  
8 down Irwin Avenue the direction I had come from.

9 As I turned back onto Irwin Avenue and I got  
10 straightened up facing Carolina Drive I observed a blue  
11 Pontiac coming down Irwin Avenue back toward South Church  
12 Street. So essentially we were coming head-on towards each  
13 other.

14 The vehicle was approximately 60 to a hundred yards  
15 away from me. I could tell it was traveling at accelerated  
16 speed for the area of 25 miles-per-hour on that roadway.

17 Upon the vehicle seeing me they made a quick  
18 right-hand turn onto Carolina Drive not using his turn  
19 signal. At that time I pulled in behind the vehicle  
20 attempting to catch up to the vehicle.

21 As I caught up to the vehicle we were going up  
22 Carolina Drive about Sweetie Way. There's a sharp  
23 right-hand curve. I initiated my blue lights. The vehicle  
24 sped up even more and moved to the center of the roadway  
25 and began picking up speed fairly rapidly.

Brad James  
Direct examination by Mr. Barnette

1 I then turned on my siren and advised dispatch as well  
2 as supervisors that I was in pursuit of the vehicle and it  
3 was not stopping.

4 The vehicle continued up Carolina Drive until we  
5 pulled into the driveway of [REDACTED] As the  
6 vehicle pulled into the driveway it pulled in at an angle.  
7 A black male with a white t-shirt, short dreadlocks and  
8 blue jeans exited the vehicle and fled on foot back towards  
9 Kimberly Drive.

10 I stopped my vehicle in the middle of the roadway,  
11 exited my vehicle and fled on foot trying to apprehend the  
12 suspect.

13 As we got to the corner of the house at [REDACTED] Carolina  
14 Drive -- there is a small 3-foot section of chain-link  
15 fence. The suspect went over the fence. I went over the  
16 fence directly behind him.

17 we get to the back of the property line of [REDACTED]  
18 Carolina Drive. There is another fence outlining their  
19 property line.

20 The suspect goes over the fence. As he goes over the  
21 fence the barbs on top of the fence catch the back of his  
22 blue jeans. He gets stuck on the fence. I approach him.

23 we wrestle back and forth over the top of the fence.  
24 He's trying to push me off to keep me from getting my hands  
25 on him to place him under arrest.

Brad James  
Direct examination by Mr. Barnette

1           At that point I realize that I can't arrest him on the  
2 opposite side of the fence. I go over the fence. And as  
3 soon as my feet hit the ground he was within arm's reach of  
4 the right-hand side. I turn to face him and a loud bang  
5 hang and a flash goes off.

6           (Pause for the witness crying.)

7           MR. ALLEN: Your Honor, if I may.

8           THE COURT: Let me ask the jury if you'll please go to  
9 your jury room.  
10           We'll bring you back in just a few minutes. Don't  
11 discuss the case.

12           (The following takes place outside the presence of the  
13 jury.)

14           THE COURT: Mr. Allen.

15           MR. ALLEN: Your Honor, the record shall reflect that  
16 at the point where the witness stopped his testimony, or  
17 stopped describing, he basically teared up and began crying  
18 in the presence of the jury. It's obvious prior to the  
19 Court's excusing the jury that he was crying.

20           It's been a year and a half. He's gone through this  
21 before. I feel as if this is an -- I feel that this  
22 showing of emotion from the deputy is unfairly swaying the  
23 jury. Whether consciously or not, or unconsciously, it is,  
24 in effect, appealing to their sympathies, something which  
25 should not be part of this case. And I therefore move for

Brad James  
Direct examination by Mr. Barnette

1 a mistrial at this point.

2 I don't know if he -- if Mr. Brown could continue to  
3 get a fair trial with a witness, I mean, as he is  
4 describing what's happened crying in the presence of the  
5 jury.

6 THE COURT: All right. Well, I understand your  
7 objection, but I'm going to overrule your request for a  
8 mistrial.

9 I mean, it's perfectly understandable that someone who  
10 has suffered a gunshot wound to the face might be emotional  
11 about it just as soldiers are who come back from combat and  
12 they are emotional about suffering injuries too that might  
13 result in their own deaths.

14 So, however, I will say, Mr. James, now, if you -- if  
15 we need some time for you to be able to collect yourself,  
16 we'll take that time. But you are going to have to be able  
17 to testify with your emotions in check.

18 THE WITNESS: I understand, sir.

19 THE COURT: Do you need a little more time?

20 THE WITNESS: No. I'm good. I'll be okay.

21 THE COURT: Are you sure?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. Does the state need to be  
24 heard on anything?

25 MR. BARNETTE: No, sir. I agree with the Court's

Brad James  
Direct examination by Mr. Barnette

1 sense of the situation.

2 THE COURT: Okay. All right. Let's bring the jury  
3 back in, please.

4 (The following takes place in the presence of the  
5 jury.)

6 THE COURT: All right. Mr. Barnette.

7 BY MR. BARNETTE

8 Q If you would, sir, please continue on with what you  
9 was telling the jury.

10 A As I went over the fence I heard the first loud bang.  
11 I didn't feel anything at that point.

12 I turned to run to create distance between myself and  
13 the suspect who was shooting at me. As I turned to run I  
14 heard two more rounds go off.

15 At that point something struck me on my left hip. I  
16 fell face first on the ground. I rolled over and looked  
17 and the suspect was coming off the fence. He had got his  
18 blue jeans untangled from the fence.

19 At that point he was coming directly towards me, and I  
20 feared that he was going to continue trying to shoot me.  
21 So I pulled my gun and started returning fire. I returned  
22 nine rounds toward the suspect at which point he veered  
23 away from me and continued running back toward Kimberly  
24 Drive.

25 At that point still thinking I was going to apprehend

Brad James  
Direct examination by Mr. Barnette

1 the suspect I jumped up, put my gun up and started chasing  
2 the suspect again.

3 As we got to Kimberly Drive the suspect made a left  
4 down Kimberly Drive back towards, essentially back towards,  
5 the city of Spartanburg.

6 I continued. Made it down to the edge of Kimberly  
7 Drive. And once I got out into the roadway I could see  
8 that I couldn't see out of my right eye. I reached up and  
9 checked, and I could feel blood, and there was a pretty  
10 size -- good-size hole in the side of my head.

