

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY

G. Edward Welmaker, Circuit Court Judge

**ORIGINAL**

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MATTHEW S. MEDLEY,

APPELLANT

APPELLATE CASE NO. 2014-001499

RECORD ON APPEAL

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

THE STATE )  
-vs- ) TRANSCRIPT OF RECORD  
MATTHEW MEDLEY, ) 2013-GS-11-00822  
DEFENDANT. ) 2013-GS-11-00823  
JUNE 10, 2014  
GAFFNEY, SOUTH CAROLINA

(VOLUME I)

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; And a Jury.

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

MATT KENDALL, ASSISTANT SOLICITOR  
ATTORNEY FOR THE STATE

MICHAEL BERRY, ASSISTANT PUBLIC DEFENDER  
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS  
CIRCUIT COURT REPORTER

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1 THE COURT: All right. Let's take a short break.  
2 I don't know how you stand or -- you got a short witness  
3 or -- we can get one witness in before lunch, surely, at one  
4 o'clock, couldn't we?

5 MR. BERRY: Your Honor, there actually was one  
6 matter --

7 THE COURT: Okay. I'll be glad to hear it.

8 MR. BERRY: -- to address before we begin about a  
9 potential Miranda violation excluding statements made by my  
10 client.

11 THE COURT: Do we need to have a Jackson-Denno  
12 Hearing on that? How long will that take?

13 MR. BERRY: Not very long, Your Honor.

14 THE COURT: Okay.

15 MR. KENDALL: We can do that. Let me fire up the  
16 video recorder real fast.

17 THE COURT: Okay. Let's take about a five minute  
18 break and then we will do that and hopefully get opening  
19 statements and one witness in before we break for lunch.

20 We will be at ease for five minutes.

21 Does the State have any issue when the jury is  
22 sworn with him, Mr. Medley, being detained? What's the  
23 State's position?

24 MR. KENDALL: As long as his bondsman is fine,  
25 Your Honor, and can guarantee --

1 THE COURT: The bond is off once we swear the  
2 jury, so I will leave that up to you. If you want to get  
3 the bondsman, we will have a hearing, but he's free to go  
4 right now, but, of course, the trial has already started.

5 Mr. Medley, let me notify you that you need to be  
6 here after we take a short break.

7 After the jury is sworn, then without the  
8 bondsman, he will be off his bond then.

9 (Videotape marked as State's Exhibit No. 1 for  
10 identification)

11 (Videotape marked as State's Exhibit No. 2 for  
12 identification)

13 (Videotape marked as State's Exhibit No. 3 for  
14 identification)

15 (Advisement of Rights Form marked as State's  
16 Exhibit No. 4 for identification)

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 THE COURT: All right, ready for the Jackson-Denno  
20 Hearing?

21 MR. BERRY: Yes, Your Honor.

22 THE COURT: Call your first witness.

23 MR. KENDALL: Thank you, Your Honor.

24 We would call Officer Brian Mullinax.

25 THE COURT: If you would come around and be sworn,

1 please, sir.

2 OFFICER BRIAN MULLINAX, having been first duly  
3 sworn, testified as follows:

4 THE COURT: What's specifically are you objecting  
5 to?

6 MR. BERRY: Judge, there were two statements  
7 elicited by Officer Mullinax.

8 THE COURT: Both oral?

9 MR. BERRY: Both oral.

10 THE COURT: Okay.

11 MR. BERRY: During his encounter with Mr. Medley.  
12 One was a pre-Miranda question that was directed towards Mr.  
13 Medley. Mr. Medley responded to that question. A couple  
14 minutes later Miranda was read. Mr. Medley was advised of  
15 those rights.

16 And then further on in the encounter there was  
17 other questions that were asked of Mr. Medley.

18 We are seeking to have both of those statements  
19 excluded, but specifically the pre-Miranda answer that was  
20 elicited by Officer Mullinax, and I have the time stamps for  
21 those.

