

2014-002639

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Beaufort County
Michael G. Nettles, Circuit Court Judge

S.C. Supreme Court

Opinion No. 2014-UP-362 (S.C. Ct. App. filed October 15, 2014)
2011-GS-70-1769

THE STATE,

RESPONDENT,

V.

JAMES HARRIS,

PETITIONER.

APPENDIX

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

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

James Harris, Appellant.

Appellate Case No. 2012-207968

Appeal From Beaufort County
Michael G. Nettles, Circuit Court Judge

Unpublished Opinion No. 2014-UP-362
Heard September 9, 2014 – Filed October 15, 2014

AFFIRMED

Appellate Defender Carmen Vaughn Ganjehsani, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, and Assistant
Attorney General Christina Catoe Bigelow, both of
Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton for Respondent.

PER CURIAM: James Harris appeals his conviction for unlawful carrying of a
pistol and appeals the sentence for his conviction for failing to stop for a blue light.

We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Brandt*, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011) (stating a directed verdict is properly denied when there is any evidence, direct or substantial circumstantial, that reasonably tends to prove the defendant's guilt); *id.* (providing when reviewing a denial of a directed verdict, "an appellate court views the evidence and all reasonable inferences in the light most favorable to the State"); *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004) (indicating a trial court should not refuse to direct a verdict "when the evidence merely raises a suspicion that the accused is guilty," but "a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis") (citations omitted); *State v. Zulfer*, 345 S.C. 258, 262-63, 547 S.E.2d 885, 887 (Ct. App. 2001) (holding when the plain language of a statute provides for the enhancement of the offense based on a prior conviction and the language does not limit the prior conviction to one in South Carolina, consideration of the out-of-state conviction is appropriate).

AFFIRMED.

HUFF, SHORT, and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Michael G. Nettles, Circuit Court Judge

Opinion No. 2014-UP-362 (S.C. Court of Appeals filed October 15, 2014)

THE STATE,

RESPONDENT,

V.

JAMES HARRIS,

APPELLANT.

APPELLATE CASE NO. 2012-207968

PETITION FOR REHEARING

The Appellant, James Harris, respectfully petitions the Court for a rehearing of its Opinion No. 2014-UP-362 pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court:

On October 15, 2014, this Court filed its unpublished opinion affirming Appellant's sentence for his conviction for failing to stop for a blue light. In his appeal, Appellant argued the Trial Court erred in using Appellant's prior out-of-state conviction for fleeing to elude police in enhancing Appellant's sentence under S.C. CODE ANN. § 56-5-750(B)(2) for failure to stop for a blue light where § 56-5-750(B)(2) does not permit the use of out-of-state convictions as predicate offenses.

In its Opinion, this Court cited to State v. Zulfer, 345 S.C. 258, 547 S.E.2d 885 (Ct. App. 2001) for the principle that when the plain language of a statute provides for the enhancement of the offense based on a prior conviction and the language does not limit the prior conviction to one in South Carolina, consideration of the out-of-state conviction is appropriate.

However, South Carolina's failure to stop for a blue light statute does limit prior convictions to those in South Carolina. The statute provides:

(A) In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. An attempt to increase the speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light is prima facie evidence of a violation of this section. Failure to see the flashing light or hear the siren does not excuse a failure to stop when the distance between the vehicles and other road conditions are such that it would be reasonable for a driver to hear or see the signals from the law enforcement vehicle.

(B) A person who violates the provisions of subsection (A):

(1) for a first offense where no great bodily injury or death resulted from the violation, is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years. The Department of Motor Vehicles must suspend the person's driver's license for at least thirty days; or

(2) for a second or subsequent offense where no great bodily injury or death resulted from the violation, is guilty of a felony and, upon conviction, must be imprisoned for not more than five years. The person's driver's license must be suspended by the department for a period of one year from the date of the conviction.

S.C. CODE ANN. § 56-5-750.

The statute permits the enhancement of a sentence for a person "who violates the provisions of subsection (A)" of South Carolina's failure to stop for a blue light statute "for a second or subsequent offense." § 56-5-750(B)(2). The statute is clear that only

a previous violation of South Carolina's statute for failure to stop for a blue light can serve as a sentence enhancement. Code section 56-5-750(B)(2) thus limits prior convictions to those involving a prior violation of that particular statute and does not permit out-of-state convictions for similar statutes to serve as a sentence enhancement.

In addition, a person only violates § 56-5-750(A) by failing to stop when signaled by a law enforcement vehicle "while driving on a road, street, or highway of the State [of South Carolina]" This statute obviously refers to roadways in South Carolina and therefore, a person can only violate § 56-5-750(A) by driving on a roadway in South Carolina, not in another state. As such, a person can only have a second offense of violating § 56-5-750(A) if the person has had a first offense of violating this code section while driving on a South Carolina roadway. § 56-5-750(B)(2); see State v. Cardin, 156 A.2d 118, 118-19 (N.H. 1959) (holding prior conviction of similar offense in Massachusetts could not be considered in determining whether a second offense of operating a motor vehicle while under the influence of intoxicating liquor had been committed where under New Hampshire's statute, reference is only to a public way within New Hampshire).

The facts of this case are distinguishable from State v. Zulfer, 345 S.C. 258, 262, 547 S.E.2d 885, 887 (Ct. App. 2001) where this Court held that the first degree burglary statute unambiguously permitted the use of out-of-state convictions as predicate offenses where the plain language of the burglary statute provided for the enhancement of the offense of burglary based on a "prior record of two or more convictions for burglary or housebreaking or a combination of both." This Court determined that "[n]owhere does the language of the statute limit a prior record of convictions for burglary or

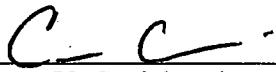
housebreaking to only those that occurred within South Carolina. In not so limiting a prior record of convictions, the plain language of our burglary statute permits an enhancement of the offense based on a prior record of out-of-state convictions for burglary or housebreaking or a combination of both." Id.

In contrast to Zulfer, the failure to stop for a blue light statute does limit a prior record of convictions to only violations of that particular statute and thus only those violations that occurred in South Carolina. See § 56-5-750(B)(2). Accordingly, the Trial Court erred in using Harris' Georgia conviction for fleeing to elude police to enhance Harris' sentence for violating § 56-5-750(A). Harris should be resentenced as a first offender under § 56-5-750(B)(1) and found guilty of a misdemeanor instead of a felony. This would allow Harris to eventually take advantage of the provisions of § 56-5-750(F) which permit a person convicted of a first offense to apply to the court for an order expunging the records of the arrest and conviction.

CONCLUSION

For the reasons set forth herein, Appellant James Harris respectfully requests that the Opinion of the Court of Appeals with respect to his sentence for his conviction for failure to stop for a blue light be withdrawn and that his conviction for failure to stop for a blue light be remanded for resentencing as a first offender pursuant to S.C. CODE ANN. § 56-5-750(B)(1).

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

This 30th day of October, 2014.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Michael G. Nettles, Circuit Court Judge

Opinion No. 2014-UP-362 (S.C. Court of Appeals filed October 15, 2014)

THE STATE,

RESPONDENT,

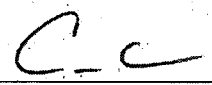
V.

JAMES HARRIS,

APPELLANT.

CERTIFICATE OF SERVICE

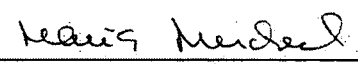
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Christina Catoe Bigelow, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. James Harris, 2239 Causton Bluff Rd., Savannah, GA 31404-1315, this 30th day of October, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 30th day
of October, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

The South Carolina Court of Appeals

The State, Respondent,

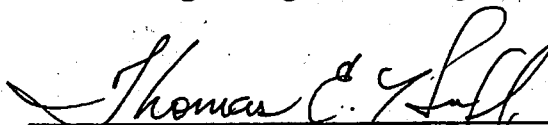
v.

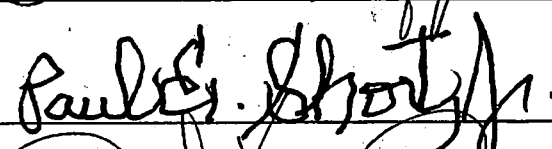
James Harris, Appellant.

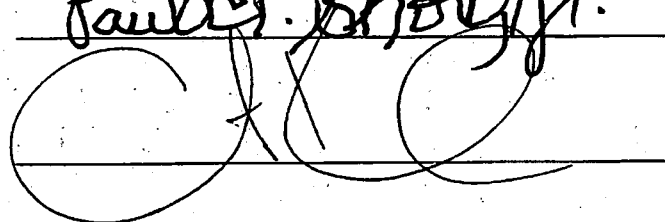
Appellate Case No. 2012-207968

ORDER

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



J.


J.


J.

Columbia, South Carolina

cc:

Carmen Vaughn Ganjehehani, Esquire
Alan McCrory Wilson, Esquire
Isaac McDuffie Stone, III, Esquire
Christina Catoe Bigelow, Esquire

FILED

November 21, 2014

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Michael G. Nettles, Circuit Court Judge

RECEIVED

DEC 12 2014

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JAMES HARRIS,

APPELLANT

APPELLANT CASE NO. 2012-207968

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE'S EXHIBIT # 3 THROUGH # 14 (PHOTOGRAPHS), STATE'S
EXHIBIT # 15 (MAP) AND STATE'S EXHIBIT # 16 (VIDEO RECORDING)**

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BEAUFORT) COURT OF GENERAL SESSIONS
) 2011 GS 07 1769; 1774

3
4 STATE OF SOUTH CAROLINA)
5)
6 versus.) TRANSCRIPT OF RECORD
7)
8 JAMES HARRIS)
9 Defendant)

10 Beaufort, South Carolina
11 January 24-25, 2012

13 B E F O R E :

14 HONORABLE MICHAEL G. NETTLES, Judge, and a Jury

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

17 For the State: JAMES BANNON, Esq.
18 Assistant Solicitor
19 For the Defendant: MATTHEW WALKER, Esq.
 Public Defender
20 Reporter Present: DEBORAH EVERETT

21
22 HARRIET P. BENNETT
23 Reporter, S. C. Court Administration
 46 Regency Oaks Drive
24 Summerville, S. C. 29485

1 ask that you not take notes. That's going to require you
2 to pay close attention to the evidence that comes from
3 the witness stand.

4 All right, ladies and gentlemen of the jury, this is
5 an important case. It's important to the State of South
6 Carolina, and it's an important case to the Defendant. A
7 very important matter, and I ask you to proceed forward
8 with this very serious matter.

9 MR. BANNON: May it please the Court?

10 On August 17, 2011, the Defendant, James Harris, was
11 driving a red Nissan pickup truck. He was driving in Bluffton,
12 and it was evening time. The sun had already gone down.

13 Now, as he was driving that pickup truck, he saw some-
14 thing in his rearview mirror. He saw blue lights.

15 Trooper Warner was on a routine speeding patrol, and
16 he had just clocked the Defendant at going over fifty miles
17 an hour in a twenty-five mile an hour zone.

18 So he turned on his blue lights and turned on his siren
19 and went after him.

20 Now, at this point, this is where it gets to one of the
21 critical junctures in our case because we're talking about
22 one of the choices that Mr. Harris made that evening.

23 At that point, Mr. Harris had a choice. He could do
24 the right thing, he could stop, because in the State of
25 South Carolina when a police officer turns on blue lights

1 behind you the law says you are supposed to stop; you're
2 about to get pulled over.

3 I think that we all know that. It's just common sense,
4 but Mr. Harris didn't do that. Mr. Harris continued on. He
5 started driving more quickly. He made U-turns. At one
6 point he hopped^{on}/the median in the road. He was passing on
7 the left side of a double yellow line, and at one point --
8 you will be able to watch the video of him running from
9 Trooper Warner -- he splits two cars coming in this direc-
10 tion, sort of like in one lane mode.

11 That is how desperate Mr. Harris was to get away from
12 Trooper Warner. Trooper Warner pursues him, and ultimately
13 they stop on a road called Shultz Road.

14 You will see the red truck pull off and start to slow
15 down, and you will see a person hop out of the driver's side
16 of the truck, a person wearing an orange shirt and what
17 looks like black and white pants.

18 Now, at first he tries to run but falls to the ground.
19 He lands feet first on the ground but falls to the ground.
20 He manages to pick himself up and run away.

21 That is Mr. Harris jumping out of the driver's side
22 door from the driver's seat of the red Nissan truck. De-
23 puty Warner pulls up and gives chase and ultimately finds
24 and catches up with Mr. Harris about a minute later, after
25 they run through the woods.

1 He manages to arrest him and take him into custody.

2 Now, what you will hear is one of the first things that
3 Mr. Harris says is, I wasn't the driver; I was the passenger.
4 I think that is going to be his contention here today, that
5 he was a passenger in that red Nissan truck.

6 So that is kind of what we're going to be talking about
7 here today. What you are going to be asked to decide is
8 whether or not you believe the person that you see jump out
9 of the driver's side door on the driver's side of the truck
10 is the driver of the truck.

11 Mr. Harris admits he's the person that jumped out of
12 that door but he says, I wasn't the driver; I wasn't the one
13 who failed to stop for a blue light.

14 Here's one other thing that might be interesting. Why,
15 I wonder, would Mr. Harris want to be getting away from
16 the police officer so bad?

17 Well, shortly after Mr. Harris was arrested other police
18 officers come to the scene, and an officer you will hear
19 from, Deputy Jansen, finds a loaded magazine in the street
20 right around where you see Mr. Harris jump out of the car.

21 It is not a gun, but it is a magazine, a forty-five
22 caliber -- fits a forty-five caliber gun.

23 So Trooper Warner goes and collects it and he says,
24 maybe I need to re-trace my steps of where I chased Mr.
25 Harris.

1 He does that, and he finds a forty-five caliber hand-
2 gun.

3 Wonder why Mr. Harris wanted to run that day?

4 He finds a forty-five caliber magazine and then, on
5 the path where he ran away, is a forty-five caliber handgun.

6 Now, in the State of South Carolina you are allowed to
7 carry a handgun but under certain conditions. Number one,
8 if you have a permit from SLED saying you are allowed to
9 carry a gun, and you are allowed to have it with you in a
10 car, but only under certain circumstances.

11 Mr. Harris, we will show you, wasn't following any of
12 those circumstances.

13 That's the case you are going to hear today. The main
14 issue in this case is who was driving that red pickup truck.

15 I want you to take your time and listen to the evidence
16 in the case, hear what is presented to you. I believe that
17 all the evidence you will see will show, will prove to you,
18 beyond a reasonable doubt, that it was Mr. Harris; that it was
19 Mr. Harris.

20 Thank you.

21 THE COURT: Mr. Walker.

22 MR. WALKER: May it please the Court?

23 I actually agree with the Solicitor or a lot of what
24 the Solicitor had to say, and I think he pretty much set out
25 the issues that there are in this trial.

1 I also appreciate the talk that Judge Nettles gave to
2 you, and I think you do too, because he spent a lot of time
3 educating you on something that I spend a lot of time talk-
4 ing about.

5 He frankly went into a lot more depth and details than
6 judges do, so I appreciate that very much.

7 It is a privilege to be an officer of the Court in the
8 United States where we have the right to have our peers,
9 twelve members of the community, deciding the issues. Like
10 the Judge said, you can be hauled into Court in other coun-
11 tries and told to prove your innocence, or you are just hauled
12 in and not entitled to do anything, to prove anything.

13 When our system started, it was like that as well, and
14 it slowly emerged over hundreds of years into the system we
15 have today.

16 At one time it was pretty much like a third world coun-
17 try and they could haul you in if they wanted to usually
18 before a judge or a sovereign. At one time you would have a
19 trial but it was a trial by battle or a trial by (inaudible)
20 who would be the decider.

21 (portion inaudible) I'm going to overturn what you
22 decided because I didn't like your decision. I didn't
23 agree with it.

24 It is really unique in the world that we have the right
25 to have citizens decide these matters, to look out for

1 the interests of those accused of crimes by the government,
2 to protect the Constitution, which we know for many people
3 is skewed every day in my job.

4 The Judge says that when someone is accused of a crime
5 that person is assumed to be innocent, and the Judge did
6 a good job of explaining why that's so.

7 He said it is the State's job to prove something beyond
8 a reasonable doubt. They are the one who bring the asser-
9 tions here too and they have a vast number of resources to
10 collect information they may need.

11 Thirdly, another reason is that you can't prove a nega-
12 tive, so an innocent person can say I didn't do it but I
13 can't prove it. How can I prove it? I can't prove I didn't
14 do something or that it didn't happen.

15 The idea of the burden of proof is kind of esoteric but
16 there's a lot of reasons we say the State has got to bring
17 to you all the evidence for you to make your decision.

18 You have to decide if they've brought you enough evi-
19 dence for you to decide, and the Judge will explain to you
20 the standard, and he will tell you the State has to prove
21 guilt beyond a reasonable doubt, and that a reasonable doubt
22 is the kind of doubt that would cause a reasonable person
23 to hesitate to act in making important life decisions.

24 The reason I express all this and it is such a big
25 deal, and why we have citizens to act as jurors, is because

1 you are not interested, you don't have a stake in the out-
2 come beyond doing your civic duty, and then to live with
3 your conscience afterwards.

4 As the Judge told you, he is the judge of the law, and
5 if there is a legal issue he rules on that. You are the judge
6 of the facts, and when you see and hear the evidence you say,
7 well, based on what I heard, this is a fact and this is what
8 happened.

9 Or when the State hasn't given you enough information
10 to make up your minds, that this is what happened.

11 If the Judge makes an error, there is a mechanism for
12 that to be reviewed.

13 As the judges of the facts, once you determine what the
14 facts are, that's a final decision. That can't be fixed
15 if you make a mistake.

16 SOLICITOR: Your Honor, I would object. May we ap-
17 proach?

18 THE COURT: You may.

19 (Conference at the bench between counsel and the Court
20 off the record)

21 THE COURT: Mr. Walker, you may proceed.

22 MR. WALKER: As judges of the facts, you have the power
23 that is unique to really determine something on your own.
24 It is really ultimately your decision. It becomes really
25 encumbent on you, and one of the really special things we

1 have about jurors -- I talked about the jury being neutral;
2 that it doesn't have a stake in the issue.

3 We draw you from the community and we ask you, hey,
4 do you know Mr. Walker, do you know Mr. Bannon. We don't
5 want there to be any outside influences so it will be truly
6 neutral.

7 And once we decide we have neutral people, it takes the
8 neutrality away and goes back to the burden of proof we've
9 talked about, because it is their job to prove something be-
10 yond a reasonable doubt.

11 The law says at the beginning you are starting out
12 sitting by Mr. Harris at the defense table and saying as a
13 citizen he is innocent, until you have done your job, State
14 of South Carolina, to convince all of us that each element
15 of these offenses have been proven beyond a reasonable doubt.

16 Really, on the scales of justice, you guys are sitting
17 on one side and that's the side of the Defendant, and it's
18 the State's job to apply and prove to you by the evidence to
19 move that scale around to your satisfaction to be reasonably
20 or reasonably convinced or if you have a reasonable doubt.

21 As Mr. Bannon said, Mr. Harris was driving the car --
22 Mr. Harris was driving the car and Mr. Harris didn't stop.
23 First of all, it is crucial -- it's not about the car didn't
24 stop. The law for failure to stop for a blue light says a
25 driver has to stop the car, and what you didn't hear from

1 the State is that the evidence is going to tell you there
2 were other people in the car.

3 I think this is another place where I kind of agree,
4 that I think someone probably ran away from the car at the
5 time and had the gun. The problem is you won't know who
6 that is, and they only got one person.

7 I think this will be a relatively short case. It's my
8 understanding the State just has a few witnesses, and there is
9 a video as well.

10 They have said Mr. Harris jumped out of the car and Of-
11 ficer Warner chased him down. This is not a California po-
12 lice chase, but this is Beaufort County. He jumps out and
13 rolls. It's lucky he didn't kill himself, and then they
14 catch him.

15 We'll be able to see all of that, and there is no doubt
16 he jumped out of the car and no doubt that he was in the
17 car. The question is whether he was driving the car, and
18 that is what they have to prove. I submit they won't be
19 able to do it.

20 Thank you for your attention.

21 Please give your attention to the State's witnesses.

22 THE COURT: Mr. Bannon, you may call your first witness.

23 SOLICITOR: Trooper Warner.

24 JOSEPH STEVEN WARNER, being
25 duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY SOLICITOR:

3 Q. State your full name, Trooper Warner.

4 A. Joseph Steven Warner.

5 Q. Trooper Warner, where do you work?

6 A. I work for the South Carolina Highway Patrol.

7 Q. How long have you worked for the Highway Patrol?

8 A. About two years now.

9 Q. As a part of your duty for the Highway Patrol, are
10 you assigned to an area?

11 A. I'm part of Troop 6, which includes Charleston, Berke-
12 ley, Dorchester, Colleton, Beaufort and Jasper, assigned
13 to Post C, which is exclusively Beaufort and Jasper.

14 Q. Were you working as a highway patrolman on August 17,
15 2011?

16 A. Yes.

17 Q. What was your patrol that evening?

18 A. I had a zone three which includes all of Hilton Head
19 Island, Bluffton, SC 170, to 21 at Callawassee, the Talmadge
20 Bridge off of U. S. 17.

21 Q. And were you still on duty around eight thirty that
22 evening?

23 A. Yes, sir, I was.

24 Q. Where were you?

25 A. I was at the city limits of Bluffton in an area called

OFR. WARNER ON DIRECT

1 -- in a subdivision called Bluffton Park. I was on (inaud-
2 ible) Parkway.

3 Q. And did you happen to encounter a red Nissan truck?

4 A. Yes, sir.

5 Q. Could you tell us how you came into contact with the
6 truck?

7 A. I was parked in some apartment parking spots, and in
8 front of the houses, running my radar. There had been a lot
9 of speeding problems in that neighborhood.

10 There was a red truck that was -- I was facing in one
11 direction and the truck was coming at me in the other direc-
12 tion and it appeared to be speeding.

13 At that time I activated my radar in my front radar an-
14 tenna and my radar picked up the vehicle traveling at fifty-
15 two miles an hour in a twenty-five.

16 Q. When you say in a twenty-five, what do you mean?

17 A. Twenty-five is the speed limit for that neighborhood.

18 Q. How fast did you say, sir?

19 A. Fifty-two.

20 Q. And how did you come to establish the speed of fifty-
21 two miles an hour on the radar?

22 A. When you engage it, it has a low speed, high speed,
23 and that was the only vehicle on the road coming toward me
24 at the time. There was no vehicles coming the other way.

25 What happens is that if you're driving it shows your

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1 speed, and it also shows the car speed coming toward me at
2 the time.

3 I was stationary so the only radar at the time was on
4 the vehicle coming toward me.

5 Q. And once you saw the vehicle traveling at fifty-two miles
6 an hour in a twenty-five, what did you do?

7 A. I immediately attempted to turn around. Unfortunately
8 it's a small area so I had to do a three point turn. The
9 car was up ahead and I attempted . .

10 Q. Were you able to catch up with it?

11 A. Yes, sir.

12 Q. Did you have your blue lights on at that time?

13 A. Not at that time.

14 Q. Where did you catch up to the car?

15 A. I ultimately caught up with the vehicle at S. C. 46 near
16 278 by Montana's and Kitty's Crossing, where Guiseppe's is.