11 At that point I felt that I couldn't interact with the  
12 suspect again if he came back. So I laid down and waited  
13 on backup and radioed in and advised them that I had been  
14 shot, that I had returned fire with the suspect and that he  
15 was still running down Kimberly Drive.

16 Q Let me show you. Was there a video in your in-car  
17 video that night, sir?

18 A Yes, sir.

19 Q Let me show you what's been marked as State's Exhibit  
20 26. Is that a copy of the in-car video from that night?

21 A Yes, sir.

22 Q And does it fairly represent what happened that night?  
23 Well, I understand the mike cuts out when you get farther  
24 away and stuff, but as well as it could be done?

25 A Yes, sir.

Brad James  
Direct examination by Mr. Barnette

1 Q And let me show you State's Exhibit 1. Is that a  
2 picture of your gun that you have today --

3 A Yes, sir.

4 Q -- and was using that night? And then State's  
5 Exhibit 190, is that a picture of the speed-limit sign on  
6 Carolina Drive?

7 A Yes, sir. That's just before Sweetie Way as we turned  
8 onto Carolina Drive.

9 Q And does that fairly represent the way it was that  
10 night?

11 A Yes, sir.

12 MR. BARNETTE: Your Honor, I'd like to move these into  
13 evidence at this time.

14 THE COURT: What are the numbers?

15 MR. BARNETTE: State's Exhibit 1, Your Honor, State's  
16 Exhibit 26 and State's Exhibit 190.

17 THE COURT: What was the second number again?

18 MR. BARNETTE: It's No. 1, 26 and 190, Your Honor.

19 MR. ALLEN: As to State's Exhibit 26, we have no  
20 objection to a portion of this, but I can express it a  
21 little more fully at the bench. But there's -- we have no  
22 objection to the video of showing the -- his following the  
23 blue Pontiac and events that occurred immediately  
24 thereafter.

25 THE COURT: Let me see y'all.

Brad James  
Direct examination by Mr. Barnette

1 (Bench conference held off the record in the presence  
2 of the jury but out of the hearing of the jury.)

3 THE COURT: All right. Any objections to 1, 26 and --

4 MR. BARNETTE: 190, Your Honor.

5 THE COURT: -- 190?

6 MR. ALLEN: No objections as to 26. I understand no  
7 objections to the portions they're going to play on the --  
8 on that video, from the video. No objections to No. 1  
9 provided. And as to 190 I'd object because they haven't  
10 established a foundation for that at this time.

11 THE COURT: Okay. All right. Mr. Barnette, lay your  
12 foundation for 1 and 190, and then we'll see if it comes  
13 in.

14 Q Okay. State's Exhibit No. 1, which is a picture of  
15 your pistol or gun, sir, is that a picture of your gun?

16 A Yes, sir.

17 Q And was that taken actually by me?

18 A Yes, sir.

19 THE COURT: Let me ask you to be sure you use that  
20 black microphone. You can adjust it if you need to.

21 THE WITNESS: I'm sorry, sir.

22 A Yes, sir.

23 Q Okay.

24 MR. BARNETTE: Your Honor, I'd like to move State's  
25 Exhibit No. 1.

Brad James  
Direct examination by Mr. Barnette

1 Q And this was the gun you had the night of  
2 November 6th of 2011.

3 A Yes, sir, it was.

4 MR. ALLEN: No objection to No. 1.

5 THE COURT: It's admitted.

6 (Glock Model 22 semiautomatic pistol marked State's  
7 Exhibit No. 1.)

8 Q On Carolina Drive -- while the video's warming up --  
9 Carolina Drive in this area, is it in Spartanburg County,  
10 sir?

11 A Yes, sir, it is.

12 Q And State's Exhibit 190. Was that the sign that was  
13 the speed-limit sign back on November the 6th of 2011, sir?

14 A Yes, sir, it was.

15 Q And it was a 25-mile-hour zone at that time.

16 A Yes, sir.

17 MR. BARNETTE: Your Honor, I realize this picture was  
18 taken -- not in November obviously. It was taken just  
19 recently, but I'd move it in evidence showing that the sign  
20 was substantially the same at the time.

21 MR. ALLEN: No further objections.

22 THE COURT: It's admitted.

23 (In-car video marked State's Exhibit No. 26.)

24 MR. BARNETTE: Your Honor, permission to publish the  
25 State's Exhibit 26 to the jury at this time.

Brad James  
Direct examination by Mr. Barnette

1 THE COURT: All right. You may.

2 Let's do this. I don't know that the last alternate  
3 can see that screen. So let me ask if the front row will  
4 move to your right one seat and the back row move to your  
5 left one seat. And the gentleman on the back row in the  
6 green shirt, you'll have to come down one seat to the front  
7 row.

8 Now, I realize -- especially the folks on my left  
9 end can't see that screen as well as you'd like. But  
10 understand that anything that's being shown on the screen  
11 is also going to be in the jury room with you when you go  
12 back. So you'll have additional opportunities to review  
13 anything.

14 MR. BARNETTE: Excuse me one second, Your Honor.

15 (Pause.)

16 MR. BARNETTE: Apologize, Your Honor.

17 (Whereupon, the State's Exhibit No. 26 was played for  
18 the jury.)

19 Q Officer James, I'm going to replay this one more time.  
20 I wanted the jury to see it. We're going to start at the  
21 beginning.

22 where is the speed located on the video?

23 A If you see on the right-hand side where it says E.P.  
24 down in the bottom right-hand corner, the number just above  
25 that is going to be the speed.

Brad James  
Direct examination by Mr. Barnette

1 Q So it's going to be right in that area. I'll let you  
2 point out when we play it back on there. And of course the  
3 farther away you get from your car, the mike cuts out. Is  
4 that what happens?

5 A Yes. The further you get away the less it picks up.  
6 And it got real distorted after the shots were fired. It  
7 distorted the mike, so the mike wouldn't really pick up  
8 afterwards.

9 MR. BARNETTE: We're going to play it again, Your  
10 Honor, so that way he can...

11 Q And if you want to describe, go ahead. But I wanted  
12 to make sure they understood where the speed was. We'll  
13 talk more about that.