22 MR. KENDALL: Okay. What were the statements?  
23 You are referring to when he asked how much he had to drink  
24 and he responded --

25 MR. BERRY: "How much have you had to drink?"

1 This was pre-Miranda. Mr. Medley stated "too much."

2 About a minute later Miranda Rights were read.

3 And then later in the encounter Officer Mullinax  
4 again started inquiring as to how much Mr. Medley had had to  
5 drink and Mr. Medley responded "I don't know. I quit  
6 counting."

7 And then questioning kept going by Officer  
8 Mullinax where he said "more than ten beers?" Mr. Medley  
9 responded "no, sir, more than five. No." Mr. Medley  
10 finally responded "about four."

11 THE COURT: All right. Do we need to hear  
12 testimony? Is that -- does everybody agree that that's  
13 what --

14 MR. KENDALL: It is, Your Honor. I think -- I  
15 think it would be consistent. If we could just -- the  
16 testimony should be relatively brief on this.

17 THE COURT: Okay.

18 MR. KENDALL: Everything is on -- everything is  
19 video recorded. I mean, we are having some technical  
20 difficulties.

21 THE COURT: But there is no discrepancy of what  
22 was said and what was asked, as far as the quality of the  
23 value of the tape?

24 MR. KENDALL: I don't think so, Your Honor. I  
25 don't think that's going to be an issue.

1           The actual video -- what happened in this case was  
2   there is a high speed chase and the defendant got off his  
3   bike and ran. Officers pursued him. He was initially  
4   basically detained and there is some very brief introductory  
5   questions asked of him before he was placed under arrest.  
6   And at that point he was placed under arrest he was outside  
7   the view of the video camera. You can hear it. You  
8   can't -- you can't see it.

9           What -- maybe what I was going to do, I was hoping  
10   we could -- we are having some problems getting the video up  
11   there, but what we were hoping to do is kind of go through  
12   each time and explain and have the officer testify as to  
13   what sort of happened with respect to what was going on.  
14   There is bunch of stuff that's happening in this case.  
15   There was a bunch of other people that came out there  
16   actually at his home when this took place on his porch and  
17   time frame is a close time frame, but I think it's kind of  
18   essential.

19           THE COURT: How much time does it take to resolve  
20   this?

21           MR. KENDALL: It's a good ways, but I think we  
22   will be able to skip. It's at the end of the chase.

23           MR. BERRY: Nine minutes.

24           THE COURT: Is the pre-Miranda?

25           MR. BERRY: Pre-Miranda and there is post-Miranda

1 statements that we are disputing occurred around the 32  
2 minute mark.

3 MR. KENDALL: And I would think that -- the  
4 pre-Miranda I don't think requires watching a lot of video.  
5 I think relatively short.

6 The post-Miranda does require -- I think that's  
7 more of in the back seat of the car he's talking to the  
8 officer.

9 THE COURT: Would it help for me to view that  
10 during lunch and let the jury go onto lunch now and then  
11 let's get this taken care of? That way I would have seen it  
12 and then y'all wouldn't have to explain as much and then we  
13 could do a brief -- see if there is any testimony offered  
14 and I can hear your arguments. And if that's the focus --

15 MR. BERRY: That's --

16 THE COURT: The 9 minute mark and the 32 minute  
17 mark, or whatever, and then I can -- and it's all on --  
18 there are no statements in the BA room that are  
19 objectionable?

20 MR. BERRY: No.

21 MR. KENDALL: Other than the ones where we talked  
22 about -- we have --

23 MR. BERRY: We have stipulated that are not being  
24 admitted.

25 THE COURT: That are not going to be viewed.

1 MR. BERRY: Okay.

2 THE COURT: Would that expedite things?

3 MR. KENDALL: Yes, sir.

4 THE COURT: We'll give the jury an early lunch and  
5 be back at 1:30 and get started?

6 MR. KENDALL: Yes, sir.

7 THE COURT: How is that?

8 MR. BERRY: Yes.

9 THE COURT: Okay. Well, then that way we can get  
10 all that other done and maybe the -- y'all got -- I don't  
11 want to ruin your evidence. Do y'all have a copy of that  
12 that I could use in my computer, do you think?

13 MR. KENDALL: Yes, sir, I'll have them run one  
14 right now.

15 THE COURT: Okay. I won't jeopardize that.

16 What we can do is just have our jury come out then  
17 and I'll excuse them for lunch and tell them to be at back  
18 at 1:30.