17 Q. And where did you turn on?

18 A. Between Montana's and Guiseppe's.

19 Q. All right.

20 A. My blue lights were on and eventually I -- we don't turn
21 our sirens on unless they are absolutely necessary. I turned
22 my blue lights on on S.C. 46, and the vehicle turned into
23 Kitty's Crossing.

24 There is actually a traffic circle between -- I believe
25 it was called Bill's Liquors -- and Guiseppe's.

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1 At that time, the vehicle started to travel at a high
2 rate of speed, fish-tailing, and that's when I activated
3 my siren.

4 Q. What is the purpose of turning on your blue lights?

5 A. To alert the driver I was stopping the vehicle. The
6 emergency equipment has to be activated in order for the
7 vehicle to be stopped, and so everyone around you on the
8 front and back side of the vehicle know that something is
9 going on so everyone can be aware of the situation.

10 Q. And you said it was to alert the driver also?

11 A. Yes, sir.

12 Q. And you say -- getting back to the truck, you said it
13 started to fish-tail?

14 A. Yes, sir.

15 Q. When you had your lights and siren on did it start to
16 drive in a different fashion?

17 A. Yes..

18 Q. Can you describe that?

19 A. Instead of going straight he started jerking around
20 a little bit. The truck didn't seem to know what it wanted
21 to do.

22 It started going around the traffic circle and started
23 driving at a different rate of speed, and I knew something
24 was wrong with the vehicle at that time.

25 Q. Was it stopping?

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1 A. No, it was not.

2 Q. Are there safe areas to stop there?

3 A. I have stopped numerous vehicles there along S. C.

4 46. That area known as Kitty's Crossing is where we stop
5 them because there's parking lots. No vehicles on the road-
6 way or be a situation where I might get struck by a vehicle
7 or someone might strike my vehicle. You are not on the
8 roadway side.

9 Q. Could you please tell us what was the traffic like on
10 the road as you were pursuing this car?

11 A. When we pulled into Kitty's Crossing there was numer-
12 ous amount of people in the parking lot of Guiseppe's.

13 I am assuming they serve dinner because it was around
14 that time when we pulled onto S. C. 46. There was a fairly
15 good amount of traffic, along with some construction crews.

16 Around the time we finished there I believe they were
17 putting lines on the road that night.

18 Q. As the chase continued, how did this driver continue
19 to drive the car?

20 A. When we drove back onto S. C. 46, instead of going
21 straight and driving in the correct lane of travel, the
22 driver immediately started driving in the opposite lane of
23 travel, driving toward cars that were coming and some
24 cars were run off the road to avoid hitting him.

25 At that time, the construction crew was at one portion

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1 in the median and he crossed that median, almost strik-
2 ing a few construction workers. At that time he blew out
3 his -- I believe it was his front left tire and started to
4 drive at even a higher rate of speed.

5 We proceeded through the traffic circle at Bluffton.
6 There were cars going around him and cars waiting to go in.
7 He didn't yield. It didn't look like he hit his brakes at
8 all.

9 He drove straight through the traffic circle, making a
10 right on Bluffton Parkway.

11 Q. When he turns onto Bluffton Parkway, what does he do?

12 A. Immediately he makes a (inaudible) and I'm pretty much
13 right behind him.

14 Q. Could you describe what sort of road Guffy Road is?

15 A. It's a two lane road, one lane in each direction, and
16 there is really nowhere for a car to pull over. There are
17 houses along there and usually people riding bikes and walk-
18 ing down there or kids walking down the street.

19 It is a very narrow road. The speed limit down that
20 road is thirty miles an hour.

21 Q. And in your estimation how fast was the red truck going
22 then?

23 A. At one point we were going approximately fifty miles an
24 hour.

25 Q. What was the traffic like on Guffy Road?

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1 A. There were a few cars. There weren't many. The
2 cars that were on the road --one was in the right lane, and
3 we had to pass on the left lane. There was two cars pretty
4 much together at one point, and those cars almost crashed
5 trying to get off the roadway. He split the cars right
6 down the middle.

7 There was one more car we passed on the left side, and
8 at that point, the truck turned its lights off.

9 Q. Were you able to follow him through all this?

10 A. Yes, sir, I was.

11 Q. Where did he go after that?

12 A. He attempted to make a turn off of Guffy Road, and . .

13 Q. Was he able to do that?

14 A. No. You have to make a proper right turn on that road
15 because there's a big ditch on the corner, and if you don't
16 swing your truck or car around, you're going to get into
17 that ditch. He pretty much was right into the ditch when he
18 tried to cut the corner.

19 Q. And what happened when the truck went around the cor-
20 ner?

21 A. At that time, the truck was rolling. It didn't appear
22 like the truck wanted to go any further. I don't know if
23 they thought the car was going to crash but the car was dis-
24 abled.

25 They busted out another tire at that point when the car

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1 was hitting the ditch. The driver's side door immediately
2 opened, and as it opened -- as soon as it opened someone
3 came out of the driver's side seat right in the seat -- came
4 out of the seat.

5 That individual was the person sitting in front of us,
6 James Harris.

7 Q. Going back for a second, I'd ask you to look at State's
8 Exhibit Number 15. Could you take a look at that and tell
9 me if you recognize it?

10 A. Yes, sir.

11 Q. What is it?

12 A. It's a map of a portion of the city limits of Bluffton
13 including Bluffton Road, Buffton Parkway and some of the
14 subdivisions around there.

15 Q. Does it include that areas where you pursued the red
16 Nissan truck?

17 A. Yes, sir, it does.

18 Q. Is it a fair and accurate map of that area?

19 A. Yes, sir, it is.

20 SOLICITOR: Your Honor, the State would move State's
21 Exhibit 15 into evidence.

22 THE COURT: Any objection from the Defense?

23 MR. WALKER: No objection.

24 THE COURT: Without objection, State's 15 in evidence.

25 (Map admitted in evidence without objection as State's

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1 Exhibit 15)

2 BY SOLICITOR:

3 Q. Trooper Warner, if I could have you step down for a
4 moment. I'd like to publish the larger video copy of
5 State's Exhibit 15 for the jury.

6 A. . .

7 THE COURT: Any objection?

8 MR. WALKER: No, sir.

9 (State's Exhibit 15 published to the jury)

10 Q. Okay, Trooper Warner, if you would just stand right
11 there and just sort of point out to us -- if you would begin
12 at the beginning and sort of take us through where the
13 . .

14 A. I was here, approximately right about there, and the
15 vehicle was coming out of Brandon Lane right over here. I
16 made a right on -- there's a hill where I caught the ve-
17 hicle.

18 The vehicle traveled on Eighth Avenue. I could see
19 Ninth Avenue because I wasn't able to slow down and try to
20 catch up to the vehicle.

21 The vehicle proceeded down Guffy Road which is this
22 road right here. I went down Ninth Avenue and I started
23 to follow it. We made it to Bluffton Parkway and the traf-
24 fic circle, down Bluffton Road, where I proceeded to call
25 the vehicle in to our dispatch, and I activated my blue

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1 lights approximately right here. This is Kitty's Crossing
2 where Guiseppe's, Food Lion and Bill's Liquors are.

3 We turned around back here on Bluffton Road and made
4 a right turn on the traffic circle at Bluffton Parkway and
5 proceeded.

6 Right here -- sorry -- right here would be Shultz Road.
7 This is where the vehicle stopped.

8 Q. And could you point out to us where you first were behind
9 the car with your lights on?

10 A. Right here.

11 Q. And where were you behind the car with your blue lights
12 and siren on?

13 A. Right here.

14 Q. And after that, can you just take us -- after Kitty's
15 Crossing and then back down 46.

16 A. Yes, down 46. Right on Bluffton Parkway and left on
17 Guffy Road. Then right on Shultz.

18 Q. And it was on Shultz where the person ultimately
19 jumped out of the car?

20 A. Yes, sir.

21 Q. Can you say approximately how long it was before the
22 truck finally stopped?

23 A. It's hard to tell when you are actually pursuing a car,
24 but I guess between three and four minutes.

25 Q. Thank you. You can go back to the stand.

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1 Is your patrol cruiser equipped with a video camera?

2 A. Yes, sir, it is.

3 Q. And was your video camera working that evening?

4 A. Yes, sir, it was.

5 Q. Was there a recording made of the chase?

6 A. Yes, sir, there was.

7 Q. I'd like to show you what's been marked State's Ex-
8 hibit 16. Do you recognize it?

9 A. Yes, sir.

10 Q. What is it?

11 A. A copy of the stop.

12 Q. Have you had an opportunity to watch it?

13 A. Yes, I have.

14 Q. Is it a fair and accurate depiction of the chase that
15 evening?

16 A. Yes.

17 SOLICITOR: Your Honor, the State would move State's
18 Exhibit 16 into evidence.

19 THE COURT: Mr. Walker?

20 MR. WALKER: No objection.

21 THE COURT: State's Exhibit 16 in evidence without
22 objection.

23 (Camera recording in evidence without objection as
24 State's Exhibit 16)

25 BY SOLICITOR:

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1 SOLICITOR: Permission to publish State's Exhibit 16.

2 THE COURT: All right.

3 Q. I'm sorry. I asked you to get back on the stand a lit-
4 tle bit too soon.

5 (Video being played for the jury)

6 Where are you at this point?

7 A. Just past the construction crew on the left. In front
8 of Montana's.

9 Q. So this is just after Kitty's Crossing?

10 A. Yes.

11 Q. And is that your voice?

12 A. Yes, sir.

13 Q. Now, how many people did you see get out of the ve-
14 hicle?

15 A. At this time I saw one. When I pulled my car to
16 the right going towards them there was another individual
17 who pretty much jumped head-first out of the car.

18 Q. Which side of the car did that person come from?

19 A. The driver's side.

20 Q. The driver's door?

21 A. Yes, the door was still open.

22 SOLICITOR: Your Honor, at this point the video goes
23 on for a few moments but I don't know it really has any
24 more value for the jury.

25 I don't know what Mr. Walker's feelings are. I will be

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1 happy to let it run.

2 THE COURT: It's your witness. You can cut it off at any
3 time, of course, and he can also introduce portions he would
4 like.

5 SOLICITOR: Okay. Actually, what I think I'll do -- I
6 would like to go back a little bit.

7 BY SOLICITOR:

8 Q. Trooper Warner, were you able to see what color shirt
9 the person was wearing?

10 A. Yes, sir.

11 Q. What color was that?

12 A. Orange. An orange shirt.

13 Q. And now did the person come out sort of face-first,
14 or did they come out with their feet first?

15 A. They came out feet-first.

16 Q. So once you stopped and got out of your car, what did
17 you do?

18 A. I secured my vehicle and I proceeded to give chase.

19 Q. Did you ever lose sight of who you were chasing?

20 A. No, sir.

21 Q. Is the person you were chasing in the Courtroom?

22 A. Yes, I was chasing the person in the Courtroom.

23 Q. Is he the person that was wearing the orange shirt?

24 A. Yes, sir.

25 Q. How far (portion inaudible)

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1 A. We started out at Guffy Road -- Shultz Road, and we
2 crossed the intersection of Guffy Road and Taylor Court or
3 the intersection of Shultz Road, which is a dead end street.

4 Q. Where did the person run?

5 A. He ran into the bushes. There was a fence there at
6 that time. He tried to lay in the bushes next to the fence.

7 Q. Were you able to take him into custody?

8 A. There was a moment that I waited, hoping there would
9 be some kind of backup but there was no backup on the way.

10 Q. Were you able to put him in handcuffs?

11 A. Yes, sir, I was.

12 Q. Did you have any trouble doing that?

13 A. No, sir. I made him crawl in the woods. They teach
14 us to put them in a disadvantaged situation when they are
15 facing away from us, their hands to their sides and their
16 feet away from each other. They're looking away from us.
17 At that point, I went in and there's a good Samaritan who
18 had followed us with his headlights on, so I was able to see
19 the whole situation.

20 Q. And once you were able to handcuff him, what did you
21 do next?

22 A. Got up and we started walking back at that point,
23 and I believe at that point I gave him his Miranda Rights.
24 He claimed his shoulder hurt and I contacted our dispatch
25 to make sure there was an ambulance coming.

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1 We are required once we place someone under arrest
2 to give them a few sentences which are their rights.

3 Q. And could you please -- did you say those to him or ...
4 show him a piece of paper?

5 A. I had a card that I read off of.

6 Q. And could you tell the jury what you read to him?

7 A. You have the right to remain silent. Anything you
8 say can be and will be used against you in a Court of
9 Law.

10 You have a right to talk to an attorney and have him
11 present with you during questioning. If you cannot afford to
12 hire an attorney one will be appointed to represent you at
13 no cost.

14 You can exercise your rights and not answer any ques-
15 tions I'm asking you at this time.

16 Then I asked him do you understand the rights I have
17 explained to you at this time. It's usually a yes or no
18 answer, and after that I read, having these rights in mind,
19 do you wish to talk to us any further.

20 Q. Did Mr. Harris seem to understand what you are saying?

21 A. I can't say yes or no because he just kept talking
22 about his shoulder.

23 Q. Did you question him at all?

24 A. No, sir.

25 Q. Did he say anything else besides his shoulder was

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- 1 hurting him?
- 2 A. That I wasn't driving.
- 3 Q. Mr. Harris was saying he wasn't driving?
- 4 A. Yes, sir.
- 5 Q. Once you had him in custody, did you ever search his
- 6 person?
- 7 A. Yes, sir.
- 8 Q. What did you find?
- 9 A. A cell phone.
- 10 Q. Did you find a driver's license?
- 11 A. No, I didn't.
- 12 Q. Did you find a license to carry a concealed weapon?
- 13 A. No, sir.
- 14 Q. Did he identify himself by name?
- 15 A. No, sir.
- 16 Q. Did he appear to be intoxicated in any way?
- 17 A. No, sir.
- 18 Q. Was he able to be seen by EMS?
- 19 A. Yes, sir.
- 20 Q. Was he released by them?
- 21 A. He refused treatment.
- 22 Q. What happened then?
- 23 A. He was placed in a county vehicle. A State trooper
- 24 car is not equipped with cages. We'd have to put him in
- 25 the front seat.

1 The investigation we have to do at the scene -- we placed
2 him in the back of a county vehicle that had a cage.

3 Q. By that point, were there other people on the scene?

4 A. Other law enforcement.

5 Q. And when you were out at the scene, did you collect
6 any evidence?

7 A. Yes, sir.

8 Q. What did you collect?

9 A. We collected a magazine that went to a forty-five
10 caliber gun, and a pistol that was also a forty-five caliber
11 pistol.

12 Q. How did you -- which did you find first?

13 A. We found the magazine first. It was laying in the
14 middle of the road.

15 Q. Were you the officer who found that first?

16 A. No, sir.

17 Q. Were you the one who collected it?

18 A. Yes, sir, I was.

19 Q. So how did you come to collect it? The magazine.

20 A. Once I searched Mr. Harris, he was placed in the County
21 vehicle. At that point it was brought to my attention there
22 was a magazine lying in the road. At that point, we left
23 it alone. We didn't touch it before we took any pictures,
24 and we traced our steps on the path Mr. Harris ran.

25 We located a pistol lying on top of some leaves.

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1 Q. What caliber was the pistol?

2 A. (No audible response)

3 Q. I'd like to hand you State's Exhibit Numbers three
4 through 14. If you could take a look at those one at a
5 time and tell me if you recognize them?

6 A. The first picture is the pistol that we found laying
7 on the ground. It shows where we found the weapon.

8 Q. Just look through them one at a time to see if you
9 recognize them, or each one of them.

10 A. Yes, sir, I do.

11 Q. Is it fair to say they are pictures of the scene
12 where the truck stopped?

13 A. Yes, sir.

14 Q. And are they a fair and accurate depiction of differ-
15 ent places at that scene?

16 A. Yes, sir.

17 SOLICITOR: At this time the State would move Exhibits
18 3 through 14 into evidence.

19 THE COURT: Any objection from the Defense?

20 MR. WALKER: No, sir. I made my earlier objections
21 before the Court to 17 and 14 which are on the record.

22 THE COURT: You are protected in that regard.

23 All of these are in evidence subject to the objection.

24 (Photographs at scene of stop, State's Exhibits 3
25 through 14, admitted subject to objection)

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1 BY SOLICITOR:

2 Q. What is this picture of?

3 A. The magazine that we found in the roadway. It goes to a
4 forty-five caliber weapon.

5 Q. And approximately where in the roadway did you -- was
6 the magazine?

7 A. I was in the middle of the roadway just after the ve-
8 hicle ran off the road and approximately where Mr. Harris
9 landed in the roadway.

10 Q. All right.

11 A. That's a picture of the pickup truck that I was chas-
12 ing.

13 Q. And is that the same license plate?

14 A. That's the same one I called in and on the video.

15 Q. That's the license plate, and what is this picture?

16 A. That's a picture of the interior of the pickup truck.

17 Q. Was the truck moved at all for these pictures to be
18 taken?

19 A. It is where it ultimately stopped rolling. It almost
20 rolled into the houses, right before the houses.

21 Q. What is that?

22 A. That's a picture of the front left tire. Based on
23 the tire being flat it's hard to see in the picture. You
24 can see a portion.

25 Same picture.

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1 (Solicitor and witness asked to speak up)

2 Q. What is this picture?

3 A. It's hard to see but I'm actually standing on -- 85
4 is the house number that we're seeing, and this is the
5 pickup truck.

6 Q. Approximately how far from the roadway? I know it's
7 difficult to tell from the picture. How far from the roadway
8 is the truck at this time?

9 A. Two hundred feet.

10 Q. And this one?

11 A. That's the pistol that we recovered. It was there.
12 It's kind of hard dirt and roots to a tree.

13 Q. It seems to look all faded. Is that the case?

14 A. Yes, sir, it is.

15 Q. Is that fairly consistent through the property in
16 that area?

17 A. Yes, sir.

18 Q. Are the portions of that property where the truck
19 came to rest -- what is this?

20 A. A picture of the gun that we recovered. This is my
21 vehicle. I stopped approximately right back here.

22 Q. Where was the truck? Was it close to the vehicle?

23 A. The truck is a long ways in the opposite direction.

24 Q. What is that?

25 A. That's a picture of Mr. Harris, the same individual

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1 that jumped out of the truck.

2 Q. And this?

3 A. That's a picture of the magazine in the middle of the
4 road.

5 Q. Thank you. You can get back on the stand.

6 I'd like to show you State's Exhibits 1 and 2.

7 A. Do you want me to take them out of . .

8 Q. Just look at them for right now and see if you recog-
9 nize them.

10 A. Yes, sir, I do.

11 Q.. And could you tell us what is State's Exhibit Number
12 1?

13 A. That would be the pistol that we recovered on the
14 scene.

15 Q. And is it in -- is the pistol in the same or substan-
16 tially the same condition as it was on the night you recov-
17 ered it?

18 A. Yes, sir, it is.

19 SOLICITOR: The State would ask to admit State's Ex-
20 hibit 1 in evidence.

21 MR. WALKER: No objection.

22 THE COURT: State's Exhibit 1 is in evidence without
23 objection.

24 (Pistol admitted without objection, State's 1)

25 Q. Now the same question with regard to State's Exhibit 2.

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1 Do you recognize Number 2?

2 A. Yes, sir. It's the same magazine we recovered.

3 Q. Does it appear to be in the same or substantially the
4 same condition?

5 A. Yes, sir.

6 Q. Now, is the magazine still loaded with rounds?

7 A. As per policy, we keep them in the same evidence bag
8 as the magazine itself, but they are separate.

9 Q. Why is that?

10 A. Because we don't -- if a weapon does happen to get lost,
11 which this did not, it lessens the opportunity for someone
12 to use the weapon with those rounds.

13 Q. Is the magazine and the rounds in substantially the
14 same condition as it was when it was found?

15 A. Yes, sir.

16 SOLICITOR: State would move to admit State's Exhibit
17 2 in evidence.

18 MR. WALKER: Without objection.

19 THE COURT: State's Exhibit 2 in evidence without ob-
20 jection.

21 (Magazine admitted into evidence without objection
22 as State's Exhibit 2)

23 BY SOLICITOR:

24 Q. Is there round in the chamber?

25 A. There is a zip tie that we put on it to make sure the

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1 weapon itself is clear.

2 THE COURT: I'm going to ask the Clerk and the Solicitor
3 to make sure we don't send the revolver and the rounds back
4 to the jury room at the same time.

5 The jury can see them but they can't go back at the
6 same time. I'll ask the Solicitor, Mr. Walker and the Clerk
7 to make sure we don't send them back at the same time.

8 BY SOLICITOR:

9 Q. Could you take the pistol out of the container that
10 it's in?

11 A. Yes, sir.

12 Q. Now, could you basically describe it.

13 A. It appears to be -- the gun itself is in good con-
14 dition. The only damage is the scrape marks to the outside
15 area.

16 SOLICITOR: Publish to jury, Your Honor.

17 BY SOLICITOR:

18 Q. Now, let me ask you something. Do you happen to know
19 what the little silver button on the side -- what that does?

20 A. It releases the magazine. If you hit the button the
21 magazine pops out.

22 Q. Could you take the magazine out of the container that
23 it's in?

24 A. . . .

25 Q. The magazine and rounds are in separate bags?

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1 A. Yes.

2 Q. And when it was recovered, was there a round in the
3 chamber?

4 A. No, sir. There were only bullets in the magazine.

5 Q. And now, is there any damage to the base area of the
6 magazine?

7 A. To one side.

8 Q. How would you describe the damage that was done?

9 A. . . .

10 Q. Looking over the area of the magazine.

11 A. Like with the gun, there is a sort of a hit hard sur-
12 face such as from the road.

13 Q. If you would just repackage it the way it was before.

14 A. Yes, sir.

15 SOLICITOR: Beg the Court's indulgence.

16 (Brief pause in proceeding)

17 SOLICITOR: I have no further questions.

18 THE COURT: All right. Madam Forelady and ladies and
19 gentlemen of the jury, we've been working for a while so I
20 will give you this opportunity to retire to the jury room
21 and refresh yourselves.

22 Once again, Madam Forelady, do not discuss the case in
23 any way, shape or form.

24 Everyone remain seated as the jury exits.

25 (Jury excused to jury room)

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1 THE COURT: Anything from the State before we take a
2 break?

3 SOLICITOR: No, Your Honor.

4 THE COURT: From the Defense?

5 MR. WALKER: No, Your Honor.

6 THE COURT: We'll be at ease for five minutes.

7 (Whereupon, the Court took a brief recess, after which
8 the case was resumed)

9 THE COURT: Bring in the jury.

10 (Jury returned to the Courtroom)

11 THE COURT: Madam Forelady, ladies and gentlemen, you
12 look refreshed. Please pay close attention.

13 Mr. Walker, you are recognized for Cross Examination.

14 MR. WALKER: May it please the Court?

15 CROSS EXAMINATION

16 BY MR. WALKER:

17 Q. You testified you have been a trooper for about three
18 years. What do you have to do to become a State Trooper?

19 A. You've got to go through the enrollment process for
20 six months, background checks and physicals, polygraphs --
21 things of that nature.