14 (Whereupon, State's Exhibit No. 26 was replayed for  
15 the jury.)

16 A The top right-hand corner, see where it currently says  
17 73 and 67, that's the speeds that we were traveling on  
18 Carolina Drive.

19 THE COURT: Be sure to use the microphone when you  
20 talk.

21 THE WITNESS: I'm sorry, sir.

22 A Right there.

23 At this point was when I'm saying that he had -- as  
24 soon as his vehicle pulled into the driveway he jumped out  
25 while it was still running. And you can see his vehicle

Brad James  
Direct examination by Mr. Barnette

1 traveling across the yard and struck a tree on the opposite  
2 side of the yard. And we went over the first fence, and  
3 then we got to the second fence. And you'll hear his  
4 rounds go off first, which was the three rounds. And then  
5 you'll hear me return fire, which is the nine rounds back  
6 to back. Actually, if you'll listen he's calling me by  
7 name when we're at the fence.

8 (Whereupon, State's Exhibit No. 26 was replayed for  
9 the jury.)

10 Q I want to play that one more time. For some reason  
11 the first part of it -- the first part is not related. I  
12 guess that's off another vehicle from another situation.  
13 But it picks up here. One thing. Obviously, were you  
14 placing him under arrest for the failure to stop?

15 A Yes, sir. That's what I was attempting to do when he  
16 fled on foot.

17 Q And, again, if you would, show them the speeds that  
18 y'all were going if we can do this again.

19 A We're still accelerating. As you can see this -- the  
20 number's still going up. It's catching up to us. And you  
21 can. He's on the left side of the road straddling the  
22 double yellow line as well. You -- you can't see him  
23 coming out, but right there is when he comes out as soon as  
24 you see the brake lights and the car is stopped.

25 Q And how many times were you shot, sir?

Brad James  
Direct examination by Mr. Barnette

1 A I was shot twice.

2 Q And where was you shot at, sir?

3 A I was shot once on the right side of my face. It hit  
4 the eye socket and went down the side of my head. And the  
5 second one was in my left hip.

6 Q How many times did he actually shoot?

7 A He fired three rounds.

8 Q Okay. And was there gunpowder residue on your shirt,  
9 what you had on that night?

10 A Yes, sir.

11 MR. ALLEN: Objection as to his giving an opinion  
12 about whether or not there was gunpowder residue. It's not  
13 been established that he --

14 MR. BARNETTE: I'll rephrase the question, Your Honor.

15 Q Approximately where did the shot come from? I mean  
16 the third shot.

17 A The third shot come from when I had my back to him.

18 Q And which shoulder or which area did it come from,  
19 what you could tell later?

20 A From my left side.

21 Q If you would, come down and let the jury, if you  
22 would, let them see your face on the right side if you  
23 would.

24 (Whereupon, the witness left the stand.)

25 A The scar starts under my eyelid and comes down all and

Brad James  
Direct examination by Mr. Barnette

1 goes all the way down the side.

2 Q If you would, come down here, sir.

3 A It starts under here, and it comes down and just goes  
4 down the side.

5 Q Okay, sir.

6 (Whereupon, the witness returned to the stand.)

7 Q And how many days was you in the hospital, sir?

8 A I was in the hospital for three and a half days.

9 Q And how long was it before you went back to duty, sir?

10 A It was 33 days.

11 Q And the gun that was shot, what kind of shells were  
12 they? Were they shotgun shells or pellets or what?

13 A Yes, sir. There's still several pellets left in that  
14 they said wouldn't be --

15 MR. ALLEN: Objection as to his testifying as to  
16 hearsay.

17 THE COURT: You can't testify to what somebody else  
18 said.

19 Q And somebody else is going to be coming to testify  
20 about that -- the doctor.

21 But was there pellets found?

22 A Yes, sir, there was pellets found.

23 Q And actually you was shot in the back side too?

24 A Yes, sir.

25 Q And where was you shot at approximately, sir, if you

Brad James  
Direct examination by Mr. Barnette

1 could show the jury where you was shot at?

2 (Whereupon, the witness stood.)

3 A It was right here.

4 (Whereupon, the witness demonstrated.)

5 Q Okay. And they -- also obviously that was treated  
6 also.

7 A Yes, sir.

8 Q And a similar type blast?

9 A Yes, sir.

10 MR. BARNETTE: One moment, Your Honor, please.

11 (Pause.)

12 Q Afterwards, how was your eye sight from your eye, sir?

13 A I don't have any.

14 MR. ALLEN: Your Honor, I object to this testimony as  
15 basically not being relevant to the issue being tried in  
16 this particular case, and it's improper, if I may approach  
17 the bench to elaborate.

18 THE COURT: Okay.

19 (Bench conference held off the record in the presence  
20 of the jury but out of the hearing of the jury.)

21 THE COURT: Overrule the objection.

22 Q If you would, sir, please tell the jury about your eye  
23 sight now, sir.

24 A I currently have no eye sight in my right eye at all.  
25 I can't see anything.

Brad James  
Cross-examination by Mr. Allen

1 Q And I think you described it. Can you actually punch  
2 your eye, I mean, with your finger and not even see it?

3 A Yes, sir. If I bring my finger up to my eye you can't  
4 even -- my eye won't blink because it won't even see it  
5 coming.

6 Q And as far as you know that's -- and of course it's  
7 been almost a area and a half since then.

8 A Yes, sir. Nothing has improved in the year and a half  
9 that it has been.

10 MR. BARNETTE: One moment, Your Honor, please.

11 (Pause.)

12 Q Please answer any questions Mr. Allen may have for  
13 you, sir.

14 CROSS-EXAMINATION

15 BY MR. ALLEN

16 Q Officer, I want to talk about first the -- right there  
17 on South Irwin and South Church on that night.

18 A Yes, sir.

19 Q Okay.

20 A Yes, sir.

21 Q As I understand it, you indicated that you were  
22 traveling up Irwin going towards South Church.

23 A No, sir. When I seen the defendant I was traveling on  
24 Irwin Avenue back towards Crescent Avenue, back towards Dee  
25 Traxx.