19 MR. BERRY: Thank you, sir.

20 THE COURT: We will do that.

21 Have the jury brought out, please.

22 THE COURT: You can step down, sir.

23 (The following takes place in the presence of the  
24 jury panel)

25 THE COURT: Thank you for your patience with us,

1 ladies and gentlemen.

2 While you were on your short break I had some  
3 legal matters that we needed to take care of and we also  
4 have some technical matters that we need to take care of.  
5 So rather than you having to wait, I'm going to give you a  
6 little earlier lunch. Normally we will try to break about  
7 one o'clock for lunch and start at 9:00 or 9:30 in the  
8 morning. Hopefully we will be -- for your planning purposes  
9 we will be finished by 5:00, 5:30 this afternoon. We will  
10 try to let you know if we need you, to have advanced notice  
11 about picking up children or whatever, but we are going to  
12 take a little earlier lunch now. We will get these legal  
13 matters taken care of during lunch and be ready to start  
14 back at 1:30. If you will have a good lunch.

15 Let me remind you again what I said earlier about  
16 talking with anyone. There might -- you may be at a  
17 restaurant and overhear some comments from someone,  
18 witnesses or others at an adjoining table. You take the  
19 initiative and find you another booth. Tell those people  
20 that you can't be talking about it.

21 If someone were to come up to you and want to give  
22 you information or ask you questions about this case, tell  
23 them that you are a juror and you can't be talking about it.  
24 I'm sure they will leave you alone, but if someone were to  
25 persist and want to give you information, please excuse

1 yourself as soon as you can, and, if possible, get the name  
2 of that individual and report it back to me. I assure you I  
3 will take care of that, but I don't expect anything like  
4 that to happen. I just wanted to emphasize to you of the  
5 importance of the impartiality that you maintain throughout.

6 Have a good lunch, ladies and gentlemen. I'll see  
7 you back at 1:30. We will be ready to proceed.

8 Everyone else please remain seated.

9 (The following takes place outside the presence of  
10 the jury panel)

11 THE COURT: All right. We will be at ease until  
12 1:30. If y'all will get me a CD, I'll be glad to look at  
13 it.

14 (Whereupon, proceedings were recessed)

15 (Whereupon, proceedings were reconvened)

16 THE COURT: All right. I have had a chance to  
17 review the video. I'm assuming y'all have agreed on the  
18 redactions.

19 Are the two issues the 9 minutes and 32 minutes?  
20 Is there anything going to be said, other than those things?

21 MR. BERRY: Judge, I would just argue that he was  
22 definitely in custody at that time. I don't think there is  
23 any disputing that. There were shouts of "get on the  
24 ground. Get on the ground." You can actually see  
25 Lieutenant Bright's video where they actually pull him off

1 the porch onto the ground. Certainly his freedom had been  
2 restrained at that point, so custody I don't think is  
3 even --

4 THE COURT: Does the State contest that he was in  
5 custody at the time? We are talking about the 9 minute mark  
6 now.

7 MR. KENDALL: With respect to the 9 minute mark,  
8 Your Honor, I don't know if we want to put testimony on the  
9 record, is that I think this happened in the immediate  
10 aftermath of his departure.

11 I think this would fall into something along the  
12 lines of State v. Salisbury. The fact they had restrained  
13 him at some point I don't think automatically equates to  
14 custody. I think that officers are entitled to under that  
15 case law and under the Supreme Court case that deals with  
16 Berkemeyer, I believe they are entitled to a certain amount  
17 of initial questioning for basic determination, particularly  
18 on roadside DUI cases, as to whether or not -- whether or  
19 not -- what kind of -- to determine what's going on with the  
20 situation.

21 I think in Berkemeyer the actual concern what they  
22 actually said the entire process of administering the Walk  
23 and Turn Test and all that stuff was at a noncustodial  
24 setting to the point that they actually said even though the  
25 officer ultimately intended to take him into custody.