22 Once you get through the employment process, you have
23 six months at the Criminal Justice Academy. Everything from
24 criminal domestic violence to pursuit, firearm training,
25 defensive tactics, how to make traffic stops.

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1 How to secure subjects, things of that nature.

2 Q. So they teach you how to drive so when you have a
3 chase you can . . .

4 A. Yes, sir. We go through a course called the rock,
5 which is a very long course with thousands of cones. The
6 course itself -- if you hit one cone, you fail.

7 Q. Do they teach you how to do investigations?

8 A. Yes, sir, accident investigations for the most part.

9 Q. Is the class that you take entitled accident investi-
10 gation, or is it investigatory techniques?

11 A. Accident investigation.

12 Q. What is your primary job?

13 A. Traffic safety, traffic enforcement and accident in-
14 vestigation.

15 Q. And when you are at the Criminal Justice Academy, did
16 you ever take any classes or study investigating scenes,
17 securing evidence, crime scene investigation, anything
18 like that, through the actual criminal justice portion that
19 every law enforcement officer in the state has to go through
20 -- during that . . .

21 A. They do have a few classes on how to secure a scene,
22 how to properly do evidence, and then from there we would
23 go into specific policies and procedures in place for Highway
24 Patrol and the way we do it; how we secure evidence, from the
25 scene to our office, all the way up to Columbia, where all

OFR. WARNER ON CROSS

1 our evidence is held.

2 Q. So evidence collection and storage is an important part,

3 I guess, of the entire process?

4 A. Yes, sir.

5 Q. Why is that?

6 A. So the evidence itself can't be mislabeled, misread,
7 improperly stored. It's the integrity of it.

8 Q. I guess I'll ask you a little bit about -- stop there.

9 You've gone through, I guess, the basic academy, the new
10 trooper academy. Have you had any other classes or courses
11 since you've been a trooper that weren't a part of your
12 initial training?

13 A. Yes, sir. I've gone through DMV fraud detection
14 class -- I guess is what you would call it. The highway pa-
15 trol classes, along with advanced DUI detection, advanced
16 accident investigation, reconstruction.

17 Other classes I've taken -- I've taken numerous EMT
18 classes.

19 Q. I'm going to pull out what's been labeled State's Ex-
20 hibit 1, and I'm not so much interested in the actual ex-
21 hibit which is firearm you recovered, but the bag you've
22 got it in.

23 A. Yes, sir.

24 Q. Is that a special kind of bag?

25 A. It's an evidence bag.

OFR. WARNER ON CROSS

1 Q. Where did you get this?

2 A. From my office. We keep them in our car.

3 Q. So you always have a stack of these with you?

4 A. Yes.

5 Q. To put in any kind of evidence that you think is im-
6 portant?

7 A. Yes, sir.

8 Q. What kind of things would you normally put in one of
9 these?

10 A. Anything ranking from evidence from a car accident to
11 marijuana or drugs, money seizures, to firearms.

12 Q. Why does it get a special bag?

13 A. It's like any other piece of evidence. It's labeled
14 evidence and known that it's evidence. We do that to have
15 the chain of custody which is in that box over there, or to
16 the left of the box.

17 You can't put something in the bag that is not marked
18 evidence. It might be misrepresented.

19 Q. Why do you need a chain of custody?

20 A. The chain of custody is for everyone that touches it.
21 That way there is no discrepancy on who has it and things
22 of that nature.

23 Q. What if you have a blood sample in a bag? That would
24 not go in an evidence bag, would it?

25 A. That would go in a separate SLED kit that we do and

OFR WARNER ON CROSS

1 that has a seal that goes over it. Nurses or doctors sign
2 it and we sign it. We have to put it in a refrigerator, a
3 locked refrigerator.

4 Then the chain of custody goes with that all the way
5 up to SLED where we take our evidence, special evidence like
6 blood and stuff.

7 It is in a separate container but it has a chain of
8 custody as well. It's a separate form.

9 Q. And why do you need a chain of custody?

10 A. Same reason, so there is no misrepresentation or any
11 discrepancy in the evidence itself.

12 Q. Why not just put it in a box and take it?

13 A. Once again, so there is no discrepancy.

14 Q. So when you are gathering evidence at a crime scene or
15 at any time you need to, you take photos, and you've got a
16 video camera that goes where you go and is evidence.

17 You take statements from people, is that correct?

18 A. Yes, sir.

19 Q. There were no statements that night from any witnesses?

20 A. Because we didn't have any. Just conversation with Mr.
21 Harris.

22 Q. Other things you might do is talk to witnesses and
23 get statements from them? See if there are any other cameras
24 in the video cams or anything?

25 You would take any physical evidence like the gun or

OFR. WARNER ON CROSS

1 a beer bottle in a DUI case?

2 A. Yes, sir.

3 Q. And those you preserve?

4 A. Yes, sir.

5 Q. And you might also seek to take fingerprints?

6 A. I'm not certified, nor do I know how to do that. That
7 wouldn't be something I could do personally.

8 Q. So you'd say this might need fingerprints, but I'm not
9 going to do it because I'm not certified, and you would
10 call someone else?

11 A. . .

12 Q. Someone that is certified that can handle it. Correct?

13 A. Yes.

14 Q. But in your investigative process, you are aware that
15 that is a technique that law enforcement uses?

16 A. Yes, sir, it is.

17 Q. And also we are all aware of DNA; that they can take
18 swabs and things?

19 A. That is above my level.

20 Q. Not something that you are . .

21 A. Correct.

22 Q. Which is another reason to put the things in bags, so
23 that if you want to do any of these tests no one else will
24 have handled them. Correct?

25 A. . .

OFR. WARNER ON CROSS

1 Q. You would get more evidence. Correct?

2 A. Yes, sir.

3 Q. I kind of want to switch gears a little bit. I have
4 a photo up on the big screen there of -- I'm sorry -- it
5 is State's Exhibit Number 4.

6 A. Yes, sir.

7 Q. And I'm just going to summarize your testimony. You
8 said that when -- it shows the photo at the base of the
9 tree, and you said your car was kind of right in this area?

10 A. Yes, sir.

11 Q. And the truck was kind of on the other side?

12 A. Farther back in the field, far away from my vehicle.

13 Q. What I'm trying to do, we've got this perspective of
14 the gun but we also have a video which is kind of a per-
15 spective out of the front of your car.

16 A. Yes, sir.

17 Q. So I'm trying to relate those two to each other.

18 Which way is your video camera pointing?

19 A. The video camera -- can I get up? That makes it eas-
20 ier. The gun is here, and my camera is pointing in this
21 direction over here.

22 Q. Back away from the gun?

23 A. Correct. I'm facing that way.

24 Q. The car is facing toward ...

25 A. Facing that way.

OFR. WARNER ON CROSS

1 Q. And so when we see on the video you run across -- the
2 car is kinda facing the jury, and you run across the edge
3 of the car. From the perspective of the video camera, from
4 left to right.

5 You're running towards -- towards me, and then we see
6 the gun is on that side of your car?

7 A. Yes, sir.

8 Q. Now, the red Nissan truck that you saw -- you are run-
9 ning stationary radar and it was approaching, so when you
10 first clocked this truck speeding and going by, and it is
11 nighttime, were you able to identify anyone driving the ve-
12 hicle when you saw it?

13 A. There was quite a bit of tint throughout the vehicle.
14 I could not see in the car.

15 Q. And it went by and you said it took you a minute to
16 get turned around, and then you say it was about a mile
17 before you caught up to it?

18 A. About, sir.

19 Q. And that is when you initiated the traffic stop?

20 A. Yes, sir.

21 Q. Who does the truck belong to?

22 A. Sir, I don't know.

23 Q. Would this help to refresh your memory?

24 A. It says T A I T -- Terry W. Tait.

25 Q. Now, I want to speak briefly with you about the firearm

OFR. WARNER ON CROSS

1 that you took-- What kind of firearm do you carry?

2 A. A Glock, model 37, forty-five caliber, cap rounds.

3 Q. So the same caliber?

4 A. Yes, sir.

5 Q. Although a cap is a much better round than a tradi-
6 tional forty-five caliber?

7 A. . . .

8 Q. I hand you the magazine. How does one put bullets
9 in one of those?

10 A. There are parts on the side that you can physically
11 put them in by the back of the round. You push down on
12 the top here and push it in.

13 Q. So you would push down with the edge inside of it
14 until you fill the magazine?

15 A. Yes, sir.

16 Q. And there were eight rounds in it?

17 A. To my recollection.

18 Q. And you would hold the magazine kind of like that
19 while you were doing it?

20 A. Everyone has their own different style to do specific
21 things.

22 Q. How do you do it?

23 A. I have it on my knee and kind of push down, because
24 our magazines are quite stiff and you are holding it in one
25 hand on your knee.

OFR. WARNER ON CROSS

1 Q. And with the other hand you push with your thumb?

2 A. Yes, sir.

3 Q. And the side of this magazine is a smooth metal sur-
4 face?

5 A. Correct.

6 Q. And this is not open -- I'm not going to open it, but
7 I'm holding up the bag containing the ammunition rounds,
8 and a forty-five caliber round has a smooth surface where
9 you push it into the magazine?

10 A. . .

11 Q. I'm holding the actual pistol and the slide you use to
12 chamber a round is very smooth metal surface?

13 A. Right.

14 Q. Would you expect if someone had touched this smooth
15 metal surface to at least sometime to be able to raise a
16 fingerprint off of it?

17 A. You could. Yes, sir.

18 Q. I know you said you don't do it, but did you ask the
19 person your office uses to take fingerprints to try to
20 raise a fingerprint?

21 A. Not based on the totality of the circumstances.

22 Q. You're not the person who takes fingerprints, but I'm
23 sure you guys have the capability to try to do DNA analysis?

24 A. We can call somebody either from our Department or from
25 SLED.

OFR. WARNER ON CROSS

1 Q. Did you use that person to try to do that?

2 A. No, sir. I didn't think we needed to use other re-
3 sources in completing the investigation on this.

4 Q. And I'm handing you another portion of your report, and
5 do you recognize that?

6 A. Yes.

7 Q. Can you tell us what it is?

8 A. This is a form that the South Carolina Department of
9 Public Safety uses for chain of evidence. It signed off
10 on once it goes to Columbia.

11 There is a list on there of what the evidence is.

12 Q. And what evidence is listed?

13 A. Rueger P97DC semi-automatic pistol, eight Winchester
14 auto bullets.

15 Q. And a couple of lines below that I think you have --
16 under comment, can you tell us what that is?

17 A. NCIC check indicates weapon cleared.

18 Q. NCIC is a national computer system where if stuff
19 is stolen it is stored in that computer? If a weapon or a
20 car is stolen, it will come back saying where that is stolen
21 from?

22 A. Yes, sir.

23 Q. So if something is stolen it goes in there and pops
24 up to say this is a stolen pistol?

25 A. Yes, sir. It's actually a separate crime to have a

OFR. WARNER ON CROSS

1 stolen pistol.

2 Q. So we know this pistol wasn't stolen or this wasn't

3 . . .

4 A. Yes, sir.

5 Q. Do you get a separate report from the ATF?

6 A. I believe that is in their report.

7 Q. Was it listed on their paperwork?

8 A. No, sir.

9 MR. WALKER: Court's indulgence.

10 (Brief pause in proceeding)

11 BY MR. WALKER:

12 Q. And then we watched a video about the chase, and what
13 happened is pretty straight-forward.

14 I don't want to belabor the point too much. I'm
15 going to try to avoid playing it again, so let's see if we
16 can agree on a few things.

17 A. Yes, sir.

18 Q. Initially you stated you thought it was three or four
19 minutes that the chase took?

20 A. Right.

21 Q. But then watching it from the time it started at 2042,
22 and then I counted the time that the car stopped at 2043.
23 Would you say it's about a minute and a half?

24 A. Yes, sir.

25 Q. In the immediacy of the circumstances, it's

OFR. WARNER ON CROSS

1 understandable. It happens to us all when judging time
2 and distance.

3 But objectively we can say it's about a minute and a
4 half?

5 A. Yes, sir.

6 Q. When we were watching the video we could hear your in-
7 terior mike and you were going through some trees on the
8 side of a building so you can't see much.

9 A. Yes, sir.

10 Q. But we could hear your mike and we didn't play the
11 whole thing so I'll just walk you through it.

12 Do you know how far you chased him?

13 A. I don't know how far it was. I'd say a quarter of a
14 mile.

15 Q. I think carrying all the stuff you carry, I'd be tired.

16 A. I think a quarter of a mile before I was able to
17 catch him.

18 Q. And you saw the truck and saw him bail out? You saw
19 it the whole time?

20 A. Yes.

21 Q. You had him in your sights before you were able to get
22 him?

23 A. Yes, sir.

24 Q. And that is all in your report. You caught him in a
25 tree line or fence line?

OFR. WARNER ON CROSS

1 A. Yes, against a fence.

2 Q. And he didn't draw a weapon on you?

3 A. No, sir.

4 Q. And you had your weapon on him?

5 A. Yes, sir.

6 Q. And you actually maintained your weapon on him for a
7 while?

8 A. Yes, sir.

9 Q. And then you decided to place him in custody?

10 A. Yes, sir.

11 Q. You say you had a conversation with him while he was
12 in custody on the way back to your car?

13 A. No, sir, in front of my car.

14 Q. And you said that he was complaining about his shoulder?

15 A. Yes, sir.

16 Q. He wasn't talking about his shoulder on the way back to
17 your car but when you got him to the front of your car is
18 when he claimed that he hadn't been the one driving.

19 Is that correct?

20 A. Yes, sir.

21 Q. And isn't it true he said he jumped out of the driver's
22 side because of a big ditch on the other side?

23 A. Yes, sir.

24 Q. Okay. Now, you're the one that -- I notice on the
25 evidence sheet the recording or whatever medium the recording

MR. WARNER ON CROSS

1 is on is not on there. Did you keep custody of that video?

2 A. Yes, sir. I have the actual VCR tape so it was actually
3 prepared on a data disk which has both been submitted in
4 evidence.

5 Q. So did you prepare this disk?

6 A. Yes, I did.

7 Q. And the conversation in the front of your car, that's
8 not on this disk, is it?

9 A. I do not believe so.

10 Q. Is there a reason you wouldn't want the jury to hear
11 that?

12 A. No, sir. I thought it was on there. It is hard to do
13 a VHS tape from the DVD. I make a lot of DUI arrests, and we
14 generally have to record VHS to DVD. Ten to 12 in a week.

15 Q. But this isn't the full and complete recording of what
16 happened that night? It was edited?

17 A. I must have stopped it. I didn't edit it.

18 Q. You got it from a larger tape?

19 A. Yes, sir.

20 Q. And the part that is not on there is where Mr. Harris
21 tells you he wasn't driving the car?

22 A. Yes, sir.

23 Q. Now, you also testified about other people being in
24 the car who you saw?

25 A. We saw another person jump out of the driver's side of

MR. WARNER ON CROSS

1 the vehicle. We all saw it on the tape.

2 Q. And we see on the video as your car swings by into the
3 driveway we get kind of a panning shot, and then it goes in
4 a frame. Is that right?

5 A. Maybe a second or two at most.

6 Q. Fortunately for Mr. Harris, we saw somebody else jump-
7 ing out of the driver's seat?

8 A. I wouldn't call it the driver's seat, sir.

9 Q. The driver's side door?

10 A. Yes, jumping out.

11 Q. And you yourself testified that at the time Mr. Harris
12 -- as soon as the truck hit the ditch that Mr. Harris came
13 out the driver's side -- Mr. Harris jumped out previously
14 going that way and you chased him down and caught him,
15 had the gun on him. Your adrenaline is slowing.

16 You didn't even realize another person had jumped from
17 the car?

18 A. Yes, sir.

19 Q. The only knowledge of another person is from that video?

20 A. Yes, sir.

21 Q. And because your only knowledge is from the video, you
22 don't know if there were even more people?

23 A. That's correct.

24 Q. That's all I have.

25 THE COURT: Any Redirect?

MR. WARNER ON REDIRECT

1 SOLICITOR: Yes, sir.

2 REDIRECT EXAMINATION

3 BY SOLICITOR:

4 THE COURT: Mr. Walker, it's going to be incumbent upon
5 you to object to any new material. There will not be Re-
6 cross.

7 Q. Just a couple of things that Mr. Walker talked about.
8 First, let's talk about this other person who got out of
9 the car.

10 Now, the truck, was it a two door truck or a four
11 door truck?

12 A. Four door truck.

13 Q. Four door, and this other person is coming out of the
14 driver's side?

15 A. Yes, sir.

16 Q. The driver's door or just the driver's side of the
17 truck?

18 A. It appeared to be the driver's door because the door
19 was still open.

20 Q. And now, this person who got out of the car, was that
21 before or after Mr. Harris got out of the car?

22 A. A little ways after Mr. Harris got out of the car.

23 Q. Was that after -- where in relation to the magazine in
24 the street did that person get out of the car?

25 A. A long time after that.

OFR. WARNER ON REDIRECT

1 Q. So the car would have rolled past where the magazine
2 was found in the street?

3 A. Yes, sir.

4 Q. Mr. Walker asked you about, I guess, why the Defen-
5 dant said he jumped out of the driver's side?

6 A. There was a big ditch.

7 Q. Now, could you describe what is beside the road where
8 Mr. Harris jumped out of the driver's side? What was on
9 the other side?

10 A. There was grass.

11 Q. Did it appear to be rocky or dangerous?

12 A. Not really.

13 Q. And the surface of the road, it was paved?

14 A. Yes, sir.

15 Q. No further questions.

16 THE COURT: You may step down.

17 (Witness excused from the stand)

18 SOLICITOR: Your Honor, the State would call Deputy
19 Jansen to the stand.

20 SEAN PHILLIP JANSEN, being
21 duly sworn, testified as follows:

22 CLERK: State your name for the record.

23 WITNESS: Sean Phillip Jansen.

24 DIRECT EXAMINATION

25 BY SOLICITOR:

DEP. JANSEN ON DIRECT

- 1 Q. Where do you work?
- 2 A. Beaufort County Sheriff's Department.
- 3 Q. How long have you worked there?
- 4 A. About five years.
- 5 Q. Just briefly, what are your duties?
- 6 A. I work road patrol.
- 7 Q. What does that entail?
- 8 A. Responding calls, backing up other deputies, inves-
- 9 tigating crimes.
- 10 Q. Were you working on the night of August 17, 2011?
- 11 A. Yes, sir.
- 12 Q. Do you recall being called upon to assist another
- 13 agency?
- 14 A. Yes, the Highway Patrol.
- 15 Q. And what did you see when you arrived at the scene?
- 16 A. There was multiple patrol cars. Trooper Warner was
- 17 transporting a male subject, Mr. Harris there, to another
- 18 patrol car that was also arriving on the scene.
- 19 Q. Once you arrived on the scene, did you find any evi-
- 20 dence?
- 21 A. There was a magazine in the middle of the road, on
- 22 Shultz Road. I notified Trooper Warner and advised him
- 23 of it.
- 24 Q. Once you found it and notified Trooper Warner, what
- 25 did you do in relation to the magazine?

DEP. JANSEN ON DIRECT

1 A. I stood by just over the top of it until Trooper
2 Warner came and took possession of it.

3 Q. I'd like to show you what's been admitted as State's
4 Exhibits 5 and 6. What are those?

5 A. That's the magazine, sir.

6 Q. And are they fair and accurate depictions of that?

7 A. Yes, sir.

8 Q. Of that magazine as you found it that evening?

9 A. Yes, sir.

10 Q. And I'd like to show you what's been marked as State's
11 Exhibit Number 2. Could you tell us what these are?

12 A. This is the magazine that I found and the rounds
13 that were in it.

14 Q. And do they appear to be in the same or substantially
15 the same condition that they were on the night that you
16 found them?

17 A. Yes, sir.

18 Q. Now, when you found it, were the magazine and the
19 bullets separate?

20 A. No. The magazine was loaded.

21 Q. Did you do any examination of it or did you just wait?

22 A. I just waited for Trooper Warner to take possession
23 of it.

24 Q. No further questions.

25 THE COURT: Mr. Walker.

DEP. JANSEN ON CROSS

1 CROSS EXAMINATION

2 BY MR. WALKER:

3 Q. You testified you just physically stood there until
4 Trooper Warner actually took possession of the magazine?

5 A. Yes, sir.

6 Q. So Trooper Warner actually took possession from the
7 ground? He didn't take it from you?

8 A. Correct.

9 Q. You said, hey, come over here, and he came and got
10 it?

11 A. Yes, sir.

12 Q. You didn't help him in bagging it?

13 A. No, sir.

14 Q. Or handle it in any way?

15 A. No, sir, not at all.

16 Q. I don't have any further questions.

17 THE COURT: You may step down.

18 (Witness excused from stand)

19 THE COURT: Next witness.

20 SOLICITOR: Deputy Irving.

21 SALLY IRVING, being duly sworn,
22 testified as follows:

23 CLERK: Please state your name for the record.

24 WITNESS: Sally Irving. Sally Kathleen Irving.

25 DIRECT EXAMINATION

- 1 BY SOLICITOR:
- 2 Q. Where do you work?
- 3 A. Beaufort County Sheriff's Office.
- 4 Q. What do you do there?
- 5 A. Deputy Sheriff.
- 6 Q. How long have you been working for the Sheriff's Office?
- 7 A. Approximately five and a half months.
- 8 Q. Were you working on August 17 of 2011?
- 9 A. Yes.
- 10 Q. So that would have been fairly early on in your employ-
- 11 ment there?
- 12 A. Correct.
- 13 Q. On that night, did you have an opportunity to go to
- 14 Shultz Road?
- 15 A. I did.
- 16 Q. Why did you go there?
- 17 A. I heard over the radio. Dispatch let us know that
- 18 there was a pursuit or chase involving the Highway Patrol,
- 19 and I responded to where the pursuit ended and where the
- 20 chase started by the officer.
- 21 Q. Were you in a patrol car?
- 22 A. I was. Marked and with the lights.
- 23 Q. And does it have like a cage or divider?
- 24 A. It does.
- 25 Q. And were you in uniform?

DEP. IRVING ON DIRECT

1 A. I was.

2 Q. When you arrived on the scene, what happened?

3 A. I get there, approximately the last person there,
4 and the subject, James Harris, had already been detained.
5 He is approaching my car and being escorted by Trooper
6 Warner. That's when I see him for the first time, and
7 as I opened the door he was placed in my car.

8 Q. When he was placed in your car, what were your re-
9 sponsibilities relative to that? Why was he placed in your
10 car?

11 A. My responsibility was I was going to transport him
12 to the jail.

13 Q. Now, had you ever met Mr. Harris before?

14 A. No, never met him.

15 Q. Had you had any involvement in what had transpired
16 before?

17 A. No, sir.

18 Q. So you had basically just arrived?

19 A. Yes, sir.

20 Q. And Mr. Harris was taken by you to the jail?

21 A. That's correct.

22 Q. So once he's in -- once he is placed in your car,
23 what did you do?

24 A. I started to talk to him, asked what his name is. I
25 just wanted to know who I was transporting to the jail.

DEP. IRVING ON DIRECT

1 What his name was. Basically I introduced myself and
2 got information about what happened.

3 Q. Are you still outside the car or inside the car?

4 A. He actually gets in the car and sits there. I sit-
5 uate him so he is comfortable, make sure the handcuffs
6 are not too tight, so that he can be seatbelted and
7 be comfortable

8 So I'm actually standing with the door open in the
9 apex of the door, talking to him as he's in the car.

10 Q. Do you recall reading anything to him?

11 A. I do. I read his Miranda Rights to him, Miranda Warnings.

12 Q. Could you just briefly tell us what you read or said to
13 him?

14 A. Sure. I explained to him -- told him these are your
15 Miranda Warnings. You have the right to remain silent.
16 Anything you say can be held against you in a Court of law.
17 if you provide answers to my questioning.