Brad James  
Cross-examination by Mr. Allen

1 Q Okay. Well, prior to that then. I think you  
2 indicated that you had traveled up South Irwin to South  
3 Church and turned around.

4 A Yes, sir. I had previously.

5 Q Okay. And you did not park at the intersection of  
6 South Church and South Irwin.

7 A I had previously. When I turned around I pulled over  
8 and parked right there at the intersection for a short  
9 time. And then I had pulled back out.

10 Q For how long?

11 A I can't tell you. I don't remember exactly how long I  
12 sat.

13 Q Just a few seconds?

14 A It's been a year and a half ago. I don't remember  
15 exactly how long I sat there.

16 Q Well, you wouldn't necessarily say that you were like  
17 sitting stationary at that location, would you?

18 A I was for a period of time before I pulled back off  
19 onto Irwin Avenue, yes, sir.

20 Q Okay. Well, how long of a period of time was it?

21 A Just to answer, I can't tell you how long it was.  
22 It's been a long time since this incident occurred.

23 Q Well, was it just a matter of just turning in there  
24 for a few seconds before you went back, or was it for  
25 minutes?

Brad James  
Cross-examination by Mr. Allen

1 A I honestly don't remember how long I sat at that.

2 Q And it was after you started going back down South  
3 Irwin that you noticed this car that was making that right  
4 turn onto Carolina.

5 A Yes, sir. It was.

6 Q Okay. You did not see that car that you ultimately  
7 chased while you were sitting at that intersection of South  
8 Church and South Irwin.

9 A No, sir. I did not.

10 Q Now, you -- South Irwin basically goes from South  
11 Church and is somewhat curvy, is that right?

12 A Yes, sir. Some of it is.

13 Q Okay. It curves over to the right just a little bit  
14 as you leave South Church, traveling from South Church.

15 A No, sir. It curves to the left there.

16 Q Curves to the left.

17 A Yes, sir.

18 Q And then it curves back to the right. Just after that  
19 bridge that becomes Carolina Drive.

20 A If you come off South Church Street it travels less  
21 than a hundred yards. It bears off to the left slightly,  
22 and then it bears back to the right. And it straightens up  
23 before there's another curve.

24 Q And then there is a big building there that's right  
25 there as it makes that curve. It's a little back to the

Brad James  
Cross-examination by Mr. Allen

1 right.

2 A There is a building that sets off the road probably 20  
3 or 30 yards, yes, sir.

4 Q And if you continue to follow South Church -- or  
5 excuse me -- if you continue to follow South Irwin it goes  
6 all the way back to Crescent?

7 A Yes, sir, it does. It comes out just directly beside  
8 Dee Traxx.

9 Q Where South Irwin comes up to South Church Street is  
10 just past where the railroad trestle passes over South  
11 Church Street as you're leaving Spartanburg city, right?

12 A Can you repeat that?

13 Q Yeah. I'll try to or say it differently.

14 where South Irwin comes into South Church is just past  
15 where the railroad trestle crosses over South Church Street  
16 as you're -- as you're leaving Spartanburg.

17 A Yes, sir. That's correct.

18 Q And you did not see this automobile while you were  
19 sitting stationary at South Irwin and South Church.

20 A No, sir. That occurred as I was back onto Irwin  
21 Avenue.

22 Q In this case you wrote a report or supplemental  
23 report.

24 A Yes, sir.

25 Q And you wrote this or prepared this around

Brad James  
Cross-examination by Mr. Allen

1 November 30th of 2011.

2 A Yes, sir, I did.

3 Q You subsequently reviewed it and signed it on  
4 December 13th of 2011. Do you need to see a copy to  
5 refresh your memory?

6 A Yes, sir. I'm not understanding what you mean as far  
7 as signed it.

8 Q Show you this document. Is this a report that you  
9 prepared?

10 A Yes, sir, it is.

11 Q Prepared on November the 30th of 2011, the date it  
12 shows at the top.

13 A Yes, sir. It is.

14 Q And is that your signature at the bottom?

15 A Yes, sir, that is.

16 Q Okay. And there's a date of 12/13/11.

17 A But that has nothing to do with the supplemental  
18 though. This is a Xerox copy that was given to SLED on a  
19 different date when they printed it out. That was just  
20 signing what date that I had turned it over to them.

21 Q But that you turned it over. And you had a chance to  
22 review it before you turned it over to them on -- in  
23 December, correct?

24 A Yes, sir.

25 Q Okay. Now, at the point at which you prepared this

Brad James  
Cross-examination by Mr. Allen

1 and at which you signed it you were being very careful to  
2 put down things accurately, is that correct?

3 A Yes, sir.

4 Q Now, of course the report doesn't say anything about  
5 your traveling up South Church Street -- excuse me --  
6 traveling up South Irwin to South Church Street, does it?

7 A No, sir, it doesn't.

8 Q And it does say that while sitting at the  
9 intersection. It does indicate that you were sitting  
10 stationary at the intersection of South Church Street and  
11 South Irwin, correct?

12 A Yes, it does, because I was explaining prior to the  
13 events beginning.

14 Q Okay.

15 A It's justifying as far as where I was at and giving a  
16 reference point.

17 Q Sure. And it also says that while sitting at the  
18 intersection you saw the blue Pontiac.

19 A Yes, sir.

20 Q It doesn't say that you saw the blue Pontiac as you  
21 were traveling back down South Irwin but while sitting you  
22 saw the blue Pontiac.

23 A Yes, sir. I had been sitting at the intersection. As  
24 I was pulling out was when I seen him as I was getting back  
25 out on Irwin Avenue.

Brad James  
Cross-examination by Mr. Allen

1 Q The statement further says that you saw the blue  
2 Pontiac make that quick right -- I'm not quoting exactly.  
3 But the next sentence indicates you saw the Pontiac make  
4 that quick right turn onto Carolina Drive and that -- the  
5 following sentence says, "I then turned out of," your  
6 location and proceed, right?

7 A Yes, sir.

8 Q You then turned out.

9 A Yes, sir.

10 Q And that means that you then pulled out of where you  
11 were sitting stationary according to the report.

12 A If that's the way you want to interpret it, yes, sir.

13 Q That's the way you meant the report.

14 A I was sitting stationary at South Church Street. I  
15 turned out onto Irwin Avenue. The suspect come down Irwin  
16 Avenue and made the right-hand turn onto Carolina Drive.