1 I mean, really, in all honesty, Your Honor, we not  
2 going to contend that after the chase they weren't going to  
3 take him into custody. They do have the right, though, to,  
4 you know, ask questions about what's going on and get to the  
5 point where they can reasonably determine what is there.  
6 That happened pre-Miranda. I think his response indicates  
7 that he understood he was not being compelled to answer.  
8 The response is, you know, 15? His response is "too much,"  
9 or "plenty," or something along those lines. I don't think  
10 that that -- I think he understood, based on the fact -- he  
11 was on his own front porch with his mom standing there. I  
12 don't think it was a coercive police environment.

13 THE COURT: Let's go to the 30 minute mark.  
14 That's clearly post-Miranda. Do you still think that's  
15 inadmissible?

16 MR. BERRY: Yes, sir, I do, and the case law I  
17 have to support that I would pass up a copy of the cases  
18 that I have and have copies for the State.

19 The reason why we are contesting this is because  
20 the United States Supreme Court in a 2010 decision, that's  
21 the Missouri v. Seibert case, pretty much said that any time  
22 you have a custodial interrogation where Miranda has been  
23 violated and then the police then seek to insert Miranda  
24 just in the middle of that, that it negates the  
25 effectiveness of Miranda at that point, that the person

1 being detained has no reasonable way to actually get the  
2 Miranda Warnings and to process them in a meaningful way.

3 Judge, they set out a bright line test and our  
4 South Carolina Supreme Court in the State v. Navy case,  
5 which again may have said that you are wrong in Missouri v.  
6 Seibert. I believe the State v. Navy case is a 2010 case,  
7 and they actually reference Missouri v. Seibert here, and  
8 they set out the test that the United States Supreme Court  
9 actually contemplated in handing down their decision, and  
10 they said it's a four-part test; that in determining whether  
11 a violation of Miranda continues even post-Miranda, that  
12 they have to look at the completeness and detail of the  
13 questions and answers in the first round of interrogation;  
14 the timing and setting of the first questioning and the  
15 second; the continuity of police personnel; and the degree  
16 to which the interrogator's questions treated the second  
17 round as continuous with the first.

18 Going back to the Supreme Court case, they said  
19 that when Miranda Warnings are inserted in the midst of  
20 coordinating and continuing an interrogation, they are  
21 likely to mislead and deprive a defendant's knowledge  
22 essential to his ability to understand the nature of his  
23 rights and the consequences of abandoning them.

24 I think that's essentially what's happened here.  
25 We have a pre-Miranda interrogation by police. And I think

1 Mr. Kendall's argument is wrong. I would actually say that  
2 this is not akin to what he's referencing in in Berkemeyer.  
3 Berkemeyer dealt with a traffic stop that essentially they  
4 had pulled over this car. They then conducted field  
5 sobriety tests. I have no argument against that. Our case  
6 law is clear. Police certainly have a right. Our courts  
7 have said that Miranda is not required for those tests.

8 This case is simply different from that, though.  
9 There was absolutely no question that they intended to take  
10 him into custody. They ordered him to the ground. They  
11 threw him to the ground when he actually stopped. They then  
12 started the questioning. It's completely different from  
13 that. Even in the officer's report he says that as soon as  
14 he got to Mr. Medley, he smelled a strong odor of alcohol.  
15 So they were already undertaking an investigation at that  
16 point and for him to elicit any answer would have required  
17 the Miranda Warnings that have been long established in our  
18 case law.

19 The 34 minute mark that I'm talking about, I think  
20 they would also be -- they should also be excluded as well.  
21 I think we have a continuing interrogation. Certainly if we  
22 look at that four-part test --

23 THE COURT: Is that the 10, the 5, the 4?

24 MR. BERRY: I'm sorry?

25 THE COURT: Did you have more than 10 --

1 MR. BERRY: Yes, sir.

2 THE COURT: Under the 34 mark?

3 MR. BERRY: Yes, sir.

4 And he says also right at the very beginning of  
5 that, I believe in the officer's report, he says "I don't  
6 know. I quit counting" was an answer that he gave to the  
7 officer as well, but I think those should be excluded.