18 You have the right to have an attorney present while
19 the questioning takes place. If you cannot afford an at-
20 torney, one can be hired by the State for you.

21 I said, do you understand what I've read to you,
22 and he acknowledged that he understood, and I asked him,
23 do you wish to speak to me, and he said he would.

24 Q. So you engaged him in conversation?

25 A. Yes.

DEP. IRVING ON DIRECT

1 Q. And is this all on the scene?

2 A. Yes, sir, it is. All this takes place real quickly.
3 He's walking to my car, being placed in my car, and I'm
4 standing there in the apex and start talking to him as
5 I'm situating him in the car.

6 After he's seated is when I read the Miranda to him.

7 Q. So what did you talk about?

8 A. I asked him, what's your name, and he just gives me
9 a name, a false name. I don't remark on that.

10 I asked him initially what's going on or what's hap-
11 pening, and that's when he told me about how he -- once the
12 car is stopped in the pursuit he came out of the driver's
13 side door.

14 He just focused on telling me about the driver's
15 side door, and how he made his exit from the truck out
16 of the driver's side door.

17 Q. So he said he comes out of the driver's side door, and
18 does he tell you whether he's the driver or whether he's
19 the passenger?

20 A. He explains that he was the passenger and that he
21 came out of the driver's side door. He wanted to make
22 sure I knew that, that he was a passenger and he came out
23 of the driver's side door.

24 Q. So did he say there were some other people in the
25 car?

DEP. IRVING ON DIRECT

- 1 A. He said that someone else was driving.
- 2 Q. Did he say or did you ask him who those people were?
- 3 Who were the other people?
- 4 A. (Inaudible portion) I tried to figure out who are we
- 5 chasing. If it's not you, who are we supposed to be chas-
- 6 ing? The person who was driving but he said he did not
- 7 know the name.
- 8 Q. Okay. So he said he was a passenger in the car but
- 9 he didn't know who was driving?
- 10 A. He didn't know the driver's name.
- 11 Q. Did you all talk about anything else?
- 12 A. That's about it. I asked for his name and where he
- 13 lived. Some ambiguous place in the area, some unknown
- 14 location.
- 15 I just tried to get information from him.
- 16 Q. Did he give you any kind of description of the driver
- 17 or who his friend was?
- 18 A. No, sir.
- 19 Q. When he was talking to you, did he seem to be under
- 20 the influence? Did Mr. Harris seem to be under the influ-
- 21 ence?
- 22 A. No.
- 23 Q. Did you promise him anything to get him to speak with
- 24 you?
- 25 A. I did not.

DEP. IRVING ON DIRECT

1 Q. Did you threaten him to get him to speak with you?

2 A. I did not.

3 Q. Now, you said initially he gave you a name?

4 A. Yes, but it was not James Harris.

5 Q. Did you ever get back to the subject of what his
6 name might be?

7 A. Yes.

8 Q. What did he ultimately tell you?

9 A. On the way to the jail he gave his first name, and
10 finally he gave me a complete name. Eventually I got the
11 whole entire name and date of birth.

12 Q. Do you see the person you were talking to that night
13 in the Court today?

14 A. Yes, he's sitting right here.

15 Q. Could you point him out?

16 A. Right there in the tie, brown tie, and white shirt.

17 Q. That's all I have.

18 THE COURT: Mr. Walker.

19 CROSS EXAMINATION

20 BY MR. WALKER:

21 Q. Deputy Irving, would you characterize Mr. Harris
22 as being unhelpful?

23 A. In a sense.

24 Q. And he didn't tell you the name of his friends?

25 A. Are you asking me to characterize him? He did tell

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1 me his name but he didn't tell me his friends.

2 Q. So he wouldn't tell you what you wanted him to tell
3 you? He wouldn't name his friends?

4 A. He told me he didn't know who they were.

5 Q. And this whole conversation took place in your car.
6 Right?

7 A. It did.

8 Q. The whole forty-five minutes?

9 A. It did.

10 Q. Is it a marked patrol vehicle?

11 A. Yes, sir.

12 Q. Is it equipped with a camera?

13 A. Yes, sir. It does have one.

14 Q. And you also wear a microphone on your person, is
15 that correct?

16 A. That's correct.

17 Q. Did you record any of this?

18 A. Part of it could have been recorded. I'm not sure.

19 Q. Do you know if it was?

20 A. We don't have it.

21 Q. And Mr. Harris told you he wasn't the driver but he
22 jumped out the driver's side?

23 A. Yes.

24 Q. He was specific about that?

25 A. Yes.

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1 Q. Did he tell you why he jumped out of the driver's
2 side?

3 A. He told me he jumped out of the driver's side because
4 there was a ditch on the passenger side.

5 Q. That's all I have. Thank you.

6 SOLICITOR: Nothing further.

7 THE COURT: You may step down.

8 (Witness excused from stand)

9 SOLICITOR: Your Honor, at this time the State rests.

10 THE COURT: Madam Forelady, we're going to break for
11 lunch at this time. I'm going to ask that you be back at
12 two o'clock. Two o'clock sharp.

13 I remind you that you are not to discuss the case
14 amongst yourselves or with anyone else.

15 Some of your friends or co-workers who know you are
16 on the jury may ask you to tell them about the case, and
17 what's going on, but this is one occasion when you do not
18 have to even tell your spouse what you are doing.

19 You may tell anyone who asks that you are under speci-
20 fic instructions or orders from the Judge not to do that,
21 and after the case is over you can talk to them as long
22 as you want to

23 Until that time it would be inappropriate to do so,
24 and they may have an opinion about this type of litigation,
25 but you need to base your decision on what transpires

1 here in this Courtroom. You are going to be the only
2 twelve people who hear all the evidence to evaluate and to
3 apply it to the law.

4 Once again, do not do any investigation on the Inter-
5 net with regard to the law or any facts about the case.
6 Do not do any independent investigation. I'm not as famil-
7 iar with Beaufort County as you are, but I assume you all
8 know where this arrest took place. I ask that you do not
9 do any independent investigation.

10 You must base your decision on what transpires here
11 in Courtroom.

12 I'm going to ask you to be back at two o'clock.

13 Thank you.

14 (Jury excused for the lunch period)

15 THE COURT: I'll be happy to entertain motions at
16 this time.

17 MR. WALKER: Thank you, Your Honor.

18 I would make a motion for a directed verdict. I do
19 not believe there is any evidence from which they could
20 find beyond a reasonable doubt that my client is guilty
21 of the crime as to the failure to stop.

22 As Your Honor saw from watching the video and as the
23 testimony has shown, there were two people exiting the
24 driver's side door, literally within seconds of each
25 other. Two to three seconds of each other.

1 There is no other testimony to differentiate who was
2 driving, except for his testimony that he wasn't driving.

3 As to the gun, we would make a motion as well. On a
4 circumstantial basis, there is nothing to tie the gun to
5 my client. It wasn't stolen. The ATF reported that,
6 and it was merely in proximity of an area that he ran by.

7 I would base the motion on that.

8 THE COURT: Well, in view of the fact that two of
9 them came from the driver's door, that seems like a clas-
10 sic case for the jury to resolve, a classic question for
11 the jury. What do you think?

12 MR. WALKER: I learned long ago that my opinion doesn't
13 really matter.

14 THE COURT: All right. I'll be glad to hear from
15 the State.

16 SOLICITOR: Well, Your Honor, it would be my position
17 that both matters are issues for the jury, but I think Mr.
18 Walker has facts he's going to argue and I have facts I'm
19 going to argue.

20 Mr. Harris comes out first from the driver's side
21 door. I believe there is enough evidence that the jury
22 can decide one way or another for itself.

23 I imagine the passenger could crawl over the driver
24 but those are matters that the jury needs to resolve, and
25 if there is a question with regard to the weapon I think

1 that is clearly a question of fact for the jury.

2 THE COURT: We're going to submit both to the jury.

3 Both motions for directed verdict are denied, but you are
4 protected on the record.

5 We will come back at two o'clock, but before we break
6 I want to go over the charge.

7 I will charge that an indictment is not evidence. I
8 will charge the fact that there are two distinct defenses.
9 Each defense separately and distinctly -- without regard
10 to their decision on the other.

11 Presumption of innocence, reasonable doubt, duties
12 of the jury and trial judge.

13 Direct and circumstantial evidence. I'm going to
14 charge because of the fact there was some question about
15 evidence preserved -- based on that, I am going to charge
16 this. One could conclude there was spoliation or loss of
17 evidence but the State has the burden of producing evi-
18 dence.

19 Evidence lost or destroyed by a party may infer that
20 the evidence which was lost or destroyed by that party be
21 adverse to that party. If you find first that the evidence
22 was spoiled or destroyed or you further find that evidence
23 could help establish the innocence of the Defendant, you
24 may then consider those facts in deciding whether or not
25 the State has met its burden of proof.

1 I'm going to charge the law with regard to the state-
2 ment of the Defendant. I'm going to charge failure of
3 the Defendant to testify.

4 I'm going to charge the substantive laws with regard
5 to blue light and unlawful carrying of a pistol, and I'll
6 give you this opportunity to review the verdict form.

7 You all can come and look at the verdict form.

8 (Brief pause)

9 SOLICITOR: No objection.

10 MR. WALKER: No objection from Defendant.

11 THE COURT: So that is the form of the verdict. Are
12 there any additional requests to charge from the State?

13 SOLICITOR: No, Your Honor.

14 THE COURT: Any from Defense?

15 MR. WALKER: No, Your Honor.

16 THE COURT: We all understand the order of argument
17 will be the State goes first.

18 (Court stood in recess for the lunch period, after
19 which the case resumed)

20 THE COURT: Are we ready for the jury?

21 MR. WALKER: Does Your Honor want to have a colloquy
22 with the Defendant?

23 THE COURT: I'm glad you reminded me of that.

24 Would you place Mr. Harris under oath, Madam Clerk?

25 (Whereupon, the Defendant was placed under oath by the

1 Clerk)

2 THE COURT: Thank you. Mr. Harris, at this time I'm
3 going to explain to you certain of your rights. If you
4 do not understand anything I say, please let me know. If
5 you want me to explain anything in more detail, please
6 let me know.

7 Do you understand?

8 DEFENDANT: Yes, sir.

9 THE COURT: We have now reached the stage of the
10 trial where you may present your defense. You have the
11 right to claim the protections given to you by the Fifth
12 Amendment to the Constitution of the United States which
13 provides in relevant part that no person shall be compelled
14 in any criminal case to be a witness against themselves.

15 This means you cannot be required to testify in this
16 case. You have the right to testify in your own behalf.
17 However, no one can make you testify. This is a personal
18 right, and no one can waive this right except you.

19 If you decide to testify you will be subject to the
20 same rules that govern other witnesses. You may be exam-
21 ined and cross-examined on any relevant issue in this
22 case.

23 In addition, if you have any convictions involving
24 dishonesty or false statements, or crimes punishable by
25 imprisonment for more than one year, this Court determines

1 if the probative value of admitting this evidence outweighs
2 the prejudicial effect to you.

3 The Solicitor may be able to introduce your record
4 to attack your credibility if you decide to testify.

5 This decision on your part must be freely, voluntar-
6 ily and intelligently made, with knowledge of the protec-
7 tions given to you by the Fifth Amendment of the Constitution
8 of the United States and the consequences to your decision
9 to testify.

10 If you decide not to testify, I will instruct the
11 jurors that they cannot give the fact that you did not tes-
12 tify any consideration whatsoever; that there is to be no
13 prejudice -- absolutely no prejudice to you because you did
14 not testify.

15 It is left entirely up to you whether or not to tes-
16 tify. You may talk to your attorney, your family and your
17 friends, or anyone else, but the final decision is to be
18 left entirely up to you.

19 Do you understand what I have explained to you, Mr.
20 Harris?

21 DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions about what I've
23 explained to you?

24 DEFENDANT: No, sir.

25 THE COURT: Have you discussed with your lawyer whether

1 or not you wish to testify?

2 DEFENDANT: Yes, sir.

3 THE COURT: Do you wish to talk to your lawyer at
4 this time?

5 DEFENDANT: No, sir.

6 THE COURT: Do you wish to testify?

7 DEFENDANT: No, sir.

8 THE COURT: Very good. Please bring in the jury.

9 (Jury returned to Courtroom)

10 THE COURT: Madam Forelady and ladies and gentlemen
11 of the jury, thanks for being here and being here on
12 time. We had one legal matter we needed to resolve before
13 we brought you out, but thank you for your promptness.

14 At this time the State has rested. The Defense is
15 recognized at this time.

16 MR. WALKER: Thank you, Your Honor, the Defense rests,
17 and we renew our motions.

18 THE COURT: Thank you. We will go to closing argu-
19 ments under these particular circumstances. The State
20 will go first.

21 Mr. Bannon, you are recognized.

22 SOLICITOR: What we started talking about this morning
23 was the actions of Mr. Harris on August 17, 2011. The case
24 that I told you we would present is exactly the case we've
25 presented.

1 I think the issues here are real clearly defined. I
2 think they are -- I would not say easy to resolve, but I be-
3 lieve the State has proved beyond a reasonable doubt that
4 Mr. Harris was the driver of the red Nissan truck that
5 failed to stop for the blue light and that he was unlaw-
6 fully carrying a pistol along with him when he did.

7 Now, during the presentation of the evidence, some
8 things have come out, and we will touch on a couple of
9 different things here to explain to you why I think the
10 State has proved beyond a reasonable doubt that he is guilty.

11 First, I'd like to talk to you a little bit about
12 reasonable doubt. The Judge is going to charge you on the
13 law. Now, what he's going to tell you is that to prove
14 someone guilty beyond a reasonable doubt isn't beyond all
15 doubt or some imagined doubt or some potential fictional
16 doubt, but it is beyond a reasonable doubt.

17 It is whether, based on the evidence that was pre-
18 sented to you, a reasonable person would hesitate to act.

19 Now, the way I like to think about it is -- if some-
20 one came up to you and said, what have you been up to, and
21 you said, well, I was on a criminal case, then they'd want
22 to know what it was about.

23 There was this truck that was running away from the
24 police as it turned on the blue lights, and when the truck
25 finally came to a stop the defendant jumped out of the

1 driver's side door and then he ran off into the woods.

2 The person you're telling that to might say, well, I
3 don't know whether that fellow is guilty, but then a reason-
4 able person might say this officer was chasing the person
5 who jumped out of the driver's car.

6 Now, the Defendant is trying to get us to believe
7 that he jumped over the person driving and jumped out of
8 the vehicle.

9 Going to the unlawful carrying of a weapon, which is
10 another charge -- well, what happened was when the Defen-
11 dant jumped out of the car he fell to the ground and then
12 right around where he fell was a magazine that was all
13 scratched up and then a little ways away from that in the
14 direction the Defendant ran was a handgun in actually the
15 caliber of the magazine -- a short distance away.

16 The handgun matches the magazine, and the magazine is
17 right with the Defendant. He had it on him when he must have
18 jumped out of the car.

19 That's how I like to think about reasonable doubt.
20 If you explain it to someone like that, it's simple.

21 At first the person might think he's not guilty, but
22 as he listens to you (balance of sentence inaudible).

23 Now, one of the things the Judge is going to charge
24 you on is exfoliation of evidence. Exfoliation of the
25 evidence -- they spoke with the Defendant, and the Defendant

1 said he wasn't the one driving the car.

2 That wasn't what was played before you today. The Judge
3 is going to tell you that if you find somehow this was de-
4 stroyed or lost, that evidence is against the State under the
5 law.

6 I would tell you there is not much to infer against the
7 Defendant told us -- if you want to go ahead and infer that
8 somehow this was lost deliberately, well, the evidence was
9 presented.

10 He has denied that he was driving the car, and that
11 goes back to the video and Trooper Warner. Also, Deputy --
12 the Deputy testified about the interview in the car. I
13 think one of the things that Mr. Walker is going to want to
14 talk to you about is fingerprint evidence.

15 What he's going to tell you is, well, you can't tell
16 who had the gun because there weren't any fingerprints taken
17 from it.

18 I'd like to do just a brief demonstration just to show
19 in a situation very similar to what we have here how you
20 don't need fingerprints. All you need is common sense to be
21 able to tell you what is plain to see.

22 Now, there is nothing on the ground right here. This
23 is a cell phone and you can see my fingerprints are all over
24 this. There is nothing here. Now, it is obscured from
25 view -- now there's the cell phone and nobody saw me drop

1 the cell phone. Do you know I dropped the cell phone on the
2 ground?

3 Now, say for a second that what happens is I say, when
4 I dropped my phone on the ground I take the case with me
5 and put it somewhere else.

6 There's the case that matches the cell phone there,
7 and if you saw me in the area where I dropped my cell phone
8 and then you traced where I had been before and find the
9 case which matches the cell phone a short distance away, then
10 you don't need fingerprints to tell you that's what happened.

11 All you need is to use your common sense.

12 Now, another thing to look at in the situation we have
13 here is whether or not the Defendant was the driver of the
14 vehicle. He says he is not the driver of the car.

15 Personally, I think that's nothing but a bold-faced lie.
16 Driver's side, passenger side. The only person on the video
17 you see come out the driver's side door or the first person
18 is the Defendant.

19 Now, does it make any sense in the world for the driver
20 not to have been the first person out of the car?

21 Think about that. Does that make any sense at all to
22 you?

23 Also remember that in the video this is not a situation
24 where the Defendant came out of the car like this, diving
25 out of the door. He was feet first, so this is presumably

1 what the Defendant would like for you to believe, that he's
2 not the driver of the truck; that he presumably is a passen-
3 ger in the truck. I really wish he would have stopped, and
4 there is to my right a small ditch that is grassy. I think
5 it's there so what I will do is -- sorry, Mr. Driver, but
6 -- sorry I'm on top of you. Okay?

7 Does that make sense to you, or does this make sense
8 to you?

9 I'm driving and I'm running from the police. I have
10 a gun in my pants or on me, and I need to get away. I have
11 a flat tire. I'm running.

12 Just think about it. Now, the Judge is going to tell
13 you about two different kinds of evidence. Direct and cir-
14 cumstantial evidence.

15 Now, a lot of what we've been talking about here is cir-
16 cumstantial evidence, but I think that circumstantial evidence
17 gets a bad rap because all circumstantial evidence is is
18 evidence which lets you draw a conclusion.

19 Just like sort of what I've been talking about here.

20 Direct evidence is things that you are able to see or
21 witness first-hand.

22 I think this case is going to be a good example of the
23 weight that circumstantial evidence should be given.

24 Another example is when I was growing up my dad was
25 a weather man, the weather rock, a meteorologist. The wea-
ther rock.

1 I would say, dad, what's the whether going to be? Well,
2 check the weather rock. If the weather rock is wet, then
3 it's rained. If it's getting wet, it's raining.

4 You don't have to have necessarily seen it rain to know
5 it's rained because our friend, the weather rock, is wet.

6 That's sort of what we're talking about here with direct
7 and circumstantial evidence. It's stuff which naturally
8 leads you to a firm conclusion. However, it is not directly
9 seen by you.

10 Another good example is let's say someone comes in the
11 door right here and they have an umbrella and galoshes and
12 a bunch of water goes to the ground. It must be pouring out-
13 side.

14 That's circumstantial evidence, while direct evidence
15 would be to see that it's pouring outside.

16 That's what we're dealing with here. Both of them are
17 to be given the same weight.

18 All right, let's talk a little bit about the law. I
19 have pulled out what I think will be the most relevant parts
20 of this statute because the way the statute is written is a
21 little bit odd.

22 It says it is unlawful for you to carry a handgun on
23 you at any time except for -- and there are some exceptions.
24 Now, you are allowed to have it in a vehicle as long as it
25 is secured in a glove compartment, closed trunk or closed

1 container. Secured in your glove box or luggage compartment.

2 We know that's not the case. How do we know that isn't
3 the case? Because when Mr. Harris bails out of the driver's
4 side of the car that gun wasn't left inside the center com-
5 partment of the car. A part of it ends up right in the middle
6 of the street. He carries the rest of it with him where he
7 eventually throws it as he's fleeing from the police.

8 Another one is if you take a course, fill out an appli-
9 cation, get fingerprinted, and that's sent off to SLED, and
10 maybe it costs you and you pay SLED Fifty Bucks, and they send
11 you a card saying you're allowed to carry a concealed weapon.
12 The Defendant has no concealed weapons permit.

13 Now, let's go back and talk a little bit about failure
14 to stop for a blue light.

15 The Defendant jumps out of the driver's side door of
16 the car. I don't really know how much stronger evidence, aside
17 from literally being able to see through that dark tint that
18 Trooper Warner talked about, to be able to prove that the De-
19 fendant ran after he finally stopped the car.

20 If he wasn't in the car with the gun, and his idiot
21 buddy was driving, why take off and run from the police? It
22 doesn't make a lot of sense.

23 The Defendant further admits it was him coming out of
24 the driver's side door but what he'd like us to believe is
25 he came all the way from the passenger's side over a driver,

1 around the steering wheel, over the center console, where
2 he lands feet first on the ground.

3 The Defendant denied he's the driver of the car. He
4 says, I'm a passenger, I'm a passenger. Okay. Well, if you
5 take a look there is not enough room in the car to climb over
6 the driver, and nobody else -- I'm sorry. There is one per-
7 son seen coming out of the driver's side door. That's later
8 after the Defendant was already out.

9 Does it make sense that once the Defendant is coming
10 out the driver's side door and that area is clear and the
11 driver is gone that there might actually be room for someone
12 else to get out? Sure, maybe.

13 But take a look at the interior of the car. It seems
14 to me the driver's seat is actually (portion not audible).
15 Like a shorter person was driving the car.

16 That would mean the other person would have to get in
17 between the passenger seat, which is all the way over here,
18 the center console, which you can see how wide it is, because
19 this is the cover of the center console.-- so that person
20 would have to get all the way from here and be feet first
21 out of the driver's door, while not getting in the way of
22 the dash.

23 Getting over the center console, over the driver, get-
24 ting past the steering wheel, getting the driver's door open,
25 and then making off with speed on the street.

1 That is what this Defendant would like for you to be-
2 lieve. I am asking you to come to the simplest conclusion
3 possible, that he was the one driving the car. He jumped
4 out of the driver's side of the truck.

5 Now, finally, take a look at the gun and take a look
6 at the clip. I know I showed it to you early on, but I'd
7 ask you to look at the scratch marks. There's scratch marks
8 all over the gun. Just like it was in somebody's pocket
9 who was jumping out of a moving car.

10 They are all right there, all over here, and then take
11 a look at the magazine. On one side you can see it's all
12 chewed up. If you get a chance, look at these back there.
13 It's all chewed up.