17 Q But your report indicates that you turned out onto  
18 Irwin Avenue after you saw the blue car make that right  
19 turn.

20 A I was on Irwin Avenue.

21 Q Does it -- but your report does say that you turned  
22 out after you saw the car make that right turn onto  
23 Irwin -- onto Carolina Drive, right?

24 A Yes, sir.

25 Q That's what your report says that you prepared

Brad James  
Cross-examination by Mr. Allen

1 November 30th of 2011, correct?

2 A Yes, sir.

3 Q And turned over after you had a chance to look at it  
4 again for accuracy on December the 13th of 2011.

5 A Yes, sir.

6 Q Now, this blue Pontiac was coming up South Irwin as if  
7 it was coming from the direction where Crescent Drive is,  
8 correct?

9 A Yes, sir, Crescent Avenue back towards South Church  
10 Street.

11 Q Excuse me. Crescent Avenue. You indicated that upon  
12 seeing or upon sighting your patrol vehicle the vehicle  
13 made that turn. You didn't see any driver look at you, did  
14 you?

15 A No, sir. I couldn't tell who was driving the vehicle,  
16 no, sir.

17 Q From the point where you first saw this vehicle you  
18 didn't see it very long before it made the right turn onto  
19 Carolina, correct?

20 A No, sir.

21 Q Okay. Just a second.

22 A I -- two to three seconds at the most.

23 Q Now, when one makes a right from South Irwin onto  
24 Carolina Drive they immediately go over a small bridge,  
25 correct?

Brad James  
Cross-examination by Mr. Allen

1 A Yes, sir. As soon as you turn onto Carolina Drive  
2 there's a small bridge that travels over a little small  
3 creek.

4 Q Just beyond that bridge is another right turn, pretty  
5 much at a 90-degree angle, a right turn immediately beyond  
6 that bridge, correct?

7 A Yes, sir. The road splits. Birch Street runs  
8 straight ahead and runs back into South Church Street. And  
9 Carolina Drive bears to the right.

10 Q A few yards farther after that right turn is a left  
11 curve to remain on Carolina Drive too, correct?

12 A Yes, sir. There's another curve back to the left.

13 Q Now, your testimony is you first turned on your blue  
14 lights.

15 A Yes, sir.

16 Q Okay. You turned on your blue lights approximately  
17 where?

18 A Once we got -- it took me until we were going up  
19 Carolina Drive approaching Sweetie way to actually get  
20 close enough to activate my blue lights.

21 So as were -- after we made the right-hand turn and  
22 then back to the left-hand turn going up the hill on  
23 Carolina Drive is when I activated my blue lights.

24 Q Your blue lights were activated for a while before the  
25 sirens came on, correct?

Brad James  
Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q And you activated the sirens, right?

3 A Yes, I did.

4 Q Okay. How long were the blue lights on before you  
5 activated your siren?

6 A I'm not sure. You can watch the video, and it'll show  
7 the delay between the two, because as soon as the blue  
8 lights come on there's a slight delay for it to kick in.  
9 The camera system comes on, and then you can hear when the  
10 siren comes on after that.

11 Q All right. Very well. So the video starts or the  
12 camera starts when the blue lights came on, correct?

13 A Yes, sir. That's the way it's activated, is when you  
14 flip the switch for the blue lights the camera system  
15 automatically comes on.

16 Q And of course you can activate that camera system  
17 manually too, correct? You can turn it on without having  
18 activated either your emergency equipment, correct?

19 A Yes, sir. You can.

20 Q And you did not do that in this case.

21 A No, sir, due to the fact that I was driving 70  
22 mile-an-hour trying to catch up to him in 25-mile-an-hour  
23 zone. It wasn't safe for me to reach up and turn that  
24 camera on.

25 Q Now, the E.P. designation that you showed us on the

Brad James  
Cross-examination by Mr. Allen

1 video, that's actually recording your speed.

2 A The E.P. is just a reference point I was showing you  
3 to know where on the screen to look for the speed. The  
4 speed is actually the number directly over the top of it.  
5 I'm not quite sure what the E.P. stands for.

6 Q Okay. So thank you for that clarification. I didn't  
7 ask for what anything stood for. But, anyway, the speed is  
8 above the letters E.P. on the video.

9 A Yes, sir, it is on the bottom right-hand corner.

10 Q That's actually recording your speed.

11 A Yes, sir, it is.

12 Q It's not recording the speed of the car in front of  
13 you.

14 A No, sir.

15 Q Now, going to [REDACTED] Carolina Drive -- it's [REDACTED], right?

16 A Yes, sir. It was.

17 Q An individual got out of the driver's side of the blue  
18 Pontiac and ran.

19 A Yes, sir, he did. As the vehicle turned into the  
20 driveway you can see the vehicle hesitate for just a  
21 second, and the gentleman fled from the driver's-side door.

22 Q And you stopped your vehicle.

23 A Yes, sir.

24 Q And you got out of your vehicle, correct?

25 A Yes, sir, I did.

Brad James  
Cross-examination by Mr. Allen

1 Q Immediately.

2 A Yes, sir.

3 Q And you ran after the other person.

4 A Yes, sir, I did.

5 Q You did not stop to look into this Pontiac, correct --

6 A No, sir. I didn't.

7 Q -- or to check for anything or anybody else in the  
8 area. But you just ran after the person.

9 A I was attempting to place the gentleman that was  
10 driving the vehicle under arrest for the failure to stop.

11 Q As far as you know your microphone was working when  
12 you got out of your vehicle, correct?

13 A It's actually working prior to me getting out of the  
14 vehicle. That's how you hear the siren when it comes on.  
15 The body mike's on me. And when I turn on the blue lights  
16 it comes on and starts recording inside the car.

17 Q I believe there are two designations on the video.  
18 There's an M1 and an M3, correct?

19 A Yes, sir.

20 Q M1 refers to the microphone that's on -- that's the  
21 one on you.

22 A Yes, sir.

23 Q And an M3 is a microphone that is in the vehicle, in  
24 your -- or in the recorder or something.

25 A Yes, sir. But the recording you hear is my body mike.

Brad James  
Cross-examination by Mr. Allen

1 I left my body mike turned on all of the time. So as soon  
2 as the blue lights come on it started recording everything  
3 inside the vehicle.