8 Again, looking to the four-part test, the  
9 completeness and detail of the question and answers in the  
10 first round of interrogation. It was the exact same  
11 question. All he did was did the formalistic reading of  
12 Miranda at that point and I don't think there had been any  
13 break in time that would negate excluding that answer.

14 The second prong of that test is the timing and  
15 setting of the first questioning and the second. Certainly  
16 the first question happened as he was laying on the ground  
17 in custody. There is -- I don't think there could be any  
18 rational dispute against that. I think he was absolutely in  
19 custody. The second interrogation happened while he was in  
20 the back of the patrol car. You don't get in any more  
21 custody than that until you hear the jail door slam.

22 The continuity of police personnel. Lieutenant  
23 Mullinax was the police officer who asked the first question  
24 at the 9 minute mark. He was then the transporting officer  
25 and ultimately the arresting officer of Mr. Medley. He

1 conducted that questioning that continued in the police car  
2 as well.

3 And, finally, the degree to which the  
4 interrogator's questions treated the second round is  
5 continuous with the first. I would just argue again that  
6 it's the same exact question and he was on the same basic  
7 hunt for answers from Mr. Medley and that's why we think  
8 that admission by Mr. Medley should be excluded as well.

9 MR. KENDALL: With respect to the second one, Your  
10 Honor?

11 THE COURT: Yes.

12 MR. KENDALL: We would argue there is not an  
13 interrogation there at all. The defendant was the one that  
14 started that conversation, not the police. They were riding  
15 down the street and he asked him a series of questions from  
16 the time they are transported when he's in the back --  
17 actually he's in the front of the patrol car, if I'm not  
18 mistaken. That's the thing. He asked him a question about  
19 how much time he's looking at; whether or not they can go by  
20 his house and drop off his keys; whether he can call  
21 somebody. When he gets to the part that actually deals with  
22 this, the officer is sitting there quietly and he volunteers  
23 "I'm not drinking much lately." This was something the  
24 defendant actually said first. The officers says "well, how  
25 much have you had to drink today?" And he says "well, I

1 don't know." This wasn't -- the officer didn't reinitiate  
2 this or continuously initiate this. The defendant was the  
3 one that actually brought this up. The officer was just  
4 sitting there. I don't think that that rises to a level of  
5 an interrogation, to say the defendant didn't know he didn't  
6 have the right to not answer questions, when he's the one  
7 volunteering the information on that. He certainly --  
8 certainly it was a -- there are -- in that entire car ride  
9 the police officer asked very, very few questions and  
10 answers a lot of them that they're being requested of him by  
11 the defendant.

12 I would also argue with respect to the first one,  
13 that, again, though he may have been in custody in the sense  
14 he was physically restrained, and he was, he was physically  
15 restrained at that time, I think the officers had a  
16 reasonable -- had the right to try to make a reasonable  
17 determination as to what was happening. That was the  
18 aftermath of a very high speed chase across two counties. I  
19 think it's a very reasonable, number one, attempt to  
20 determine whether or not he's under the influence of  
21 something that they are going to have to take him to the  
22 hospital for, or whether or not he's just alcohol, whether  
23 it's something, you know, more volatile that's going to  
24 create an issue down the road. I think they have a right to  
25 make a determination -- they used a very brief determination

1 as to what was happening in that situation. I think based  
2 on that the first one of those would not constitute a  
3 Miranda violation. It's very basic. We get this on the  
4 side of the road in every police stop you see in every  
5 place; license and registration, which he asked for. He  
6 asked for the license, and he asked how much he had to  
7 drink. I mean, those are questions that appear in every  
8 single DUI case that we ever had, almost every roadside stop  
9 that we have ever had.

10 THE COURT: I know that the dispatch was talking.  
11 Was there mention of a concussion? Was that related to him,  
12 or some other incident that was taking place?

13 MR. BERRY: I think that was another incident.

14 Judge, if I could reply to that?

15 THE COURT: Yes, sir.

16 MR. BERRY: Again, I agree with Mr. Kendall. I  
17 think ordinary traffic stops are completely different from  
18 the case that we are in. Courts have said that Miranda is  
19 not required for those short detentions. This was not going  
20 to be a short detention. They had every intention of taking  
21 him to jail that night. I think it was absolutely a Miranda  
22 violation.