14 I guess what the Defendant wants you to believe is that
15 the magazine was just lying in the street. I think the evi-
16 dence shows that this is what happened. The Defendant had
17 the magazine and the gun. He had it with him when he was
18 driving.

19 Law enforcement don't know he has this gun, but he can't
20 lose the police officers. He's lost the front left tire. He
21 knows he needs to get out of there so his only choice is to
22 run.

23 He jumps out of the car, landing on the ground, and as
24 he is on the ground he presses something and the magazine
25 falls to the ground.

1 The gun stays in his pocket or it's stuck in his
2 waistband. It hits and falls to the ground.

3 Now, the Defendant, as he's running away, realizes that
4 he still has the gun on him and here's Trooper Warner behind
5 him.

6 So what's he going to do with the gun? He certainly
7 can't shoot it. He does what he has to, and that is for
8 him to ditch the gun too. That's his only choice.

9 That is what the evidence has shown here today, and
10 that is what, ladies and gentlemen, I believe the State's
11 evidence has proven beyond a reasonable doubt.

12 Thank you.

13 THE COURT: Mr. Walker.

14 MR. WALKER: The evidence absolutely shows that James
15 could be guilty of failure to stop for a blue light. He
16 might be guilty of unlawful possession of a pistol. The
17 evidence is clear that maybe he did these things. Could be,
18 might be, maybe. Those are what I like to call not guilty
19 words, because that's your decision.

20 It is the State's job to prove that he did that, that
21 he failed to stop for a blue light, and unlawful possession
22 of a pistol.

23 Could be, might be, maybe -- that's not proof beyond
24 a reasonable doubt.

25 I will talk a little bit about reasonable doubt, but

1 before I do that -- of course, you didn't hear from James
2 today, and the Judge is going to tell you that, and he has
3 told you, of course, that the Defense has no burden to pre-
4 sent any evidence to you.

5 There is a procedural thing that we have that if the
6 Defense puts up any evidence at all or any testimony then
7 the State gets to talk to the jury last, and I like to talk
8 to the jury last. I wanted to have the last argument.

9 Talking about reasonable doubt -- now, that's the bur-
10 den the State has to overcome.

11 The Judge talked to you before kind of conceptionally
12 about why that is. I'd like to imagine that it would be as
13 if you were walking down a path and you come up to a large
14 wall and look to the right as far as you can see and you
15 look to the left as far as you can see. You don't know what
16 is on the other side of that wall, and all kinds of things
17 occur to you.

18 It could be a cliff, it could be something else. Then
19 imagine, if you will, that the path you're on is the trial
20 you have been observing.

21 You hear the evidence, and on the other side of the
22 wall is the verdict you have to render. Is it a good ver-
23 dict, a verdict you're going to be able to live with and be
24 confident in as you leave here today, or is it a verdict
25 that would be an error, a verdict that would be in spite of

1 the State's failure to prove its case?

2 So you have that wall, the presumption of innocence,
3 because we don't know what's on the other side.

4 See, everybody is innocent, and so the State's job --
5 it's part of their burden to take each piece of evidence
6 and present it to you and everything you need to get up there
7 and look over the wall, and be confident, be firmly convinced,
8 that it is something you should do.

9 I submit to you that they haven't allowed you to be con-
10 fident, to be fully aware. They haven't presented all the
11 evidence that you need.

12 There are some crimes in life for the purpose of crim-
13 inal defense and criminal prosecution that you can have some-
14 thing happen, and you and I and everyone in the world would
15 be a suspect.

16 Sometimes things happen so quickly or so fast that when
17 you go through these things you have a pool of potential
18 suspects which you narrow until you get to the one.

19 If there is a robbery at a convenience store, it could
20 be anyone in Beaufort. It's a black man so it takes all
21 caucasions and females out.

22 Then you get another piece of evidence and narrow it
23 down to the person who committed the crime.

24 You've seen the video, and it has some things happen
25 very quickly. Almost immediately you could say that the

1 evidence narrows it down to two people. The problem is
2 that they haven't presented any other evidence to you for
3 you to take the final step.

4 Use your common sense, use the simplest explanation?
5 I submit to you that common sense is kind of a coating for
6 I don't have any evidence that proves the point I want to
7 make.

8 Some juries just kind of jump over that and make the
9 leap on their own. I can't point to a fact that would make
10 that point for me, so just use your common sense -- that's
11 probably what happened. The simplest explanation for that.

12 I would say that the simplest explanation is not always
13 the right one. It shouldn't be easy to convince yourselves
14 that someone did something.

15 The State asserts that James is connected to that
16 firearm, but nothing connects him to that firearm except
17 his proximity to it, but there are other people there, and
18 then -- it's kind of funny, but some of the arguments they
19 use in one part of the case is that he wants to discard the
20 gun. (portion not audible)

21 There were at least two people there. In fact, we
22 only know of two. That is Trooper Warner's vehicle facing
23 the car as a person jumps out. He gets the man.

24 But Trooper Warner never actually saw who was driving
25 the truck, and there could have been other people in there

1 jumping out. Trooper Warner never actually saw that.

2 If there were other people in the car who jumped out,
3 why did they leave? What reason would they have for leav-
4 ing?

5 The prosecution makes much of the scratches on the
6 firearm, and they are there, but if the weapon is there
7 in a pocket as he said -- they're trying to tell you these
8 scratches happened on the site there, happened when the
9 person jumped out of the car. I think that is strange, and
10 especially if the gun was tucked in the waistband as the
11 Solicitor said.

12 On the side of the grip on the gun is a little bit of
13 a rub, and on the bottom of the magazine. Otherwise, they
14 are in pretty good shape. It's interesting there are no
15 marks on the magazine release lever which is what they are
16 saying got banged under their theory when James got out of
17 the car and lost the magazine.

18 Is it just a poorly cared for firearm? I submit that
19 there is nothing really indicative of how the scratches
20 were really obtained.

21 The scratches really don't even match up with really
22 what they think happened. They have no link between James
23 and the firearm. The gun is not stolen. The person who
24 had the gun is not James. (Portion inaudible)

25 No mention of a follow-up on the other person to try

1 and create a connection.

2 He talked about that you are all the determiners of
3 the facts, but you have to wonder -- you can't watch tele-
4 vision without running into a CSI or NCIS. (Portion of
5 closing by Mr. Matthews not appearing on disc)

6 For you all to be confident beyond a reasonable doubt
7 you have to be sure of the facts, and if there were finger-
8 prints on the magazine I'd be pretty sure.

9 Let's talk about something else. Mr. Bannon said that
10 James was running and threw down the gun and ran off from
11 it. Right? What did Trooper Warner say? I had my eyes
12 on him the entire time. Did you ever hear Trooper Warner
13 say, I saw him throw something away or I saw something fall?
14 Mr. Warner didn't even know anything about it until the
15 other officers came and said, look at this.

16 We saw the picture of the pistol found under the shade
17 tree. He said his car was just past it. I fully expect
18 you will watch the video several times as you are deliber-
19 ating.

20 If the truck is going this way and somebody else has
21 just bailed out, maybe that person is trying to get rid of
22 this gun. That is as likely or certainly as possible, isn't
23 it? That if I'm trying to get rid of evidence that can
24 get me arrested or whatever that I'm going to throw it
25 the opposite way of where I'm going?

1 We know there was at least one other person there,
2 and he's beating his feet, trying to get out of there.
3 How do we know that stuff didn't come from one of the peo-
4 ple?

5 They could certainly have fingerprinted it. He says,
6 well -- talking about his failure to stop for a blue light
7 -- their whole idea is that James is running from the po-
8 lice and he's got this gun he's not supposed to have, and
9 that is the motive.

10 He's driving and that's why he's got to get out of
11 there. You all watched the videos and you see how he's
12 going through places, going around corners. James has got
13 this gun he's trying to get rid of. Don't you think just
14 throwing it out the window would be a pretty good way to get
15 rid of it?

16 That doesn't prove anything one way or the other. It's
17 just speculation. They are trying to get you to convict
18 somebody based on speculation.

19 I kind of have the same problem with the failure to
20 stop charge. That is that nothing connects James to the
21 truck except his obviously being there at the end of the
22 chase, or during the chase. The truck could have been,
23 driven by somebody else. It is owned by somebody else.

24 We asked Trooper Warner, did you see who was driving?
25 It was dark, and, of course, there were very dark tinted

1 windows. If I'm coming by, I don't know who is driving
2 until I see somebody come out the car. I can't see what
3 is going on in the cab. He never saw the driver at all.

4 Mr. Bannon went through an elaborate display for you
5 about how hard it would be to climb over somebody and jump
6 out. He went on about how big that center console is; you
7 would never get over that.

8 Watch the video and see how quickly the second person
9 gets out of the car. It is two seconds and this person is
10 out, feet first and running. How could a passenger get
11 over there -- how could James, if he were a passenger, get
12 over there quickly with all the problems he described and
13 get out except for the driver's seat being empty?

14 It would be the same problem for the person in the
15 passenger seat. That second person out of there is out at
16 super fast.

17 Again, Trooper Warner didn't even know about that
18 second person. He jumped out the driver's door, and, of
19 course, immediately Trooper Warner -- he told Officer Irving
20 I jumped out of the driver's side because there was a big
21 ditch on the passenger side.

22 It's one of those kind of arguments they want to
23 make, that that's ridiculous. Trooper Warner said there's
24 a big ditch there. So no one would jump out on that side.

25 If James was the driver, why did the second guy --

1 like they're arguing James would have done if he was the
2 passenger -- why did the second guy come out of the driver's
3 door as well?

4 That doesn't prove anything either but for the same
5 reasons James had if he was driving.

6 This gets us to the overall poor quality of this case,
7 the poor level of quality.

8 The Judge told you that they affirmed they were going
9 to do it. I've harped all day long that it was their job
10 to prove this stuff and their responsibility to give you
11 what you need to make your decision, give you the evidence
12 to be firmly convinced and have no doubts.

13 We talked about the tunnel vision that Trooper Warner
14 had to have; that he was locked in the first guy in the
15 car, which James is out on the road and the car still has
16 to turn this way and goes this way. It looks to me there
17 is a pretty good chance someone is directing him that way.
18 He didn't just continue on straight.

19 Obviously you will make your determination from the
20 video. Officer Warner only saw James. He never saw any-
21 body else; never tried to apprehend anybody else, never in-
22 vestigated anybody else.

23 Let's talk a little bit about Mr. Bannon's spoliation
24 of the evidence. There is a way the State has to gather
25 the evidence it gathers. The State has a lot of procedures

1 for protecting it and they have custody of it so it doesn't
2 get tampered with or lost of anything like that.

3 The idea is that the State gives you facts to make a
4 determination of someone's guilt. It is their job to give
5 you the facts, and besides giving you all the facts to let
6 you decide, what Trooper Warner did, he had this big long
7 video and I've got it down to eight minutes that kind of
8 shows you the car chase and stop.

9 But wouldn't you kind of like to see what his demeanor
10 was and what he actually told Trooper Warner? Maybe there
11 were other parts to the conversation other than the police
12 officer's remembrance or version of what those conversations
13 were.

14 The same thing with the other officer. I had a forty-
15 five minutes conversation with James. I'm wearing a mike.
16 I have a mike in my car, got a camera in my car. The jury
17 doesn't need to see all that stuff.

18 - Usually we have fingerprint evidence that will help you
19 to make a decision one way or the other, as well as other
20 information.

21 I think it is fair to demand that they gave you what
22 they need. It's fair. It's not fair for the State to ex-
23 pect you to do their job for them.

24 They say to use your common sense; that you don't need
25 this other information.

1 Based on the evidence the State has given you, don't
2 hesitate to make quick work of these charges. (Portion
3 not audible)

4 THE COURT: Madam Forelady, ladies and gentlemen of
5 the jury, you have heard all the evidence in this case.
6 You've heard the closing arguments.

7 You have taken a solemn oath to listen to all of the
8 evidence and determine the facts from the evidence you've
9 heard and apply them to the law. That's what I'm going to
10 be doing now, is charging you on the law.

11 I wish there was an easy way to do it. It's kind of
12 like taking medicine. You've got to pay very close atten-
13 tion.

14 I know that it's mid-afternoon and you've had a good
15 lunch. So I ask you to perk up and pay very close attention
16 because these are important matters.

17 These are important matters to the State of South
18 Carolina and important matters to the Defendant, Mr. Harris.
19 So please pay very close attention.

20 The Indictments charge the Defendant with failure to
21 stop for a blue light and unlawful weapon. I remind you
22 that the fact that the Defendant was arrested and charged
23 and indicted is not evidence and cannot be considered by
24 you as evidence of guilt, nor does it create any presumption
25 or inference of guilt.

1 This document is simply the formal written instrument
2 which contains the charges made against the Defendant. It
3 is the formal document by which this case is brought into
4 this Court.

5 The Indictments in this case allege two different of-
6 fenses. Each Indictment charges a separate and distinct of-
7 fense, and you must decide each Indictment separately on the
8 evidence and law applicable to it, uninfluenced by your de-
9 cision as to the other Indictment.

10 The Defendant may be convicted or acquitted on any or
11 all of the offenses charged. You will be asked to write a
12 separate verdict, guilty or not guilty, for each indictment.

13 The Defendant has pled not guilty, and that plea places
14 the burden on the State to prove the Defendant guilty. A
15 person charged with committing a criminal offense in South
16 Carolina is never required to prove himself innocent.

17 I charge you that it is an important rule of law that
18 the Defendant in a criminal trial, no matter what the ser-
19 iousness of the charge may be, will always be presumed to
20 be innocent of the crime for which the Indictment was issued
21 unless guilt has been proven by evidence satisfying you, the
22 jury, of that guilt beyond a reasonable doubt.

23 This presumption of innocence does not end when you
24 begin your deliberations. It accompanies the Defendant
25 throughout the trial until you reach a verdict based on

1 evidence satisfying you of that guilt beyond a reasonable
2 doubt.

3 The presumption of innocence is like a robe of right-
4 ousness placed about the shoulders of the Defendant, which
5 remains with the Defendant until it has been stripped by
6 the Defendant by evidence satisfying you of the Defendant's
7 guilt beyond a reasonable doubt.

8 The presumption of innocence is not a mere legal theory.
9 It's not just a legal phrase, but it is a substantial right
10 to which every Defendant is entitled unless you, the jury,
11 are satisfied from the evidence of the Defendant's guilt
12 beyond a reasonable doubt.

13 What is a reasonable doubt? A reasonable doubt is the
14 kind of doubt that would cause a reasonable person to hesi-
15 tate to act. The State has the burden of proving the De-
16 fendant guilty beyond a reasonable doubt.

17 Some of you may have served as a juror in a civil case
18 where you were told that it was only necessary that the per-
19 son bringing the action prove a matter is more likely true
20 than not true, which is what is known as by the greater
21 weight or preponderance of the evidence.

22 In a criminal case, the State's proof must be more
23 powerful than that. It must be beyond a reasonable doubt.

24 Proof beyond a reasonable doubt is proof that leaves
25 you firmly convinced of the Defendant's guilt.

1 There are very few things in this world that we know
2 with absolute certainty. In a criminal case, the law does
3 not require proof that overcomes every possible doubt. If,
4 based on your consideration of the evidence, you are firmly
5 convinced the Defendant is guilty of the crime charged, you
6 must find the Defendant guilty.

7 If, on the other hand, you think there is a real possi-
8 bility that the Defendant is not guilty, you must give the
9 Defendant the benefit of the doubt and find him not guilty.

10 Ladies and gentlemen of the jury, during this trial you
11 and I have certain duties to perform. As the trial judge,
12 it is my responsibility to preside over the trial of this
13 case. I also have the duty to rule on the admissibility of
14 evidence offered during this trial.

15 You are to consider all the competent evidence before
16 you. You are to consider only the testimony which was
17 presented from this witness stand, any exhibits which may
18 have been made a part of the record in this case, any stip-
19 ulations of counsel.

20 I have the additional duty to charge you the law ap-
21 plicable to this case. As the presiding judge, I am the
22 sole judge of the law in this case, and it is your duty
23 as jurors to accept and apply the law as I now state it
24 to you.

25 If you already have an idea of what the law is or what

1 the law ought to be, and it does not agree with what I now
2 tell you the law is, you must abandon this idea because you
3 are to accept and apply the law exactly as I state it to
4 you.

5 In every case tried in this Court, the jury becomes
6 the judges of the facts of this case. As the trial judge,
7 if I state, make comment on, or make any statement to the
8 trial jury about the facts in a case, you are not to infer
9 from anything I have said what I may think the facts are.
10 I do not have any opinion about the facts, and that is a
11 matter solely for you, the jury, to determine.

12 To determine the facts, it is necessary that you de-
13 termine the credibility of the witnesses who have testified.
14 Credibility simply means believability.

15 It becomes your duty as jurors to analyze and to eval-
16 uate the evidence and determine which evidence is true. To
17 determine the believability of witnesses who have testified
18 in this case, you may believe one witness against several
19 witnesses or several witnesses against one witness.

20 You may believe a part of the testimony of a witness
21 and disregard the remaining part of the testimony of the
22 same witness. You may believe or reject the testimony of
23 a witness in its entirety. You may also consider the ap-
24 pearance and manner of a witness as they testified from
25 the stand. You may consider their demeanor.

1 There are two types of evidence which are generally pre-
2 sented during a trial, direct evidence and circumstantial
3 evidence.

4 Direct evidence is the testimony of someone with act-
5 ual knowledge of facts in the case, such as an eyewitness.
6 It is evidence which immediately establishes the main facts
7 to be determined.

8 Circumstantial evidence is evidence (portion inaudible
9 on disc). The law makes absolutely no distinction between
10 direct and circumstantial evidence, nor is a great degree of
11 certainty required for circumstantial evidence than it is
12 for direct evidence.

13 You should weigh all of the evidence and evaluate all
14 of the evidence. If you are not convinced of the guilt of
15 the Defendant beyond a reasonable doubt, then you must find
16 the Defendant not guilty.

17 If you conclude there was spoilation or loss of evi-
18 dence, this is a controversial fact for you to resolve. It
19 is the State's burden to present evidence to you upon which
20 to make a determination of the facts. If evidence is lost
21 or destroyed that (portion inaudible).

22 If you further find that the evidence is lost or is
23 destroyed, you may then consider that fact as to whether
24 the State has met its burden of proof.

25 A statement alleged to have been made by the Defendant

1 has been admitted into evidence in this case. While the
2 Court has determined the statement is admissible, I would
3 instruct you that you make the ultimate decision of whether
4 or not the Defendant made the statement of his own free
5 will and voluntarily. This means the State must not cause
6 by pressure or force, by intimation, by hope of promise or
7 reward of any kind a statement to be made.

8 In determining whether a statement is voluntary, you
9 should consider both the characteristics of the Defendant
10 and the details in question, such as the age of the Defen-
11 dant, his education, mental ability, nature of the question-
12 ing, advice or lack thereof to the Defendant of his consti-
13 tutional rights, the right to remain silent; that any state-
14 ment could be used against him in a Court of law; the right
15 to have a lawyer present; that if he could not afford a
16 lawyer one would be appointed to represent him without any
17 cost; and that he could stop making a statement at any time.

18 You must carefully consider all the surrounding cir-
19 cumstances before you give any weight to an alleged state-
20 ment.

21 The State has the burden of proving beyond a reasonable
22 doubt that the statement was voluntary. If you determine
23 it was, you may give the statement any further consideration
24 you decide it should have.

25 You must decide what weight, if any, to give to the

1 alleged statement. If it was not a free and voluntary
2 statement, you should not consider the statement at all.

3 Ladies and gentlemen of the jury, I instruct you and
4 emphasize the fact that the Defendant did not testify is
5 not a factor to be considered by you in any way in your
6 deliberations or in your consideration on the question of
7 guilt or innocence of the Defendant.

8 It must not be considered by you in any manner whatso-
9 ever. The Defendant has a constitutional right to remain
10 silent, and the assertion of this right must not be consid-
11 ered by you in your deliberations.

12 I repeat, under your oath, you are to draw no conclus-
13 ion whatsoever from the fact that the Defendant in this
14 case did not testify. The fact that this Defendant did
15 not testify should not be even discussed in the jury room.

16 Madam Forelady, there should be no discussion about
17 the fact that the jury did not testify. The burden of
18 proof, as I have stated to you, is on the State. The De-
19 fendant is not required to prove his innocence. The bur-
20 den of proof remains on the State to prove guilt beyond a
21 reasonable doubt.

22 Ladies and gentlemen of the jury, please pay close
23 attention as I charge you the substantive law with regard
24 to the criminal offense of failure to stop for a blue
25 light.

1 The Defendant is charged with failure to stop for a
2 blue light. In order to prove this charge, the State must
3 prove the Defendant was driving a motor vehicle, and the
4 Defendant was driving the motor vehicle on a road, street
5 or highway of the State; that the Defendant was signaled
6 to stop by a law enforcement vehicle by means of a siren
7 or flashing light, and the Defendant did not stop.

8 In determining whether or not there are mitigating
9 circumstances which would justify the Defendant's failure
10 to stop, you may consider actual road conditions, light-
11 ing or any other circumstances you may believe to be (in-
12 audible portion) an official signal requiring motorists
13 to stop, either a siren or a flashing light. Both are not
14 required.

15 An attempt to increase the speed of the vehicle or
16 some other (inaudible) may be considered as evidence of
17 failure to stop for a blue light. However, it is merely
18 an evidentiary fact to be taken into consideration by you
19 along with all the other evidence in this case and be
20 given the weight you decide it should receive.

21 I charge you the substantive law with regard to unlaw-
22 ful carrying of a pistol. The Defendant is charged with
23 unlawful carrying of a pistol. The State must prove be-
24 yond a reasonable doubt that the Defendant carried a pis-
25 tol about his person and the weapon is about the Defendant's

1 person if it is readily accessible.

2 The pistol need not be actually touching the person
3 of the Defendant.

4 Ladies and gentlemen of the jury, I'm going to come
5 forward and show you the verdict form. Madam Forelady,
6 I'm going to ask you to stand as I go over the verdict
7 form with you. This is the verdict form.

8 It has a caption, State of South Carolina, County of
9 Beaufort. The State versus James Harris, the Defendant.
10 Court of General Sessions, which is criminal court, the
11 Thirteenth Circuit. These are the Indictment numbers, two
12 different offenses. Failure to stop for a blue light as
13 we talked about.

14 We, the jury, by unanimous consent, find the Defendant,
15 as to failure to stop for a blue light, and not guilty or
16 guilty.

17 Unlawful carrying of a pistol, not guilty or guilty.
18 Then there's a place for you to sign, a place for you to
19 date, and you will notice on there that it says the ver-
20 dict must be unanimous.

21 It cannot be eleven to one, eight to four, six to
22 six. Everyone has to agree. It has to be unanimous.

23 Please let the bailiff know when you all reach a ver-
24 dict. Have a seat now and I'll let you go with this. I
25 hear of a jury in Greenville County stay in the jury room

1 for three days and did not knock on the door, so knock on
2 the door when you reach a verdict.

3 I'm going to ask the Alternate to stay with us and not
4 go back to the jury room. I will talk to you briefly in
5 a moment, but please stay with us in the Courtroom.

6 One of the things I want to emphasize to you, Madam
7 Forelady, is that if anyone needs to stop and use the rest-
8 room, stop your deliberations, because everyone has to
9 participate in all of the deliberation process.