4 Q Now, the body mike as far as you know accurately  
5 picked up what was being said, or what you said and what  
6 was being said, up to the point where it began to  
7 malfunction or something, correct?

8 A Yes, sir.

9 Q And you did not say you're under arrest.

10 A No, sir. I --

11 Q In fact, the first thing that you could hear on the  
12 recording is "don't go," correct? I mean, the first words,  
13 shall we say. "Don't go."

14 A I don't remember saying "don't go," no, sir.

15 Q "Don't go. I'll shoot your" -- and I think the next  
16 word was ass.

17 A Yes, sir.

18 Q That's your voice?

19 A Yes, sir, it is.

20 Q This was said at what point in the foot chase?

21 A I -- I think if you listen to it it's after we go over  
22 the first set of fences.

23 Q Okay. Now, let's talk about going over. You say he  
24 jumped. Is that the first fence?

25 A Yes, sir. He did.

Brad James  
Cross-examination by Mr. Allen

1 Q And how do you go over, through that first fence?

2 A I'm not understanding.

3 Q How did you get through that first fence?

4 A I didn't say --

5 Q Did you jump it or did you go through, walk through  
6 it?

7 A There wasn't a gate. You had to go over the fence.

8 Q Okay. Which reminds me. When the individual got out  
9 of the car -- of course, now, he pulled into a driveway at  
10 [REDACTED] Carolina, correct?

11 A Yes, sir.

12 Q And [REDACTED] -- the driveway to [REDACTED] Carolina Drive is along  
13 the -- as you're looking at the house from Carolina Drive,  
14 is on the left side of the house, correct?

15 A Yes, sir, it is.

16 Q But this car continues across the -- basically the  
17 front yard over to the right side of Carolina Drive,  
18 correct?

19 A Yes, sir. It continued all the way across the front  
20 yard to a row of trees that was on the right side of the  
21 yard and nosed up against the trees on the opposite side of  
22 the yard.

23 Q Of course that's what the video shows, correct?

24 A Yes, sir. It does.

25 Q But you did not actually see it nose up to the trees

Brad James  
Cross-examination by Mr. Allen

1 on that night.

2 A No, sir, I didn't. By the time the vehicle made it to  
3 the trees we were already over the fence and behind the  
4 house.

5 Q And the person you were chasing was on the -- went  
6 over or went to the fence on the right side of the house or  
7 the left side of the house? The side where the trees are,  
8 where the vehicle was, or the other side?

9 A He actually went to the left side of the house,  
10 because if we'd went to the right side of the house you'd  
11 have seen us on video pass the side of the car.

12 Q You can't see the fence on the video on the right side  
13 of the house, can you?

14 A No, sir, you cannot.

15 Q The fence we're talking about is basically a wire  
16 fence, correct?

17 A The first or second fence?

18 Q Let's talk about the first fence, talking about the  
19 first fence first.

20 A Okay.

21 Q That was a wire fence, basically the metal or the  
22 aluminum poles supporting it.

23 A Yes, sir. The first fence was approximately a 3-foot  
24 section of chain-link fence. I had poles on both sides,  
25 had the -- not the barbs but the kind that are bent down --

Brad James  
Cross-examination by Mr. Allen

1 and had a metal bar running across the top. So it was a  
2 nice, full section of fence between the house and the  
3 garage, I think it was.

4 Q Now, the next fence. Was that basically the far end  
5 of the property of [REDACTED] or thereabouts? Correct?

6 A I'm assuming it was at the back of their property line  
7 because it was the way their back yard was fenced in. It  
8 was the back fence across their back yard.

9 Q Of course we know people don't fence beyond their  
10 property lines. Property line's close to -- might --  
11 apparently close to that fence.

12 A I'm assuming so. I'm not sure.

13 Q Right. Okay. And then there are trees and bushes  
14 immediately past that part of the fence?

15 A Yes. There was a row of bushes and stuff just  
16 directly on the other side of the fence.

17 Q And this was also a cyclone fence?

18 A I'm sorry? What now?

19 Q This is also a cyclone fence?

20 A I don't know what a cyclone fence is.

21 Q All right. Basically, the wire fence or chain-link  
22 fence. Excuse me.

23 A It was a chain-link fence, but it had the metal barbs  
24 on the top. It didn't have the tops bent down. It had the  
25 chrome sticking up.

Brad James  
Cross-examination by Mr. Allen

1 Q That's just where the wires are put together and  
2 twisted, correct?

3 A It's at the top of the fence at -- how some chain-link  
4 fences when you get to the top the pieces are bent down so  
5 it's smooth across the top. This one wasn't bent down. It  
6 had the pieces crossed over so they were pointy across the  
7 top of it.

8 Q Okay. And that was what he was caught on, the parts  
9 that stuck up over the fence.

10 A I'm assuming so. He was caught in the fence. Somehow  
11 his blue jeans was caught in the fence keeping him from  
12 continuing to flee.

13 Q At that point of course you were running as well,  
14 correct?

15 A At the point that he's caught on the fence?

16 Q Right. The point -- I mean, you're running to chase  
17 him, correct?

18 A Yes, sir. I did.

19 Q And you had in your hand the flashlight.

20 A Yes, sir.

21 Q Have in your hand a gun?

22 A No, sir.

23 Q Now, you told him to get on the ground.

24 A Yes, sir, I did.

25 Q "Get on the ground now," correct?

Brad James  
Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q And there was a voice that says, "All right, man,"  
3 correct?

4 A Yes, sir. But what you don't see is the fact that the  
5 whole time he's saying, "All right, man," he's steady  
6 pushing me off of him trying to keep me from placing him  
7 under arrest.

8 Q Okay. He's pushing you?

9 A Yes, sir. Not like pushing me across the yard but  
10 just trying to keep a distance between myself and him. And  
11 that's what I put in the report as far as struggling  
12 between the two of us.