23 MR. KENDALL: It's not -- again, under Berkemeyer  
24 it doesn't really matter what the officer -- the true point  
25 is frankly said, it doesn't matter what the officer

1 ultimately intended to do. At that point was another reason  
2 he could be taken to jail and that was the failure to stop.

3 He also I think had the right to find out what was  
4 going on and what he was dealing with as a very, very, I  
5 wouldn't say a violent situation, but dangerous situation  
6 unfolded on the roads. This was the end. It ended on his  
7 front porch of his house. For him to say, indicate he  
8 didn't know he didn't have the right to answer questions  
9 when he gave at best a semi-responsive reply in a very  
10 limited one -- a two question context? Question number one  
11 was "do you have your license?" Number two is "have you  
12 been drinking?" Those are the questions that every law  
13 enforcement officer asks every time always.

14 And, again, with respect to the second point, the  
15 defendant brought this up, not the police.

16 THE COURT: Didn't the officer place him under  
17 arrest for DUI initially? Wasn't the failure to stop and  
18 DUS down the road?

19 MR. KENDALL: I believe, if I'm not mistaken,  
20 that -- I don't think we have made a determination -- in the  
21 prima res I don't think he was placed under arrest until he  
22 was actually read the Miranda Rights and brought around the  
23 front. At that point I think it was for the failure to  
24 stop. I think at that point he also believed him DUI.

25 THE COURT: I was thinking when he first read his

1 Miranda, or pretty soon -- maybe he read the Miranda twice?

2 MR. KENDALL: Yes. Yes, I'm sorry.

3 THE COURT: The second time reading Miranda,  
4 wasn't he placed under arrest for DUI then?

5 MR. BERRY: That's right, for compliance with  
6 2953 --

7 THE COURT: Right.

8 MR. BERRY: -- which he has to do. Otherwise --

9 THE COURT: Nothing was said about the failing to  
10 stop at that point, I don't think. I don't know if that's  
11 significant or not, but the focus being on the DUI and  
12 obviously the other.

13 I have listened to it carefully and I think it was  
14 an admissible -- both were admissible statements, that I  
15 think an officer, when they -- on the first issue you  
16 raised, Mr. Berry, I think when an officer stops being a --  
17 this was not a temporary stop, obviously, but any time that  
18 you have a stop of this nature, generally on the scene for  
19 questioning, I mean for health issues, for safety issues,  
20 for whether or not EMS needs to be called, I think the  
21 questions he asked pre-Miranda were certainly not -- would  
22 not meet the definition of custodial interrogation. I  
23 believe he had been adequately warned.

24 Even if -- and I appreciate the State's argument  
25 that it really wasn't an interrogation, but even if it was,

1 he had been Mirandized twice since then on the 34 minute  
2 issue, so I think those clearly are admissible and voluntary  
3 and not coerced in any way.

4 Obviously I'm making that finding by the  
5 preponderance of the evidence. The jury is going to have  
6 the ultimate decision as to whether or not the statements  
7 are admissible and I'll so charge them.

8 I'm allowing both statements to be admitted to the  
9 jury.

10 You are certainly protected on the record for your  
11 argument, Mr. Berry.

12 MR. BERRY: Thank you, Your Honor.

13 MR. KENDALL: Thank you, Your Honor.

14 Your Honor, one other thing before the jury comes  
15 in. Actually two other things, if that's okay.

16 The first is we have agreed that we are not going  
17 to allow certain -- I should have made him a copy of this,  
18 statements in that tape. We agreed on the redactions as 15  
19 minutes, 37 seconds through 16 minutes, 16 seconds.  
20 Actually if I can just make this as an exhibit, that might  
21 be easier.

22 THE COURT: Court Exhibit?

23 MR. KENDALL: Yes, sir. It's actually one of the  
24 e-mails. I know it's kind of a little -- I'm not going to  
25 admit it into evidence or anything, but if we could just

1 issues joined in this case and true verdict rendered  
2 according to the law and evidence, so help you God?