10 There might come an occasion during the deliberation
11 process that a question might come up. There should not
12 be questions because you've paid attention to the evidence,
13 you have listened to me as I charged the law, so you have
14 all the equipment necessary to go back and make a decision
15 in this case.

16 I tell you from the very outset if there are ques-
17 tions in this case, since you are the finders of the fact,
18 no matter whether a question of law or of fact, write it
19 down, knock on the door and give it to the bailiff. If
20 it is a question I can answer, I will, but I don't antici-
21 pate there are any questions.

22 I'm going to ask that you retire to the jury room once
23 again and do not begin deliberating. I am going to have
24 to talk to these very fine lawyers to determine whether or
25 not they have an objection or believe that I have charged

1 something wrong. We will address those questions in just
2 a minute, and if there are no objections that require that
3 I bring you back in the Courtroom to address a matter of
4 law, then I'll ask the bailiff to gather up the documents
5 and evidence and carry them in the jury room. Do not begin
6 deliberations until you receive the evidence and verdict
7 form from the bailiff to do so.

8 With regards to the evidence, you will have all the
9 documents that are tangible evidence with you to review.
10 You would not have an opportunity to view the weapon and
11 the bullets at the same time, just as a matter of caution.
12 I haven't lost a juror yet and I don't want to start now.

13 I know everybody has got plenty of sense and some of
14 you know about guns. If you want to see the bullets you
15 can. We can send those in and the gun comes out. Does
16 that sound fair enough?

17 I would ask you to retire to your jury room and do not
18 begin deliberations.

19 (Jury excused to jury room)

20 (Alternate jurors excused by the Court)

21 THE COURT: All right, any objections with regard to
22 the jury charge?

23 SOLICITOR: None from the State.

24 THE COURT: Any objections with regard to the jury
25 charge from the Defendant?

1 MR. WALKER: No, Your Honor.

2 THE COURT: Any additional requests to charge from
3 the State?

4 SOLICITOR: No, Your Honor.

5 THE COURT: From the Defendant?

6 MR. WALKER: No, Your Honor.

7 THE COURT: I would ask each of you come forward and
8 go over the evidence with the Court Reporter. I'm going
9 to ask you if everything in evidence is there?

10 (Colloquy at the bench between counsel and the Court
11 not on the record)

12 (Jury given instructions to begin deliberations at
13 3:25 P.M.)

14 THE COURT: Is everything in that box in evidence?

15 SOLICITOR: Yes, sir.

16 THE COURT: Mr. Walker is there anything in that box
17 that is not in evidence?

18 MR. WALKER: No, sir.

19 THE COURT: With exception of the bullets, and every-
20 one is aware of that.

21 (Evidence and verdict form handed to jury)

22 (The Court stood in recess until 3:30 P.M.)

23 THE COURT: Okay, a question has been presented, we
24 would like to know exactly where the magazine was found
25 on the road compared to where James fell from the truck.

1 I think that is a question for the jury to resolve.

2 SOLICITOR: No objection from the State.

3 THE COURT: All the evidence has been presented that
4 they are to consider. They have to base their decision
5 based on what they've heard.

6 (Jury returned to the Courtroom)

7 THE COURT: The question has been presented, we'd like
8 to know exactly where the magazine was found on the road
9 compared to where James fell from the truck.

10 This is a factual dispute that you need to resolve.
11 You have heard all of the evidence and the testimony in
12 this case, and that is a matter for you to resolve.

13 I'd ask that you return to the jury room and resume
14 deliberations.

15 (Jury excused to jury room)

16 (The Court stood in recess until 4:28 P.M.)

17 THE COURT: I think the jury has figured out what a
18 legal question is. They hit it right on the head.

19 We'd like to hear what constitutes whether or not
20 you are unlawfully carrying a pistol. I'll just recharge
21 the statute.

22 Any objection, Mr. Walker?

23 MR. WALKER: No, Your Honor.

24 (Jury brought into Courtroom)

25 THE COURT: Madam Forelady, ladies and gentlemen of

1 the jury, I'm going to charge you with regard to the un-
2 lawful carrying.

3 The Defendant is charged with unlawful carrying of a
4 pistol. The State must prove beyond a reasonable doubt
5 that the Defendant carried a pistol about his person whe-
6 ther concealed or not. The weapon is about the Defendant's
7 person if it is readily accessible.

8 The weapon need not be actually touching the person
9 of the Defendant.

10 I ask that you retire to the jury room and continue
11 your deliberations. Everyone remain seated while the jury
12 exits the Courtroom.

13 (Jury excused to Courtroom)

14 THE COURT: Anything from the State?

15 SOLICITOR: No, Your Honor.

16 THE COURT: Anything from the Defendant?

17 MR. WALKER: No, sir.

18 (Court stood in recess until 5:36 P.M.)

19 THE COURT: I understand we have a verdict. I need
20 everybody to understand that regardless of what the verdict
21 is there will not be any outbursts, and I'm going to ask
22 the Deputies if there is an outburst to go ahead and take
23 you into custody.

24 Anything from the State?

25 SOLICITOR: No, sir.

1 THE COURT: Anything from the Defense?

2 MR. WALKER: No, Your Honor.

3 THE COURT: Let's have the jury.

4 (Jury returned to Courtroom)

5 THE COURT: Madam Foreperson, has the jury agreed upon
6 a verdict?

7 FOREPERSON: Yes, sir.

8 (The Court examining verdict form)

9 THE COURT: The verdict seems to be in order. I'm going
10 to ask the Clerk if she'll publish it.

11 CLERK: State of South Carolina versus James Harris,
12 Defendant. Indictment Number 2011 GS 07 01769, and Number
13 2011 GS 07 1774.

14 Count one, failure to stop for a blue light. We, the
15 jury, by unanimous consent, find the Defendant as to fail-
16 ure to stop for a blue light guilty.

17 Unlawful carrying of a pistol, we, the jury, by unan-
18 imous consent, find the Defendant as to unlawful carrying
19 of a pistol guilty.

20 Signed by the Foreman, Tracy Beal. Madam Forelady and
21 ladies and gentlemen of the jury, if this is your vote,
22 please indicate by raising your right hand.

23 (Jurors raising their right hands)

24 THE COURT: Thank you. Any additional requests for
25 polling?

1 MR. WALKER: Please poll the jury.

2 (Whereupon, the jury was individually polled by the
3 Clerk, with each juror indicating that this was their verdict
4 and is still their verdict.)

5 (The jurors were then excused by the Court.)

6 THE COURT: I'll be happy to hear motions at this
7 time.

8 MR. WALKER: Thank you, Your Honor. I'm going to
9 preempt the colloquy and inform you that Mr. Harris has a
10 prior conviction for failure to stop . .

11 THE COURT: I think the better form is for me to take
12 care of any motions you have first.

13 MR. WALKER: Thank you, Your Honor.

14 I was putting the cart before the horse. I would
15 renew my motions for directed verdict at this time.

16 THE COURT: I'd be glad to hear from the State.

17 SOLICITOR: I would just reiterate what I have said
18 after the earlier motion. I don't believe a directed ver-
19 dict would be proper.

20 I think that both issues were raised at the directed
21 verdict stage and ruled upon.

22 THE COURT: I'd be glad to entertain any legal argu-
23 ments with regard to whether or not the sentence should be
24 enhanced.

25 MR. WALKER: Thank you, Your Honor. I would start by

1 saying the paperwork I've been given from Georgia is not
2 for a crime that is entitled failure to stop for a blue
3 light. I would give the Court a copy of that information.

4 It's called attempt to allude in Georgia.

5 It is similar to failure to stop and I think that
6 I have given to the Court at the beginning of the trial
7 a copy of (inaudible), which is from the Court of Appeals,
8 357 South Carolina 27 from 2004.

9 I believe that is pretty squarely on point. It, of
10 course, goes into language which construes (inaudible
11 portion) but when you look at the line of cases the Court
12 is looking at a person who is asking the Court to do some-
13 thing that is beyond what is plainly in the language of
14 the statute.

15 (Portion inaudible)

16 The language there is that if you have a prior burglary
17 on your record it can be enhanced. It was a burglary from
18 Florida and the Defendant was asking the Court not to do
19 that because it's from somewhere else and it's different.

20 Here the plain language says prior failure to stop
21 and we don't have another failure to stop, but then if you
22 look at it further, there is language that would not cover
23 other state convictions because there is explicit language
24 in the statute concerning a violation of the law or offense
25 of this state. Law or ordinance of this State.

1 The actual statute on failure to stop for a blue
2 light -- the actual text of the failure to stop for a blue
3 light is where the elements of the offense are set out.
4 When driving on a road, street or highway of this State,
5 so the occurrence in the State of South Carolina is an
6 element of the crime.

7 Obviously, the crime that happened in Georgia would
8 not be the same.

9 Also, the same in New Hampshire v Cardin Penton, and
10 that statute says any DUI that is on any street -- it talks
11 about facts in the elements and says that the statute is
12 not satisfied by another case from outside.

13 So that is not the test. I think really all of the
14 language indicates that it should not be allowed to enhance,
15 Your Honor, and I would defer to the State.

16 SOLICITOR: Your Honor, to my understanding I think
17 you really need to look at the statutes that deal with en-
18 hancement. If you look at the blue light statute, it does
19 not limit it to the State, and you made reference to that
20 language of the statute that is the substantive group.

21 MR. WALKER: In order to be convicted of a blue light
22 violation in South Carolina, you have to be on a South
23 Carolina road.

24 SOLICITOR: But really the issue is in the enhancing
25 statutes.

1 MR. WALKER: But I think the plain language of the
2 blue light enhancement statute is that only state convictions
3 would apply.

4 Under the old state of law for driving under the influence
5 -- that is very much on point, because that's an
6 example that shows that the state of the law at that time
7 was that in order for it to be enhanced it had to be a
8 South Carolina conviction.

9 Of course, that is no longer the law, but that is
10 the type of thing we'd be looking for in this case where
11 the blue light enhancement statute says it has to be a
12 South Carolina conviction like it did in the former DUI
13 state of the law, the DUI realm.

14 THE COURT: I understand your arguments and you are
15 protected on the record, but to my understanding it doesn't
16 have anything to do with whether or not the elements are
17 exactly the same.

18 The Georgia attempting to flee or whatever the statute
19 is, it clearly addresses the similar conduct. Whether or
20 not they are identical elements I don't think is materially
21 relevant with regard to enhancement.

22 The issue is whether or not the enhancement statute
23 limits this case. I think the blue light statute does not.

24 Mr. Bannon, would you like to add anything?

25 SOLICITOR: Your Honor, the State wouldn't have anything

1 to add with regard to enhancement. We have the certified
2 copy of the records from Georgia, along with the actual law
3 concerning it.

4 THE COURT: If you agree with whether the elements are
5 exactly one hundred percent identical, that is not really
6 relevant for our purposes here. Would you agree?

7 SOLICITOR: Yes, sir.

8 THE COURT: For the purposes of enhancement?

9 SOLICITOR: Yes.

10 THE COURT: I had an opportunity to review that, and
11 I'm going to make the prior criminal record part, the
12 Georgia part -- out of state conviction -- part of the re-
13 cord for appellate review, and that's my ruling.

14 However, Mr. Walker, you are protected on the record.

15 If you would bring your client around for sentencing?

16 (Defendant and counsel before the Court)

17 SOLICITOR: Your Honor, I have sentencing sheets pre-
18 pared.

19 (Brief pause in proceeding)

20 THE COURT: All right, Mr. Bannon, you are recognized
21 with regard to any matter you would like to add with regard
22 to sentence.

23 SOLICITOR: The State would ask for the maximum sen-
24 tence on both charges. I asked for the maximum sentence
25 based on both the Defendant's conduct that evening, which

1 I think is quite evident from the video tape. The reckless-
2 ness of the driving and the danger he placed other motorists
3 in in order to try to escape, the apprehension by police,
4 and also the fact that traffic stops in general can be dang-
5 erous for police officers, particularly when people are
6 armed with weapons.

7 Beyond that, Your Honor, I'd like to give you a taste
8 of Mr. Harris' record which we have. I show a wilful ob-
9 struction of law enforcement officers from 2003 out of
10 Georgia; the fleeing or attempting to allude the police of-
11 ficer which is what is enhancing this conviction today; the
12 aggravated battery; manufacturing and dispensing drugs in
13 2003; giving false name; contempt of Court from 2008; re-
14 ceiving stolen property from 2008; altering, forging or
15 counterfeiting motor vehicle certificate from 2008; wilful
16 obstruction of law enforcement from 2006, along with driv-
17 ing while under suspension, same year; wilful obstruction
18 of law enforcement from 2006; giving false name from 2010.
19 That looks to be it, Your Honor.

20 THE COURT: Mr. Walker, be glad to hear from you in
21 mitigation, and your client if he'd like to speak.

22 MR. WALKER: Thank you, Your Honor. Mr. Harris is
23 twenty-six years old. He went to the tenth grade. He
24 has two children. He is not working when he was in custody;
25 wasn't really working at the time.

1 When he can get work, he knows how to cut hair. He
2 has that skill.

3 He's from Savannah. The vehicle was actually regis-
4 tered out of Savannah. The gun was registered to somebody
5 in Georgia. That's where all his family is.

6 As to the record that was read out by the State, they
7 were all -- if the Court would look, one charging document
8 kind of lists eight things, one big clump, and the rest is
9 what it is.

10 As far as -- he's been in jail since this happened,
11 Your Honor.

12 THE COURT: How many days is it?

13 MR. WALKER: I have not counted the days, Your Honor.

14 THE COURT: I would do that if you want to get credit
15 for it. Let's do that right now.

16 (Brief pause)

17 MR. WALKER: For the edification of the Court, in
18 plea discussions we've been offered a four year plea to a
19 second, which I didn't think was appropriate. It was the
20 only offer really we've had.

21 As the Court has seen, I believe there were some ques-
22 tions of fact for the jury which they were out a couple of
23 hours deciding.

24 Taking all of this into account, we'd ask the Court
25 to certainly take into account the time he's been in, and

1 the Solicitor certainly mentions the fact of potential
2 danger to an officer and that sort of thing, but, of course,
3 there is no allegation that he ever tried to harm or threaten
4 or do anything to an officer.

5 Of course, any time there is a stop there is a poten-
6 tial for danger, but no one in fact did get injured in
7 this matter even while we frown on this behavior.

8 We ask the Court to take all of this into account
9 when fashioning a sentence for Mr. Harris.

10 THE COURT: Mr. Harris, do you wish to speak to me?

11 DEFENDANT: I don't really have that much to say to
12 Your Honor, sir.

13 THE COURT: All right, Mr. Harris.

14 On Indictment Number 2011 1774, unlawful carrying of
15 a pistol, the sentence of the Court is that you be commit-
16 ted to the South Carolina Department of Corrections for one
17 year.

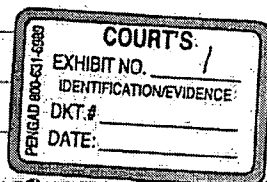
18 On Indictment 2011 1769, failure to stop for blue
19 light, the sentence of the Court is that you be committed
20 to the South Carolina Department of Corrections for thirty
21 months, with credit for time served of, I believe, fifty-
22 eight days. Sentences to run concurrent.

23 Thank you.

24 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

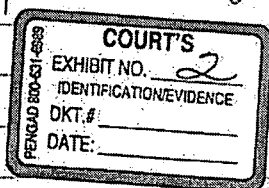
25

We would like to
know exactly
where the mag.
was found in
the road compared
to where James
bailed from the
truck



Chacy Bul
1/25/12

We would like
to hear what
constitutes whether
or not you are
unlawfully carrying
a pistol!

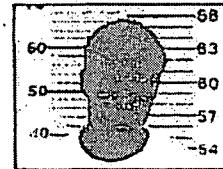


#9 from the
slides

Jay Giel
1/25/12



In the State Court of Chatham County, Georgia
 Sentencing Order - State of Georgia
 vs
HARRIS, JAMES SAMUEL



DEFENDANT: HARRIS, JAMES SAMUEL

CASE NO: R03F096

DISP DATE: 1/17/2008

DEFEND ID: X0135263

DOB:

DEF ATTY: RANDALL SCHMIDT

DISPOSITION: GN

RACE/SEX: B/M

ADA: ETHO

DATE FILED: 6/9/2003

☐ Fall Appeal
☐ Arrest Warr
☐ Call Bond
☐ Form 912

☐ Bond Call
☐ Estreat
☐ Dismiss

CNT	CODE	CHARGE DESCRIPTION	MRG CNT	DEF PLEA	COURT FIND	SENTENCE				FINE(s)		COMM SVC	CONSEC to CNT	OFF DATE
						TIME	JAIL	SUSP	PROB	FINE \$	SUSP \$			
1	16-1-4	CONTEMPT OF COURT	0	Guilty	Guilty		10D							3/15/2006
2	16-1-4	CONTEMPT OF COURT	0	Guilty	Guilty		10D							12/20/2006
3	16-1-4	CONTEMPT OF COURT	0	Guilty	Guilty		10D							10/26/2006
4	16-1-4	CONTEMPT OF COURT	0	Guilty	Guilty		10D							9/21/2006
5	16-8-2	THEFT BY TAKING	0		Dismissed									3/30/2003
6	40-6-181	SPEEDING	0	Guilty	Guilty					195	195			3/28/2003
7	40-6-395	FLEEING TO ELUDE POLICE OFFICER	0	Guilty	Guilty	12M	60D	✓		500				3/28/2003
8	40-8-72	FAILURE TO STOP AT STOP SIGN	0	Guilty	Guilty					100	100			3/28/2003
9	40-6-181	SPEEDING	0		Nolle Pros									3/28/2003
10	16-10-24	OBSTRUCTION	0		Dismissed									3/30/2003
11	40-6-10	NO PROOF OF INSURANCE	0	Guilty	Guilty					200	200			3/28/2003
12	40-6-20	FAILURE TO OBEY TRAFFIC CONTROL DEVICES	0	Guilty	Guilty					300	300			3/28/2003
13	16-10-20	FALSE STATEMENTS & WRITINGS	0	Guilty	Guilty	12M	60D	✓						3/30/2003
14	16-8-7	THEFT BY RECEIVING STOLEN PROPERTY	0	Guilty	Guilty	12M	60D	✓						3/28/2003
15	40-6-390	RECKLESS DRIVING	0	Guilty	Guilty	12M	60D	✓		300	300			3/28/2003
16	40-2-8	OPERATING VEHICLE WITHOUT TAG OR DECAL	0	Guilty	Guilty					180	180			3/30/2003
17	40-2-7	SWITCHING LICENSE TAGS TO MISREPRESENT	0	Guilty	Guilty					400	400			3/30/2003
18	40-6-72	FAILURE TO STOP AT STOP SIGN	0	Guilty	Guilty					100	100			3/28/2003
19	16-8-4	THEFT BY CONVERSION	0		Dismissed									3/30/2003
20	40-5-20	NO PERMIT	0	Guilty	Guilty					150	150			3/28/2003

Other Considerations

☒ Credit granted for time served on these charges

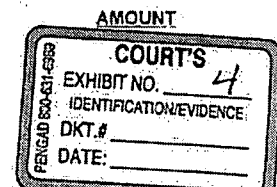
☒ Defendant is ordered to comply with all general conditions of probation and the following SPECIAL CONDITIONS for all Probated/Suspended Sentences:

AS PER

SPECIAL CONDITION OF PROBATION

CHG: 14

CTS SINCE 12/10/07 FLEEING TO ELUDE HIGH AND AGGRAVATED SPEEDING 57/35 MPH SPEED ZONE



THIS IS TO CERTIFY that the within and foregoing
is a true and correct copy of the original Plea Agreement
Accusation Disposition
filed in the Clerk's Office of The State Court of
Chatham County

this 2 day of Dec. 2011

[Signature]
Deputy Clerk The State Court of Chatham County

OBLIGATIONS

Total Confinement: 
 Total Fines: \$500.00
 Total Restitution: \$0.00
 DUI Court/CCIDF: \$0.00

IMPORTANT NOTICE

- Your financial obligations are payable upon sentence. Report to the payment window, Room 308, before leaving the Courthouse.
- The defendant is ordered to pay all surcharges required by law. The Clerk of Court will add mandatory surcharges, as required by law, to all fines imposed.
- If this sentence includes probation/community service, see the probation intake officer before leaving the courthouse. If you are sent directly to Jail, you shall report to PRIDE probation within 72 hours of your release from jail.
- Credit for time served per these charges, if any, will be deducted from the confinement summary.

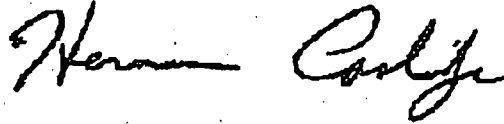
FILED IN OPEN COURT UPON
SIGNATURE OF THE JUDGE



COURT CLERK

Case: R03F096
DispDate: 1/17/2008

So Ordered Today: 1/17/2008



JUDGE, STATE COURT OF CHATHAM COUNTY

STATE COURT OF CHATHAM COUNTY
STATE OF GEORGIA

Accusation Number

~~RO3F09C0~~
RO3F09C0

Misdemeanor Charges:

STATE OF GEORGIA
VS

James Harris
Defendant

Randy Schuman
Attorney

- | | |
|---------------------------|-----------------------|
| 1) <u>Fleeing</u> | 7) <u>No tag</u> |
| 2) <u>no keys</u> | 8) <u>obstruction</u> |
| 3) <u>stop sign (x 2)</u> | 9) <u>TK RSP</u> |
| 4) <u>speeding (x 2)</u> | 10) _____ |
| 5) <u>No permit</u> | 11) _____ |
| 6) <u>No Insurance</u> | 12) _____ |

I. THE PLEA

The Accused, after having received and read a copy of the Accusation, pleads as follows:

☒

GUILTY

NOLO CONTENDERE

GUILTY (North Carolina v. Alford)

Defendant is Eligible for the First Offender's Act and hereby enters the plea under such without opposition from the State of Georgia

Defendant is eligible for the Drug First Offender's Act (OCGA 16-13-2(a)) and does hereby enter the plea under such without opposition from the State of Georgia

NOT GUILTY

The right to a trial by jury is:

☒

WAIVED

NOT WAIVED

The signature of the Accused, and the Accused's attorney if represented, below evidences the plea, agrees that there is a factual basis to support the plea, and the waiver, if any, and also acknowledges receipt of a copy of the Accusation, this 16th of Jan, 2008.