13 Q Now, when you jump over the fence -- you jumped over  
14 that second fence yourself, correct?

15 A I did.

16 Q And he was still at the fence, correct?

17 A Yes, sir. He was still just directly on the opposite  
18 side of the fence as I was.

19 Q And you basically turned to face him, correct?

20 A Yes, sir. As soon as my feet hit the ground I turned  
21 to face him, yes, sir.

22 Q Okay. And you were facing therefore back towards  
23 Carolina Drive.

24 A No, sir. At that point I would have been facing  
25 Airport Road.

Brad James  
Cross-examination by Mr. Allen

1 Q Where does Airport Road run in connection with  
2 Carolina?

3 A If you -- Carolina Drive and Kimberly Drive run  
4 parallel, and both of them "T" into Airport Road.

5 Q Airport Road.

6 A So we would have been facing each other with his back  
7 to Airport Road. And I was facing him.

8 Q And it was at that point that -- no shooting, correct?

9 A Yes, sir.

10 Q And you shot several times, numerous times, about  
11 nine, right?

12 A I returned fire, yes, sir, after I had been fired upon  
13 three times. I wasn't the first to shoot.

14 Q At the time you were shooting -- well, first, you  
15 returned fire immediately.

16 A No, sir. You can hear in the video there's a delay.  
17 First two rounds go off, or actually the first round goes  
18 off.

19 I turned to create distance between the two of us.  
20 And as I turned to run two more rounds go off. And I  
21 actually -- there's a delay because I fell to the ground  
22 and had to roll over and draw my service weapon or my  
23 pistol to actually return fire.

24 Q Now, during a portion of what you're calling a delay  
25 there's a lot of static or something or the microphone not

Brad James  
Cross-examination by Mr. Allen

1 working, right?

2 A Yes, sir. I'm assuming that's from the distortion of  
3 the first round of gunfire going off. I'm not sure.

4 Q And then you got up and went towards Kimberly Drive,  
5 correct?

6 A After I shot back, yes, I got up and began chasing the  
7 same person that had just shot me.

8 Q Now, Kimberly Drive, as you indicated, runs right  
9 behind Carolina Drive, correct?

10 A Yes, sir. They run parallel to each other. If you  
11 seen where we pulled in the driveway, approximately 200  
12 yards behind that is Kimberly Drive. They just run  
13 parallel to each other.

14 Q And the back yards of the folks on that side of  
15 Carolina Drive go up to the -- basically the back-property  
16 edge of folks on Kimberly Drive, correct?

17 A Yes, sir. [REDACTED] Carolina Drive backs up to the property  
18 of [REDACTED] Kimberly Drive.

19 MR. ALLEN: One second, please, Your Honor.

20 (Pause.)

21 MR. ALLEN: No other questions. Thank you, Your  
22 Honor.

23 MR. BARNETTE: A couple on followup, Your Honor.

24

25

Brad James  
Redirect examination by Mr. Barnette

1 REDIRECT EXAMINATION

2 BY MR. BARNETTE

3 Q Your camera was left on after you left the car, is  
4 that right?

5 A Yes, it was.

6 Q And it was on approximately an hour and a half or a  
7 long distance afterwards.

8 A I'm not sure who turned it off afterwards. It was  
9 left on. And whoever took possession of my patrol car  
10 turned it off. I never went back to the scene.

11 Q And I know we've reviewed the video tape. Do you see  
12 anybody else come outside of that car on that video?

13 A No, sir.

14 Q And obviously other officers came in response to you  
15 shortly after that.

16 A Yes, sir.

17 Q So there was nobody else in the car other than you and  
18 the defendant then.

19 A No, sir. There was not.

20 Q And what was the description that you had of the  
21 defendant again, sir, if you would?

22 A When the first officer gave -- got to me I give them  
23 the description of a black male, had on blue jeans with  
24 a -- some kind of tear in the blue jeans.

25 MR. ALLEN: Your Honor, if it please the Court. I

Brad James  
Redirect examination by Mr. Barnette

1 don't think that this is appropriate redirect. We didn't  
2 go into anything about the description. I therefore  
3 object.

4 MR. BARNETTE: I think he asked about the individual.  
5 He indicated trying to say it was another person in the  
6 car. I think I have a right to go back through that.

7 THE COURT: Overrule the objection.

8 BY MR. BARNETTE

9 A Blue jeans with some type of rip on it where they had  
10 gotten caught in the fence with a white t-shirt. I advised  
11 them that he was pretty tall. I'm 6'5", and we were  
12 looking somewhat eye to eye when we were at the fence. And  
13 that he had short dreadlocks.

14 Q And we have a map here since we've been talking about  
15 areas here. And it does have other areas that may be  
16 pertinent later to it. Let me show you State's Exhibit 22.  
17 Is this Carolina and Kimberly Drive that we're talking  
18 about, the two locations earlier involving you?

19 A Yes, sir, it is.

20 Q And there's two other locations here. Are you  
21 familiar with the City of Spartanburg and County of  
22 Spartanburg, sir?

23 A Yes, sir, I am.

24 Q And is this map a fair representation of the other  
25 areas that we've been talking about later -- ■■■ Queensbury

Brad James  
Redirect examination by Mr. Barnette

1 Way, as well as [REDACTED] Delmar Road?

2 A Yes, sir, it is.

3 MR. BARNETTE: Your Honor, I'd like enter this into  
4 evidence at this time.

5 MR. ALLEN: Subject to their showing the relevance of  
6 some of these other markings on it, but I've got no  
7 objection subject to their showing the relevance to the  
8 other markings on it.

9 THE COURT: What number is that?

10 MR. BARNETTE: That'll be No. 22, Your Honor. We do  
11 have other witnesses that will testifying afterwards about  
12 it.

13 THE COURT: All right. It's admitted.

14 MR. BARNETTE: Thank you, Your Honor.

15 (Map marked State's Exhibit No. 22.)

16 Q If you would, just come down for a second, sir, if you  
17 would.

18 THE COURT: Be sure you stand in front of that  
19 microphone so that the court reporter can hear.

20 THE WITNESS: Yes, sir.

21 (Whereupon, the witness left the stand.)