3 JURY PANEL: (Collectively said I do.)

4 THE CLERK: You may be seated.

5 THE COURT: All right, solicitor, you may address  
6 the jury in your opening.

7 MR. KENDALL: Thank you very much, Your Honor.

8 May it please the court, counsel?

9 Ladies and gentlemen of the jury, good afternoon.  
10 Thank you for coming today.

11 My name is Matt Kendall and I represent the State  
12 of South Carolina.

13 We are all here today because on April 21st, 2013,  
14 the defendant, Matthew Medley, led the police on a high  
15 speed chase while intoxicated. This occurred just after  
16 midnight on the 21st. The police were running a sobriety  
17 checkpoint here in Cherokee. Mr. Medley never got there.  
18 As he saw the checkpoint he pulled away through a stop sign  
19 and took off very fast. Officers pursued, reaching speeds  
20 near a 100 miles an hour, as Mr. Medley left Cherokee  
21 County, went into North Carolina, and then came back into  
22 Cherokee County, all the while law enforcement closely  
23 behind him, blue lights on, sirens blazing, clearly  
24 signaling for him to stop.

25 Once Mr. Medley got back into South Carolina he

1 left the road. He pulled into a nearby field on his  
2 motorcycle and went across a field to his house, where he  
3 got off on foot and attempted to run. Officers chased him  
4 down at that point and placed him under arrest. He was  
5 asked how much he had to drink. He said too much. They put  
6 him in the car after he was read his Miranda Rights and  
7 taken to the station, where he had the opportunity to blow  
8 into a breathalyzer machine, something which he refused to  
9 do.

10 Now, ladies and gentlemen, over the course of this  
11 trial you are going to see a lot of evidence. We have  
12 videotapes for you from two officers that will show you very  
13 clearly how this very, very dangerous situation unfolded.  
14 You will also be able to see in the BA room his behavior and  
15 his demeanor as he waited to take that test, which he  
16 ultimately refused.

17 Now, at the end of this case I'm going to ask you  
18 to return a verdict of guilty, but for right now I'm only  
19 going to ask of you three things.

20 First, you listen very carefully to all the  
21 evidence that's presented here today.

22 Second, you listen very carefully to the  
23 instructions the judge gives you. What is most important as  
24 a representative of this state is this trial gets conducted  
25 in a fair and just manner and listening to the judge will

1 ensure that happens.

2 And, finally, in this case you don't be afraid to  
3 use a little bit of common sense. I think you will find it  
4 goes a long way. Thank you.

5 THE COURT: Mr. Berry, you may address the jury in  
6 your opening.

7 MR. BERRY: Your Honor, may it please the court?  
8 Mr. Solicitor.

9 Mr. Foreman and ladies and gentlemen of the jury,  
10 again my name is Michael Berry and I am an assistant public  
11 defender here in Gaffney.

12 Like the judge said earlier before we recessed for  
13 lunch I'm honored to be here today. I love coming to work  
14 every day. I love the job that I get to do, because I get  
15 to hold the State, these officers, any other officer in  
16 Cherokee County accountable to the State Constitution, the  
17 United States Constitution and the other laws of this state.

18 Ladies and gentlemen of the jury, they simply  
19 won't be able to prove Mr. Medley guilty beyond a reasonable  
20 doubt of driving under the influence.

21 You heard the judge read out two indictments  
22 earlier; one for failure to stop and one for driving under  
23 the influence.

24 And attorneys get a bad rap, because people say we  
25 like to argue over every little point, we like to argue over

1 everything. I hate that for our profession. Some people  
2 make it true. I try not to be one of those attorneys.

3 The failure to stop, we absolutely believe the  
4 State would be able to provide sufficient evidence to you in  
5 order to get a conviction on that. We are admitting that.  
6 We think that they will be able to show enough evidence so  
7 that you will convict him.

8 We absolutely do not believe that they will be  
9 able to show beyond a reasonable doubt, which the judge will  
10 instruct you what that means at the close of the case, in  
11 order to get a conviction on driving under the influence.

12 The solicitor asked you to do a few things. He  
13 asked you to pay attention to all of the evidence in this  
14 case. I will do the same.