Defendant

X James Harris

Defendant's Attorney

Randy Schuman

**WAIVER OF RIGHTS OF THE DEFENDANT
(ADDITIONAL RECORD WHEN PLEA IS "GUILTY" OR "NOLO CONTENDERE")**

After having been duly sworn, in open court the Defendant answered or ratified the answers or the following questions concerning the voluntariness of his or her plea:

- | | | | |
|---|----|--------------------------------------|--------------------------|
| (1) Are you willing to answer these questions although you have the right to remain silent? | 1 | ☒ YES | ☐ NO |
| (2) Are you now under the influence of any alcohol, drugs, narcotics, or other pills? | 2 | ☒ YES | ☐ NO |
| (3) Do you understand the charge(s) against you and the maximum and minimum possible sentence(s)? The sentence for any misdemeanor charge may not exceed 12 months, but sentences may be imposed consecutively. | 3 | ☒ YES | ☐ NO |
| (4) Do you understand that any negotiated plea is not binding on the Court?
(Do not answer if you have not agreed upon a plea with the district attorney.) | 4 | ☒ YES | ☐ NO |
| (5) Has anyone made any promise (excluding the provisions of the plea agreement) or threats to you to influence you to enter a plea in this case. | 5 | ☒ YES | ☐ NO |
| (6) Do you understand that you have the following rights which you are waiving by entering a plea of guilty or nolo contendere: | | | |
| (a) the right to a jury trial; | 6a | ☒ YES | ☐ NO |
| (b) the presumption of innocence; | 6b | ☒ YES | ☐ NO |
| (c) the right to confront and question witnesses against you; | 6c | ☒ YES | ☐ NO |
| (d) the right to subpoena witnesses to a trial; | 6d | ☒ YES | ☐ NO |
| (e) the right to testify and offer other evidence at a trial; | 6e | ☒ YES | ☐ NO |
| (f) the right to assistance of a lawyer during trial; and | 6f | ☒ YES | ☐ NO |
| (g) the right not to be compelled to incriminate oneself? | 6g | ☒ YES | ☐ NO |
| (7) Do you understand that by pleading not guilty or remaining silent and not entering a plea, you may obtain a jury trial? | 7 | ☒ YES | ☐ NO |
| (8) Are you in fact guilty of the charges to which you are pleading?
(Do not answer if you are pleading Nolo Contendere.) | 8 | ☒ YES | ☐ NO |

Answer the following if you are represented by a lawyer:

- | | | | |
|---|----|--------------------------------------|--------------------------|
| (9) Have you had time to talk with your lawyer about this case and this plea? | 9 | ☒ YES | ☐ NO |
| (10) Are you satisfied with the services of your lawyer? | 10 | ☒ YES | ☐ NO |

Answer the following if you are NOT represented by a lawyer:

- | | | | |
|---|----|--------------------------------------|--------------------------|
| (11) Do you waive your right to a lawyer? | 11 | ☒ YES | ☐ NO |
|---|----|--------------------------------------|--------------------------|

Answer the following if you are not a citizen of the United States:

- | | | | |
|--|----|--------------------------------------|--------------------------|
| (12) Do you understand that this plea may have an impact on your immigration status? | 12 | ☒ YES | ☐ NO |
|--|----|--------------------------------------|--------------------------|

Date

1/17/08

Defendant's signature

D. James S. Khorin

The undersigned trial judge certifies that after suitable inquiry and observation, I am satisfied that the defendant knowingly, intelligently and voluntarily waived the above rights and made his or her plea. I accept the plea and order that judgment be entered upon said plea.

Date

1/17/08

Judge, State Court of Chatham County

[Signature]

State Court of Chatham County, Georgia
Negotiated Plea Contract

State of Georgia vs. James Harris Accusation number(s) 1203F096

Defendant's Attorney Randy Selmer (Please Print)

Submitted by: Nathaniel Wright Angel Dwyer
Lauren E. Thomas Assistant D.A.

Count/Charge	Sentence	Jail Time	Fine	C.S. Hours	Consecutive To Count #
(2nd) 1 Fleeing to Elude	12 mos	~~100~~ days	\$ 500		
2 Reckless Driving	12 mos	~~100~~ 60	\$ 300	sup 300	
3 Running Red Light			\$ 300 (Susp ~~\$50~~)		
4 Stop Sign			\$ 100 (Susp)		
5 Stop Sign			\$ 100 (Susp)		
6 Speeding 57/35			\$ 195 sup		
7 No Permit	~~12 mos~~		\$ 150 sup		
8 No Insurance	~~12 mos~~		\$ 200 sup		
9 Switched Tag	~~12 mos~~		\$ 400 (Susp ~~\$200~~)		
10 No Tag			\$ 180 (Susp)		

☒ Defendant to receive CREDIT FOR TIME SERVED in jail on these charges.

☒ Balance of sentence is ~~PROBATION~~ / SUSPENDED

☒ Early Termination / Suspended Sentence Possible AFTER 0 months IF in compliance with Probation AND if completed of all conditions/fines/fee AND in discretion of probation

☒ Count(s) 1 are High and Aggravated Misdemeanors.

☒ Total sentence of all counts is a total of 12 Months.

☐ This plea is entered under the FIRST OFFENDER'S ACT as to all counts.

☐ This plea is entered under OCGA 16-13-2(a) (DRUG FIRST OFFENDER'S ACT) as to counts _____

☐ This plea is entered as a NOLO CONTENDRE as to counts _____

☐ This plea is entered under North Carolina v. Alford as to counts 1-10

11. Speeding 50/30 (NP) 155 - merged at 6
12. Obst x False Name 12 mos 400 (Susp ~~\$200~~)
13. Theft x Receiving 12 mos 250 (Susp ~~\$100~~)

CS
12/10/08

SPECIAL CONDITIONS TO APPLY TO ALL COUNTS WHERE PROBATION RECEIVED:

() ALL FIRST TIME DUI CONDITIONS

- () Drug and alcohol evaluation with counseling as recommended by probation (complete in 30 days)
- () Not to consume or possess alcohol (this also means no alcohol in the Defendant's residence).
- () Not to enter any bars or liquor stores.
- () Attend and Complete BOTH a DUI Risk Reduction Program AND a Victim Impact Panel (complete in 60 days)
- () Submit to random drug and alcohol screening
- () Pay a \$_____ contribution to the Chatham County D.U.I. Court within 90 days.

() SECOND DUI WITHIN 5 YEARS DUI CONDITIONS

- () All first time DUI conditions
- () Mandatory drug and alcohol counseling (enroll in 30 days)
- () For the first 6 months eligible to drive, cannot drive any vehicle without an ignition interlock device
- () Pay a \$25 photo fee and agree to publishing of photo
- () Surrender all license plate(s) that are in Defendant's name.

() THIRD DUI WITHIN 5 YEARS DUI CONDITIONS

- () All first time DUI conditions AND all second DUI conditions within 5 years
- () H.V. Service

() Attend and complete all conditions of the Chatham County D.U.I. Court.

- () Banishment from the premises of _____
- () Banishment from Chatham County, Georgia while under sentence
- () No threats or violence against the victim or any witnesses identified on the State's Witness List in this case.
- () No contact with the victim or any witnesses identified on the State's Witness List in this case.
- () Attend and complete Anger Management Counseling (enroll in 30 days)
- () Attend and complete Counseling as recommended by Parent and Child (enroll in 30 days)

() Pay restitution in the amount of \$_____ to _____

() Enroll in G.E.D. classes and obtain G.E.D. (~~Suspend upon proof of H.S. diploma~~)

() Seek and maintain full-time employment while on probation.

() Pay thru the Clerk of State Court _____ to the Chatham County Indigent Defense Fund.

() Other Special Conditions: ~~Defendant's Driving School (proof of completion)~~
~~other to state~~

AFTER READING THIS PLEA FORM, AND BY SIGNING BELOW, I STATE THAT I UNDERSTAND ALL CONDITIONS OF MY SENTENCE AND HAVE NO QUESTIONS. I UNDERSTAND THAT IF I AM RECEIVING ANY PROBATION TIME OR SUSPENDED SENTENCE TIME, THAT ANY PORTION MAY BE REVOKED OR UNSUSPENDED BY THIS COURT AND THAT I MAY SERVE JAIL TIME IF I COMMIT NEW OFFENSES OR VIOLATE ANY CONDITIONS OF PROBATION. BY SIGNING BELOW, I AGREE TO ABIDE BY ALL CONDITIONS AS STATED ON THIS PLEA CONTRACT.

[Signature]
Defendant

[Signature]
Defendant's Attorney (if applicable)

Judge

IN THE STATE COURT OF CHATHAM COUNTY, GEORGIA
MISDEMEANOR CHARGES

CONTINUATION
OF

STATE OF GEORGIA

PAGE 2 OF 5

VS

JAMES S. HARRIS
DEFENDANT

R03F096
ACCUSATION NUMBER

=====

CONTINUATION OF ACCUSATION

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of II. RECKLESS DRIVING [O.C.G.A. 40-6-390 (A)]; for that the said Defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully and intentionally drive a motor vehicle upon a public highway of this State, with a reckless disregard for the safety of person and property, by failing to maintain proper control of said vehicle; contrary to the laws of the State of Georgia, the good order, peace and dignity thereof.

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of III. RAN A RED LIGHT (O.C.G.A. 40-6-20); for that the said Defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, being the driver of a motor vehicle, proceed when a stop signal was being exhibited by an official traffic control device; contrary to the laws of the State of Georgia, the good order, peace and dignity thereof.

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of IV. FAILURE TO STOP AT STOP SIGN (O.C.G.A. § 40-6-72); for that the said Defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully being the operator of a motor vehicle approaching a stop sign did fail to stop at the intersection; contrary to the laws, the good order, peace and dignity of this State.

IN THE STATE COURT OF CHATHAM COUNTY, GEORGIA

Misdemeanor Charges

STATE
VS.R03F096
Accusation NumberJAMES S. HARRIS
DefendantSAVANNAH, GA 31404
Defendant's AddressBM
Race/DOB/SSN or OLN

- 1) FLEEING TO ELUDE
- 2) RECKLESS DRIVING
- 3) RAN RED LIGHT
FAILURE TO STOP
- 4) AT STOP SIGN
FAILURE TO STOP
- 5) AT STOP SIGN
- 6) SPEEDING
- 7) SPEEDING
- 8) NO PERMIT
- 9) NO PROOF OF INSURANCE
SWITCHING LICENSE TAG
- 10) TO MISREPRESENT
OPERATING VEHICLE
- 11) WITHOUT TAG OR DECAL
- 12) OBSTRUCTION
THEFT BY RECEIVING
- 13) STOLEN PROPERTY

=====

WITNESSES FOR THE STATE

CPL. D. HARRIS, TBPd, 2821 RIVER DRIVE, THUNDERBOLT, GA 31407
SGT. MILLER, TBPd, 2821 RIVER DRIVE, THUNDERBOLT, GA 31407

=====

ACCUSATION

On behalf of the people of the State of Georgia, the undersigned, as prosecuting attorney for the County of Chatham and the State of Georgia, does hereby charge and accuse the above-named defendant with the offense of I. FLEEING TO ELUDE POLICE (O.C.G.A. 40-6-395); for that the said Defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully and willfully fail and refuse to bring the vehicle he was driving to a stop when given visual and audible signals to bring his vehicle to a stop by a uniformed police officer in a marked official police vehicle; contrary to the laws of the State of Georgia, the good order, peace and dignity thereof.

IN THE STATE COURT OF CHATHAM COUNTY, GEORGIA

CONTINUATION
OF

MISDEMEANOR CHARGES

STATE OF GEORGIA

PAGE 2 OF 5

VS

JAMES S. HARRIS
DEFENDANTR03F096
ACCUSATION NUMBER

CONTINUATION OF ACCUSATION

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IN THE STATE COURT OF CHATHAM COUNTY, GEORGIA

CONTINUATION
OF

MISDEMEANOR CHARGES

STATE OF GEORGIA

PAGE 3 OF 5

VS

JAMES S. HARRIS

R03F096

DEFENDANT

ACCUSATION NUMBER

=====

CONTINUATION OF ACCUSATION

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of V. FAILURE TO STOP AT STOP SIGN (O.C.G.A. § 40-6-72); for that the said Defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully being the operator of a motor vehicle approaching a stop sign did fail to stop at the intersection; contrary to the laws, the good order, peace and dignity of this State.

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of VI. SPEEDING (O.C.G.A. 40-6-181); for that the said Defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully operate a motor vehicle upon a public roadway/ highway in excess of the speed allowed by the Law of Georgia: to wit: 30 mph; contrary to the laws, the good order, peace and dignity of this State.

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of VII. SPEEDING (O.C.G.A. 40-6-181); for that the said Defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully operate a motor vehicle upon a public roadway/ highway in excess of the speed allowed by the Law of Georgia: to wit: 35 mph; contrary to the laws, the good order, peace and dignity of this State.

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of VIII. NO PERMIT (O.C.G.A. § 40-5-20); for that the said defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully operate a motor vehicle upon a public highway without having a permit; contrary to the laws of said State, the good order, peace and dignity thereof.

IN THE STATE COURT OF CHATHAM COUNTY, GEORGIA

CONTINUATION
OF

MISDEMEANOR CHARGES

STATE OF GEORGIA

PAGE 4 OF 5

VS

JAMES S. HARRISR03F096

DEFENDANT

ACCUSATION NUMBER

CONTINUATION OF ACCUSATION

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of XI. NO PROOF OF INSURANCE (O.C.G.A. 40-6-10); for that the said Defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully operate a motor vehicle without proof of effective insurance in immediate possession; contrary to the laws of said State, the good order, peace and dignity thereof.

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of X. SWITCHING LICENSE TAGS TO MISREPRESENT (O.C.G.A. 40-2-7); for that the said defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully remove a license plate from a vehicle to conceal and misrepresent the identity of said vehicle and its owner; contrary to the laws of said State, the good order, peace and dignity thereof.

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of XI. OPERATING VEHICLE WITHOUT TAG OR DECAL (O.C.G.A. 40-2-8); for that the said Defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully operate a motor vehicle on a public highway and street without a valid numbered license plate properly validated; contrary to the laws of the State of Georgia, the good order, peace and dignity thereof.

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of XII. FALSE NAME TO POLICE (O.C.G.A. § 16-10-25); for that the said Defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully and intentionally give a false name to a law enforcement officer, CPL. D. HARRIS, while in the lawful discharge of his official duties with the intent of misleading the officer as to his identity; contrary to the laws of the State of Georgia, the good order, peace and dignity thereof.

IN THE STATE COURT OF CHATHAM COUNTY, GEORGIA

CONTINUATION
OF

MISDEMEANOR CHARGES

STATE OF GEORGIA

PAGE 5 OF 5

VS

JAMES S. HARRISR03F096

DEFENDANT

ACCUSATION NUMBER

CONTINUATION OF ACCUSATION

THE UNDERSIGNED, AS PROSECUTING ATTORNEY, DOES FURTHER CHARGE AND ACCUSE the above Defendant with the offense of XIII. THEFT BY RECEIVING STOLEN PROPERTY (O.C.G.A. 16-8-7); for that the said Defendant did: in Chatham County, State of Georgia, on or about MARCH 28, 2003, unlawfully receive stolen property which the Defendant then knew and should have known was stolen, without the intent to restore it to the lawful owner, and having a value of less than \$500; contrary to the laws of the State of Georgia, the good order, peace and dignity thereof.

Filed in office this _____

Deputy Clerk, State Court of Chatham
County



SPENCER LAWTON, JR.
District Attorney
Eastern Judicial Circuit of
Georgia

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

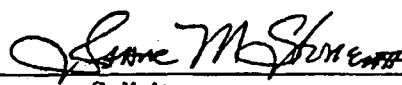
INDICTMENT
2011GS0701769

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of Beaufort County present upon their oath:

Traffic / Failure to stop for a blue light, no injury or death

That in Beaufort County, South Carolina, on or about August 17, 2011, the Defendant, James Harris, while driving a motor vehicle on a road, street, or highway of the State, did fail to stop for a law enforcement vehicle after being signaled by a flashing light or a siren to do so; all in violation of Section 56-5-750, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

WITNESSES

J.S. Warner-SCHP

ARREST WARRANT NUMBER

F114453

ACTION OF GRAND JURY

Brett Wolf SEP 15 2011
Foreperson of Grand Jury
Date: ~~AUG 15 2011~~

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2011GS0701769

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

September Term 2011

THE STATE

vs.

James Harris

Indictment for

**Traffic / Failure to stop for a blue light, no injury
or death**

SC Code: 56-05-0750(B)(1)
CDR Code:0065

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

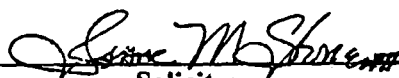
INDICTMENT
2011GS0701774

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Unlawful carrying of pistol

That in Beaufort County, South Carolina, on or about August 18, 2011, the Defendant, James Harris, unlawfully did carry about his person a handgun, described as follows: Ruger 45 Caliber Semi-Automatic Pistol; in violation of Section 16-23-20, Code of Laws of South Carolina (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

WITNESSES

J.S. Warner-SCHP

ARREST WARRANT NUMBER

J349601

ACTION OF GRAND JURY

Brett Walk
Foreperson of Grand Jury
Date: *SEP 15 2011*

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2011GS0701774

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

September Term 2011

THE STATE

vs.

James Harris

Indictment for

Weapons / Unlawful carrying of pistol

SC Code: 16-23-0020; 16-23-0050(A)
CDR Code:0044

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

UP to 5 YRS

COUNTY OF
STATE

Beaufort

VS.

James Harris

AKA:

Race: B Sex: M Age: 26

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Traffic / Failure to stop for a blue light, no injury or death - 2nd or sub. offense

in violation of § 56-05-0750(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2396

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Dannon, [Signature]

77414
SC Bar#Janita [Signature]
Defendant[Signature]
Attorney for Defendant72535
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 158 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk: [Signature]

Court Reporter: Deborah E. [Signature]

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS0701769

A/W#: F114453

Date of Offense: 8/17/2011

S.C. Code §: 56-05-0750(B)(1)

CDR Code #: 0065

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge: [Signature]

Judge Code: 2150

Sentence Date: 1-25-2012

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Certified - A True Copy

Jeri Ann Roseboro - Clerk of Court
Beaufort County, SC - Kristy Taylor☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

STATE OF SOUTH CAROLINA *up to 1 yr and/or up to 5K* IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.

James Harris

AKA: _____

Race: B Sex: M Age: 26

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Weapons / Unlawful carrying of pistol

INDICTMENT/CASE#: 2011GS0701774

A/W#: J349601

Date of Offense: 8/18/2011

S.C. Code § 16-23-0020; 16-23-0050(A)

CDR Code #: 0044

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0020; 16-23-0050(A) of the S.C. Code of Laws, bearing CDR Code # 0044

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

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

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

ATTEST: [Signature] 77414 [Signature] 72535
Dannott, Mercedes SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1-25-12
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 158 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

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

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

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

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

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

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

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

TOTAL \$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Certified - A True Copy

[Signature]
Jeri Ann Roseaneau - Clerk of Court
Beaufort County, SC - Kristy Taylor

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2140

Sentence Date: 1-25-12

Clerk of Court/Deputy Clerk

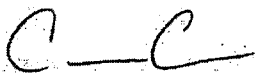
Court Reporter: Deborah Givens

SCCA/217 (03/2011)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 24th, 2014



Carmen V. Ganjehsani
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
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P.G. Sullivan Corp.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES HARRIS,

APPELLANT

APPELLANT CASE NO. 2012-207968

FINAL BRIEF OF APPELLANT

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The Trial Court erred in failing to grant Appellant's motion for a directed verdict on the charge of unlawful carrying of a pistol where there was no evidence showing actual or constructive possession by Appellant of the pistol and magazine found in the area where a police vehicle chase of Appellant ended.
- II. The Trial Court erred in using Appellant's prior out-of-state conviction for fleeing to elude police in enhancing Appellant's sentence under S.C. CODE ANN. § 56-5-750(B)(2) for failure to stop for a blue light where § 56-5-750(B)(2) does not permit the use of out-of-state convictions as predicate offenses.

STATEMENT OF THE CASE

On September 15, 2011, Appellant James Harris was indicted by the Beaufort County Grand Jury for (1) failure to stop for a blue light in violation of S.C. CODE ANN. § 56-5-750; and (2) unlawful carrying of a pistol in violation of S.C. CODE ANN. § 16-23-20. R. 129.

Harris appeared before the Honorable Michael G. Nettles and a jury on January 24-25, 2012. R. 1. Harris was represented by Matthew Walker, and the State was represented by Assistant Solicitor James Bannon. Id.

The jury found Harris guilty on both charges. R. 105, ll. 11-20. Judge Nettles sentenced Harris to thirty months for failure to stop for a blue light and one year for unlawful carrying of a pistol with the sentences to run concurrent. R. 113, ll. 14-22.

Harris timely filed and served a Notice of Appeal on January 30, 2012.

STATEMENT OF FACTS

On the evening of August 17, 2011, Highway Patrol Trooper Joseph Steven Warner was patrolling an area in the city limits of Bluffton, South Carolina when he encountered a red Nissan truck that appeared to be speeding. R. 11, l. 3 – 12, l. 19. Trooper Warner turned his vehicle around and caught up with the red truck. He eventually activated his blue lights. R. 13, ll. 5-23. The red truck did not stop for the blue lights and a brief chase ensued. R. 14, l. 1 – 17, l. 24.

Trooper Warner testified that the red truck eventually hit a ditch and “[t]he driver’s side door immediately opened, and as it opened - - as soon as it opened someone came out of the driver’s side seat right in the seat - - came out of the seat.” R. 17, l. 25 – 18, l. 4. Trooper Warner contended at trial that this person was Harris. R. 18, ll. 5-6. A second individual also jumped out of the driver’s side door. R. 22, ll. 15 – 21; 49, l. 23 – 50, l. 24.

Trooper Warner stopped his vehicle, got out of his vehicle, and proceeded to give chase on foot. R. 23, ll. 16-18. The person Trooper Warner was chasing ran into some bushes, and Trooper Warner was able to handcuff the person. R. 24, ll. 4-19. The person Trooper Warner handcuffed was Harris. Harris informed Trooper Warner that he was not the person driving the red truck and that he had jumped out of the driver’s side because there was a big ditch on the passenger side of the truck. R. 25, l. 21 – 26, l. 4; 48, ll. 16-23.

While out at the scene, Trooper Warner testified that he also collected a magazine that went to a forty-five caliber gun and a forty-five caliber pistol. R. 27, ll. 5 – 11. The magazine was found lying in the middle of the road by Officer Sean Phillip Jansen of the Beaufort County Sheriff’s Department, and Officer Jansen notified Trooper Warner as to the magazine. R. 52, l. 23 – 53, l. 23. Trooper Warner claimed the magazine was found in the

middle of the roadway just after where the red truck ran off the road and approximately where Harris landed in the roadway. R. 27, ll. 13-14; 29, ll. 5-9. Trooper Warner located the pistol lying on top of some leaves. R. 27, l. 24.

Trooper Warner testified that the pistol was in good condition with only some scrape marks to the outside area. R. 33, ll. 12-15. Trooper Warner also testified there was some damage to one side of the magazine as if it hit a hard surface. R. 34, ll. 5-12.

Trooper Warner did not have the pistol fingerprinted or analyzed for any DNA. R. 44, l. 14 – 45, l. 3. Trooper Warner also determined that the pistol was not a stolen pistol. R. 45, l. 15 – 46, l. 4.

Trooper Warner never testified that he saw a pistol being thrown from the truck or that he saw Harris throw anything while leaving the truck or while running. Trooper Warner further did not testify that he saw anything fall from Harris' person.

At the close of the State's case, Harris moved for a directed verdict on the charge of unlawful carrying of a pistol where there was no evidence to connect the pistol to Harris and the pistol and magazine were merely found in proximity of an area where Harris ran near. R. 65, ll. 3-7. The Trial Court denied this motion for directed verdict. R. 66, ll. 3-4. Harris renewed his motion for directed verdict after the defense rested which the Trial Court also denied. R. 70, ll. 16-20.