22 Q If you would, try to stay back a little but so  
23 everybody can see you.

24 The area we're talking about here, is this South Church  
25 street that comes down through here, sir?

Brad James  
Redirect examination by Mr. Barnette

1 A Yes, sir.

2 Q And if you go back up here you've got, I think,  
3 Carver, Mary Wright School and so forth, and the swim  
4 center in this area.

5 A Yes, sir.

6 Q And we come down this way. And this is actually [REDACTED]  
7 Kimberly. And Carolina Drive is that way down South Church  
8 Street off that road, is that right? I believe this is  
9 Airport Road that you're talking about that comes through  
10 there.

11 A Yes, sir. It is.

12 Q And, like you said, these roads run parallel to each  
13 other.

14 A Yes, sir.

15 Q And this is where the stop was made -- [REDACTED] Carolina  
16 Drive.

17 A Yes, sir, it is.

18 Q And [REDACTED] is actually in this area right here.

19 A Yes, sir. It's directly behind it. That fence  
20 separates the yards from it -- [REDACTED] Kimberly Drive and [REDACTED]  
21 Carolina Drive.

22 Q And the Carolina Drive we're talking about here is  
23 right here, and it's going through here.

24 A Yes, sir.

25 Q That's the route that you followed him when you caught

Brad James  
Redirect examination by Mr. Barnette

1 up to him at.

2 A Yes, sir.

3 Q Thank you, sir.

4 (Whereupon, the witness returned to the stand.)

5 Q Deputy James, as you -- as you were laying down there  
6 obviously on the road did you see the defendant come by you  
7 later that evening?

8 A Yes, sir. while I was laying there waiting on another  
9 unit to get to me I observed a burgundy Cadillac driven by  
10 the same male.

11 MR. ALLEN: I object to this, Your Honor, as also  
12 being new matter that wasn't even discussed.

13 THE COURT: I'll let you examine.

14 Let's do it all at one time if we can. Okay.

15 MR. BARNETTE: Yes, sir.

16 Q If you would, go ahead, sir.

17 A while laying there beside the mailbox at [REDACTED] Kimberly  
18 Drive I was approximately four to five feet from the side  
19 of the roadway. I observed a burgundy Cadillac drive past  
20 me with the same male driving that I had had my interaction  
21 with earlier.

22 Q Thank you sir. Please answer any questions Mr. Allen  
23 may have for you.

24

25

Brad James  
Recross-examination by Mr. Allen

1 RECROSS-EXAMINATION

2 BY MR. ALLEN

3 Q The report that I showed you earlier that was made on  
4 November 30th and signed on the 12th of December of 2011,  
5 that's the only report you've prepared in connection with  
6 this case?

7 A Yes, sir, it is.

8 Q It's the only thing that you have written in  
9 connection with this case as far as reports.

10 A Yes, sir.

11 Q There's nothing in this report about a burgundy  
12 Cadillac, is there?

13 A No, sir.

14 Q There's nothing in this report about your seeing the  
15 same person you were chasing later that night or driving as  
16 it passed you or something to that effect, correct?

17 A No, sir.

18 Q But you remembered that night clearly when you wrote  
19 this report, correct?

20 A Yes, sir. That was the report to the best of my  
21 recollection of what events occurred.

22 Q And again when you reviewed it on December 13th,  
23 correct?

24 A On December 13th I didn't review it. I handed it over  
25 to them. I was signing that I was giving it to them.

Brad James  
Recross-examination by Mr. Allen

1 Q And that -- and you know as a police officer -- of  
2 course you've been trained as part of your training or as a  
3 deputy to -- you've been trained to write reports, correct?

4 A Yes, sir.

5 Q Putting in all of the necessary information, correct?

6 A Yes, sir.

7 Q Be as thorough as you can, correct?

8 A Yes, sir.

9 Q Be as accurate as you can, correct?

10 A Yes, sir.

11 Q Be as complete as you can, correct?

12 A Yes, sir.

13 Q And that was your thorough, accurate and complete  
14 report that you made on -- back on November 30th, correct?

15 A Just as I said, it was to the best of my recollection  
16 at the time I wrote the supplemental, yes, sir.

17 Q And since that date you understand as a trained  
18 officer that you have the right to write additional  
19 supplemental reports as things come to you, correct?

20 A Yes, sir.

21 Q And you didn't write any additional supplemental  
22 reports, did you?

23 A No, sir. I have none.

24 Q You've never written any report about seeing a  
25 burgundy Cadillac or the individual again, did you?

Brad James  
Redirect examination by Mr. Barnette

1 A No, sir. I have not.

2 Q And as far as seeing anybody else, you didn't check  
3 that Pontiac for anybody else, correct?

4 A No, sir. My focus was on catching the person that was  
5 fleeing in the vehicle.

6 Q Right. And you went out after him as fast as you  
7 could.

8 A Yes, sir, I did.

9 Q Nothing further. Thank you.

10 MR. BARNETTE: One question, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. BARNETTE

13 Q who did you tell about the red Cadillac?

14 A The first officer that arrived to me on the scene.

15 Q Did you also notify on radio traffic about it?

16 A Yes, sir. You can listen to the radio traffic, my  
17 actual radio traffic, communicating with people coming to  
18 me, and you can hear me say on the radio while I was laying  
19 on the road --

20 MR. ALLEN: Object to this as being hearsay as to what  
21 he --

22 THE COURT: Overruled.

23 A I -- you can hear me say on the radio that he just  
24 passed me in a red Cadillac going out toward Airport Road  
25 with no lights on.

# Exhibit 5

## Susan Hackett

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**From:** Cole, J. Derham Law Clerk (Lauren E. Ward) [REDACTED]  
**Sent:** Wednesday, July 30, 2014 3:45 PM  
**To:** Salley W. Elliott; Barnette, Barry; Clay T. Allen; Susan Hackett  
**Subject:** Appeal on Robert Odell Brown

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Good Afternoon,

There have been questions of discovery on sealed documents on the appeal of Mr. Robert Odell Brown. Judge Cole has these sealed documents. They can be picked up in his chambers by whoever wants to pick up these documents for review with the Court of Appeals.

Thank you

Lauren Ward  
Law Clerk to the Honorable J. Derham Cole  
Seventh Judicial Circuit  
Spartanburg County Court House  
PO Box 1744  
29304  
[REDACTED]

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