After the jury began deliberating, they sent two questions to the Trial Court. The jury first asked, "We would like to know exactly where the mag[azine] was found in the road compared to where James [Harris] bailed from the truck." R.114 (Court's Ex. 1); R. 102, l. 23 – 103, l. 14. The Trial Court advised the jury this was a factual dispute they would need to resolve. R. 103, ll. 7-14.

The jury next informed the Trial Court that they would “like to hear what constitutes whether or not you are unlawfully carrying a pistol.” R. 115 (Court’s Ex. 2); R. 103, ll. 17-21. The Trial Court recharged the statute to the jury. R. 103, l. 25 – 104, l. 12.

The jury ultimately found Harris guilty of both failure to stop for a blue light and unlawful carrying of a pistol. R. 105, ll. 11-22.

ARGUMENT

- I. The Trial Court erred in failing to grant Appellant's motion for a directed verdict on the charge of unlawful carrying of a pistol where there was no evidence showing actual or constructive possession by Appellant of the pistol and magazine found in the area where a police vehicle chase of Appellant ended.**

The Trial Court erred in failing to direct a verdict for Harris on the charge of unlawful carrying of a pistol where the evidence, taken in the light most favorable to the State, is insufficient to support the conclusion that Harris possessed the pistol. R. 65, ll. 3-7; 66, ll. 2-4; 70, ll. 16-20. S.C. CODE ANN. § 16-23-20 makes it "unlawful for anyone to carry about the person any handgun, whether concealed or not" subject to certain exceptions. Therefore, the State must prove that the defendant was unlawfully in possession of a weapon. State v. Kirby, 325 S.C. 390, 399, 481 S.E.2d 150, 154 (Ct. App. 1996).

A defendant is entitled to a directed verdict at trial when the State fails to present evidence on a material element of the offense charged. State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004). The grant of a directed verdict motion for acquittal by a defendant is proper if there is a failure of competent evidence tending to prove the charge. State v. Jackson, 395 S.C. 250, 254, 717 S.E.2d 609, 611 (Ct. App. 2011).

If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the trial court should submit the case to the jury. Otherwise, "a trial judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Buckmon, 347 S.C. 316, 321-22, 555 S.E.2d 402, 404-05 (2001); see also State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); State v. James, 362 S.C. 557, 561, 608 S.E.2d 455, 457 (Ct. App. 2004).

The State's evidence of Harris' possession of the pistol consisted of only the following: Trooper Warner did not see a pistol thrown from the red truck he was chasing; Trooper Warner did not see Harris throw anything while leaving the truck or while running; Trooper Warner also did not see anything fall from Harris' person; the magazine was found in the middle of the roadway just after where the red truck ran off the road and approximately where Harris landed in the roadway; the pistol was found lying on top of some leaves in the area where the truck stopped and where Harris was found; the pistol was determined not to be stolen; a second person was also in the truck with Harris and also jumped out of the driver's side door of the truck; the pistol was in good condition with some scrape marks on its outside area and the magazine had damage to one side as if it had hit a hard surface.

This evidence is not sufficient to support a jury verdict that Harris possessed the pistol. At most, the evidence merely suggests that the likely owner of the pistol was riding in the truck being chased by Trooper Warner. There was a second person, however, in the truck with Harris, and the pistol could have belonged to that second person. Furthermore, there is no evidence even showing that the pistol was ever thrown from the truck, that Harris ever threw anything while leaving the truck or while running, or that anything ever fell from Harris' person.

There is simply no evidence showing actual possession of the pistol by Harris, nor is there any evidence of Harris' control of the pistol sufficient to show constructive possession. See State v. Jackson, 395 S.C. 250, 255, 717 S.E.2d 609, 611 (Ct. App. 2011) ("To prove constructive possession, the State must show a defendant had dominion and control, or the right to exercise dominion and control, over the [weapon].") (internal citations omitted). Harris did not have dominion and control over the outside area where the pistol and magazine were found.

Accordingly, the Trial Court erred in denying Harris' motion for a directed verdict on the charge of unlawful carrying of a pistol. Harris' conviction on that charge should be reversed. See State v. Pierce, 718 S.E.2d 648, 654 (N.C. Ct. App. 2011) (holding that there was no evidence showing actual or constructive possession by the defendant of a firearm found on the roadside of the route of a police vehicle chase in which the defendant was involved and concluding that the trial court should have granted the defendant's motion to dismiss the charge of possession of the firearm found).

II. The Trial Court erred in using Appellant's prior out-of-state conviction for fleeing to elude police in enhancing Appellant's sentence under S.C. CODE ANN. § 56-5-750(B)(2) for failure to stop for a blue light where § 56-5-750(B)(2) does not permit the use of out-of-state convictions as predicate offenses.

During sentencing for Harris' conviction for failure to stop for a blue light in violation of S.C. CODE ANN. § 56-5-750, the Trial Court enhanced Harris' sentence based upon a conviction in the State of Georgia for fleeing to elude police in violation of GA. CODE ANN. § 40-6-395. R.116. (Court's Ex. 4); R. 106, l. 22 – 110, l. 14; 113, ll. 18-22.

South Carolina Code Section 56-5-750 provides:

(A) In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. An attempt to increase the speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light is prima facie evidence of a violation of this section. Failure to see the flashing light or hear the siren does not excuse a failure to stop when the distance between the vehicles and other road conditions are such that it would be reasonable for a driver to hear or see the signals from the law enforcement vehicle.

(B) A person who violates the provisions of subsection (A):

(1) for a first offense where no great bodily injury or death resulted from the violation, is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years. The Department of Motor Vehicles must suspend the person's driver's license for at least thirty days; or

(2) for a second or subsequent offense where no great bodily injury or death resulted from the violation, is guilty of a felony and, upon conviction, must be imprisoned for not more than five years. The person's driver's license must be suspended by the department for a period of one year from the date of the conviction.

Id.

If Harris had been convicted of a first offense, Harris would have only been guilty of a misdemeanor. Instead, the Trial Court used Harris' out-of-state conviction for fleeing to elude

police to enhance Harris' sentence and therefore, Harris was found guilty of a felony under § 56-5-750(B)(2).

South Carolina's statute for failure to stop for a blue light does not permit the use of out-of-state convictions as predicate offenses. See § 56-5-750(B). The statute permits the enhancement of a sentence for a person "who violates the provisions of subsection (A)" of South Carolina's failure to stop for a blue light statute "for a second or subsequent offense." § 56-5-750(B)(2). The statute is clear that only a previous violation of South Carolina's statute for failure to stop for a blue light can serve as a sentence enhancement. Code section 56-5-750(B)(2) thus limits prior convictions to those involving a prior violation of that particular statute and does not permit out-of-state convictions for similar statutes to serve as a sentence enhancement.

In addition, a person only violates § 56-5-750(A) by failing to stop when signaled by a law enforcement vehicle "while driving on a road, street, or highway of the State [of South Carolina] . . ." This statute obviously refers to roadways in South Carolina and therefore, a person can only violate § 56-5-750(A) by driving on a roadway in South Carolina, not in another state. As such, a person can only have a second offense of violating § 56-5-750(A) if the person has had a first offense of violating this code section while driving on a South Carolina roadway. § 56-5-750(B)(2); see State v. Cardin, 156 A.2d 118, 118-19 (N.H. 1959) (holding prior conviction of similar offense in Massachusetts could not be considered in determining whether a second offense of operating a motor vehicle while under the influence of intoxicating liquor had been committed where under New Hampshire's statute, reference is only to a public way within New Hampshire).

The facts of this case are distinguishable from State v. Zulfer, 345 S.C. 258, 262, 547 S.E.2d 885, 887 (Ct. App. 2001) where this Court held that the first degree burglary statute unambiguously permitted the use of out-of-state convictions as predicate offenses where the plain language of the burglary statute provided for the enhancement of the offense of burglary based on a “prior record of two or more convictions for burglary or housebreaking or a combination of both.” This Court determined that “[n]owhere does the language of the statute limit a prior record of convictions for burglary or housebreaking to only those that occurred within South Carolina. In not so limiting a prior record of convictions, the plain language of our burglary statute permits an enhancement of the offense based on a prior record of out-of-state convictions for burglary or housebreaking or a combination of both.” Id.

In contrast to Zulfer, the failure to stop for a blue light statute does limit a prior record of convictions to only violations of that particular statute and thus only those violations that occurred in South Carolina. See § 56-5-750(B)(2). Accordingly, the Trial Court erred in using Harris’ Georgia conviction for fleeing to elude police to enhance Harris’ sentence for violating § 56-5-750(A). Harris should be resentenced as a first offender under § 56-5-750(B)(1) and found guilty of a misdemeanor instead of a felony. This would allow Harris to eventually take advantage of the provisions of § 56-5-750(F) which permit a person convicted of a first offense to apply to the court for an order expunging the records of the arrest and conviction.

CONCLUSION

For the reasons set forth herein, Appellant James Harris respectfully requests this Court to reverse his conviction for unlawful carrying of a pistol. Harris also requests this Court to remand his conviction for failure to stop for a blue light for resentencing as a first offender pursuant to S.C. CODE ANN. § 56-5-750(B)(1).

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

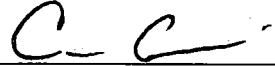
ATTORNEY FOR APPELLANT

This 10th day of March, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 10, 2014



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

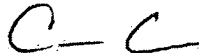
V.

JAMES HARRIS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of March, 2014.


Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of March, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Michael G. Nettles, Circuit Court Judge
Appellate Case No. 2012-207968

STATE OF SOUTH CAROLINA,

RESPONDENT,

vs.

JAMES HARRIS

APPELLANT

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. **The trial judge properly denied Appellant's directed verdict motion on the charge of unlawful carrying of a pistol where, although the pistol was not found on Appellant's person, evidence supported that Appellant actually possessed the pistol before disposing of it during the police chase.**

- II. **The trial judge properly enhanced Appellant's sentence for failure to stop for a blue light based upon a prior Georgia conviction for the same conduct.**

STATEMENT OF THE CASE

Appellant was indicted in Beaufort County in September 2011 for failure to stop for a blue light and unlawful carrying of a pistol. On January 24-25, 2012, Appellant proceeded to trial before the Honorable Michael G. Nettles and a jury. The jury found Appellant guilty as indicted, and Judge Nettles sentenced Appellant to thirty months for failure to stop for a blue light and one year, concurrent, for unlawful carrying of a pistol. A timely notice of appeal was served and filed.

ARGUMENT

- I. **The trial judge properly denied Appellant's directed verdict motion on the charge of unlawful carrying of a pistol where, although the pistol was not found on Appellant's person, evidence supported that Appellant actually possessed the pistol before disposing of it during the police chase.**

Relevant Facts

Around 8:30 pm on August 17, 2011, Trooper Warner of the South Carolina Highway Patrol observed a red Nissan truck traveling at fifty-two miles per hour in a twenty-five mile per hour zone. (R. p. 11-12). The driver sped up after Trooper Warner attempted to pull the truck over, and, after a fairly brief chase, the truck blew out two tires. (R. p. 13-17). After making a hasty right turn onto a side road bordered by a ditch, the driver bailed out of the truck feet-first through the driver's side door, fell to the ground, then quickly got up and took off running. (See R. p. 17-21; see Video, State's Exhibit # 16). Trooper Warner immediately parked his car and ran after the driver, who was wearing an orange shirt. (R. p. 23-24). He never lost sight of the driver during the chase. (R. p. 23, lines 19-20). Having no driver, the truck rolled ahead for several yards and then a second person exited the truck through the driver's side door and took off running. (R. p. 17-22; see Video, State's Exhibit # 16). Trooper Warner did not become aware that a second person exited the vehicle until he watched the footage from his patrol car camera. (R. p. 50, lines 11-20).

Trooper Warner chased the driver on foot into a nearby wooded area where the driver tried to hide in some bushes next to a fence. (R. p. 23-24). At that point Trooper Warner was able to handcuff him, take him into custody, and read him his Miranda rights. (R. p. 24). Although the driver initially gave a false name, officers eventually learned that the person Trooper Warner chased and arrested was Appellant, James Harris.

(R. p. 18, lines 5-6; p. 59, lines 8-9). Appellant complained that his shoulder was hurting and also said he had not been driving the truck. (R. p. 24-26). Appellant stated he did not know the name of the driver. (R. p. 60, lines 6-10). A search of Appellant's person revealed a cell phone but no driver's license and no concealed carry permit. (R. p. 26, lines 5-13). After Appellant refused medical treatment, officers placed him in a county vehicle. (R. p. 26-27).

Officers then collected a magazine for a forty-five caliber gun that was found in the roadway. (R. p. 27). This magazine was found "in the middle of the roadway just after the vehicle ran off the road and approximately where [Appellant] landed in the roadway." (R. p. 29, lines 3-9). The magazine was not found in the area where the second person exited the truck since the truck had by that point rolled a good distance from where the magazine was dropped. (R. p. 51, line 20 – p. 52, line 3). The magazine had damage to th

e base area indicating it had hit a hard surface such as a roadway. (R. p. 34, lines 5-12). A forty-five caliber pistol was recovered when officers retraced the steps Appellant took when he ran from Trooper Warner. (R. p. 27). The pistol was on the ground on top of some leaves. (R. p. 27, line 25). The pistol was generally in good condition but had some scrape marks on the outside. (R. p. 33, lines 12-15). Notably, there was a little silver button on the side of the pistol which, if hit, would release the magazine. (R. p. 33, lines 18-21).

Discussion

When considering a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. See State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). At the directed verdict

stage, a trial judge is not required to evaluate the evidence or determine which version is more likely; instead, a judge's sole concern is with the existence of evidence. See State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006). The trial court has a duty to deny a defendant's directed verdict motion if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. See State v. Copeland, 321 S.C. 318, 326, 468 S.E.2d 620, 626 (2001). On appeal from the denial of a motion for a directed verdict, the appellate court may reverse the trial court only if there is no evidence to support the trial court's ruling. See, e.g., State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

Appellant asserts that the trial court should have granted his directed verdict motion as to the charge of unlawful carrying of a pistol because there was insufficient evidence that he actually or constructively possessed the pistol in question. To the contrary, the evidence set forth above, when viewed in the light most favorable to the State, established that Appellant was in actual possession of the pistol before he abandoned it during the chase. Specifically, the evidence supported that when Trooper Warner attempted to pull over the truck Appellant was driving, Appellant decided to flee since he had no driver's license and an unlawful pistol in the car; that when Appellant jumped out of the driver's seat and fell to the ground, he accidentally disengaged the magazine from his pistol; and that Appellant subsequently tossed the pistol aside as he ran from Trooper Warner.¹ Since there was sufficient evidence supporting that Appellant actually possessed an unlawful pistol, the trial judge properly denied Appellant's motion for directed verdict on this charge. (See R. p. 64-66). See State v. Ballenger, 322 S.C. 196, 470 S.E.2d 851 (1996) (under similar facts, the Supreme Court held that sufficient

¹ Note that defense counsel acknowledged at sentencing that the pistol was registered to someone in Georgia, where Appellant and his family reside. (R. p. 112, lines 3-5).

circumstantial evidence was presented to establish that the defendant actually possessed drugs he tried to abandon during a police chase); see also State v. Stanley, 365 S.C. 24, 43, 615 S.E.2d 455, 465 (Ct. App. 2005); State v. Gore, 318 S.C. 157, 162-64, 456 S.E.2d 419, 422-23 (Ct. App. 1995). Appellant's conviction for unlawful carrying of a pistol should be affirmed.

II. The trial judge properly enhanced Appellant's sentence for failure to stop for a blue light based upon a prior Georgia conviction for the same conduct.

Appellant contends that the trial court erred by enhancing his sentence for failure to stop for a blue light based upon a prior Georgia conviction for fleeing or attempting to elude a police. South Carolina's failure to stop for a blue light statute provides, in pertinent part, as follows:

(A) In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. An attempt to increase the speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light is prima facie evidence of a violation of this section. Failure to see the flashing light or hear the siren does not excuse a failure to stop when the distance between the vehicles and other road conditions are such that it would be reasonable for a driver to hear or see the signals from the law enforcement vehicle.

(B) A person who violates the provisions of subsection (A):

(1) for a first offense where no great bodily injury or death resulted from the violation, is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years. The Department of Motor Vehicles must suspend the person's driver's license for at least thirty days; or

(2) for a second or subsequent offense where no great bodily injury or death resulted from the violation, is guilty of a felony and, upon conviction, must be imprisoned for not more than five years. The person's driver's license must be suspended by the department for a period of one year from the date of the conviction.

S.C. CODE § 56-5-750.

Appellant asserts that the statute is "clear" that only a previous violation of South Carolina's statute for failing to stop for a blue light can serve to enhance a sentence under S.C. CODE § 56-5-750(B). Appellant points out that subsection (A) of the statute specifically states that section (A) is violated only if a person is "driving on a road, street, or highway of the State." However, Appellant's argument on this point is a red herring inasmuch as all crimes for which a person is sentenced in South Carolina must necessarily have occurred within South Carolina even if the particular statute fails to specifically set forth that requirement. Consequently, the fact that subsection (A) is drafted in this manner has no bearing upon whether or not a sentence enhancement for an out-of-state conviction is appropriate.

It is the State's position that since the failure to stop for a blue light statute does not contain a provision limiting sentence enhancement to second or subsequent offenses occurring in South Carolina, the statute contemplates that out-of-state convictions may be used for enhancement. See State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (in considering statutory construction, "[t]he Court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.") (citation omitted); cf. State v. Zulfer, 345 S.C. 258, 262, 547 S.E.2d 885, 887 (Ct. App. 2001) (holding that the first-degree burglary statute clearly allows for the use of out-of-state convictions to enhance the crime where the plain language of the statute does not limit the prior convictions permitted to be used to in-state convictions). Indeed, allowing the use of out-of-state convictions to enhance the sentence for failure to stop for a blue light is entirely logical because the whole idea is to punish a defendant to a greater extent for the current offense due to his repetitive similar illegal actions. See State v. Washington, 338 S.C. 392, 397, 526 S.E.2d 709, 711 (2000)

("However, Defendant's current sentence does not punish him a second time for his previous transgression. Instead, the State is punishing Defendant to a greater extent for the current offense due to his repetitive illegal actions."). It would be unfair to disallow sentence enhancement simply because the prior offense took place in another state because the result would be that defendants who commit numerous prior similar offenses in bordering states would receive minimal sentences in South Carolina despite their continuing disregard for the law, while defendants who commit prior similar crimes within the state would receive higher sentences.² See People v. Poppe, 394 Ill. 216, 220-21, 68 N.E.2d 254, 256 (1946) ("The purpose of the Habitual Criminal Act is to punish people who have committed prior felonies more seriously than those who are guilty of a first offense. If plaintiff in error's contention were correct, it would result in penalizing more heavily those who have previously been convicted of offenses in this State and not penalizing as severely persons who have committed the same crimes in other States, regardless of how many times they may have been convicted in other jurisdictions."); State v. Wood, 2 Utah 2d 34, 39, 268 P.2d 998, 1001-02 (1954) ("Appellant contends further that the intent of the legislature in enacting the present habitual criminal statute, U.C.A.1953, 76-1-18, was to make it applicable only in those instances where the previous felonies charged were committed in and punishable in the state of Utah. This construction would make the imposition of the enhanced punishment available against one who had committed two previous felonies within the state but not as against one who had committed any number of felonies in other states. Clearly the intent of the statute is otherwise, for its obvious purpose is to protect society against any person whose tendency towards criminality is indicated by previous offenses.").

² It would be particularly unfair in a case such as this where Appellant has numerous prior convictions indicating his total lack of respect for the criminal justice system. (See R. p. 111, lines 7-19; p. 116).

Here, Appellant's prior Georgia conviction was for "fleeing or attempting to elude a police officer" under GA. CODE ANN. § 40-6-395. Subsection (a) of that statute states as follows:

It shall be unlawful for any driver of a vehicle willfully to fail or refuse to bring his or her vehicle to a stop or otherwise to flee or attempt to elude a pursuing police vehicle or police officer when given a visual or an audible signal to bring the vehicle to a stop. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such signal shall be in uniform prominently displaying his or her badge of office, and his or her vehicle shall be appropriately marked showing it to be an official police vehicle.

GA. CODE ANN. § 40-6-395(a). Compare South Carolina's statute for "failure to stop motor vehicle when signaled by law-enforcement vehicle":

In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. An attempt to increase the speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light is prima facie evidence of a violation of this section. Failure to see the flashing light or hear the siren does not excuse a failure to stop when the distance between the vehicles and other road conditions are such that it would be reasonable for a driver to hear or see the signals from the law enforcement vehicle.

S.C. CODE § 56-5-750(A).

Plainly, the Georgia statute and the South Carolina statute proscribe the same conduct – fleeing in one's vehicle to avoid a police officer attempting to make a traffic stop. It was therefore proper for the trial judge to enhance Appellant's South Carolina sentence based upon his prior Georgia conviction. (See R. p. 106, line 22 – p. 110, line 13; p. 116). Cf. State v. Phillips, 400 S.C. 460, 462, 734 S.E.2d 650, 651 (2012) ("When a prior conviction is for an offense not found in § 17-25-45, trial judges can look to the elements of the prior offense to determine if they are equivalent to the elements of an offense found in the statute for purposes of sentence enhancement." (citing State v.

Lindsey, 355 S.C. 15, 583 S.E.2d 740 (2003) & State v. Washington, 338 S.C. 392, 526 S.E.2d 709 (2000)). Appellant's sentence for failure to stop for a blue light should be affirmed.

CONCLUSION

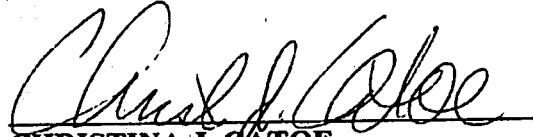
For the reasons discussed above, Respondent requests that this Court affirm Appellant's convictions and sentences.

Respectfully submitted,

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ISAAC MCDUFFIE STONE, III
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March 21, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Michael G. Nettles, Circuit Court Judge
Appellate Case No. 2012-207968

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

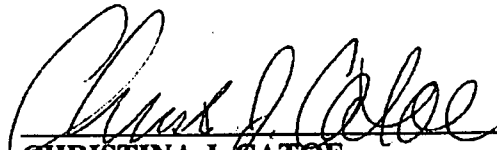
v.

JAMES HARRIS,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.


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ATTORNEYS FOR RESPONDENT

March 21, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Michael G. Nettles, Circuit Court Judge
Appellate Case No. 2012-207968

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

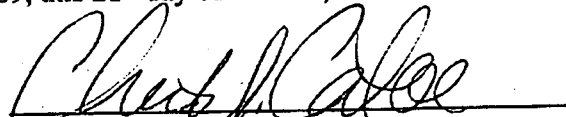
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APPELLANT.

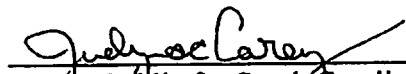
AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **Carmen V. Ganjehsani**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this 21st day of March, 2014.


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SWORN to before me this 21st day of March, 2014.


Notary Public for South Carolina.
My Commission Expires: 5/11/2014