15 He mentioned Mr. Medley's behavior and demeanor.  
16 I, too, want you to pay very close attention to his behavior  
17 and demeanor. It's not one of an intoxicated person.  
18 That's why I will ask you at the close of the case to return  
19 a verdict of not guilty on the driving under the influence.  
20 It's just absolutely not consistent with someone who they  
21 claim is so intoxicated that they cannot drive an  
22 automobile.

23 Mr. Kendall also referenced Mr. Medley's refusal  
24 to take a breathalyzer. You are going to hear later on that  
25 the officer has to tell him that he doesn't have to take the

1     breathalyzer. That's the standard of law in South Carolina.  
2     Every person who is accused of driving under the influence  
3     has to receive that warning that they don't have to provide  
4     evidence against themselves, and that's exactly what he did.  
5     He chose not to provide any further evidence against  
6     himself.

7             Ladies and gentlemen, the final thing that Mr.  
8     Kendall asked you to do was to use common sense. I will  
9     echo him there. The reason I say that is because, again, if  
10    you look at Mr. Medley's conduct during the entire course of  
11    the chase, of the pre-arrest interrogations, while he was in  
12    the BA room, you are not going to see an intoxicated person,  
13    and that's why at the close of the case I'm going to ask you  
14    to return a verdict of not guilty for Mr. Medley on the  
15    offense of driving under the influence. Thank you.

16            THE COURT: Solicitor, you may call your first  
17    witness.

18            MR. KENDALL: Your Honor, the State would call  
19    Lieutenant Steven Bright.

20            LIEUTENANT STEVEN BRIGHT, having been first duly  
21    sworn, testified as follows:

22    DIRECT EXAMINATION BY MR. KENDALL:

23    Q.    Could you please state your name for the record?

24    A.    Steven Lee Bright.

25    Q.    Mr. Bright, what is your current occupation?

1 A. Deputy sheriff.

2 Q. And who do you work for now?

3 A. Cherokee County Sheriff's Office.

4 Q. And how long have you worked in law enforcement?

5 A. Approximately ten years.

6 Q. Okay. And what is your rank these days?

7 A. Lieutenant.

8 Q. All right.

9 And were you working on April 21st, 2013?

10 A. With the sheriff's office.

11 Q. Yes, sir.

12 And during that time what were your responsibilities?

13 A. Supervised B Crew, road shift guys that patrol the  
14 roads.

15 Q. So you were a road officer, is that fair to say?

16 A. Correct.

17 Q. And what sort of things do road officers look for?

18 What do you guys typically do as road officers?

19 A. You patrol the areas of high crime areas. You answer  
20 calls, burglaries, larcenies. And when afforded the time,  
21 we do traffic checkpoints.

22 Q. Okay.

23 A. Safety checkpoints, stuff along those lines.

24 Q. And on April 21st, 2013, a little after midnight,  
25 approximately 12:45, where were you working?

1 A. We were working on Boiling Springs Highway or Highway  
2 150 North in the vicinity of several crossroads; Old Post,  
3 Ellis Ferry, that area.

4 Q. Okay. And what county was this located in --

5 A. Cherokee.

6 Q. -- where y'all were located?

7 A. Cherokee.

8 Q. And could you please describe to us what happened  
9 around 12:45 a.m. that day?

10 A. I was writing citations. I had two other vehicles  
11 pulled over in the parking lot there and I had issued  
12 citations to both drivers. I had just finished up the last  
13 citation sitting inside my police vehicle, and Lieutenant  
14 Mullinax was out in the roadway at the intersection. And as  
15 I'm putting my ticket book away and letting those other  
16 drivers go I hear a motorcycle engine.

17 Q. And what was the motorcycle doing? Did he make it to  
18 the checkpoint?

19 A. He was -- when I looked up and I was able to see him,  
20 he was already in the middle of the road with Lieutenant  
21 Mullinax and Lieutenant Mullinax was getting out of the way  
22 of it.

23 Q. Okay. And were there any stop lights or traffic  
24 signals around there?

25 A. Stop signs at that intersection.

1 Q. Okay. And did he stop for those stop signs?

2 A. Negative.

3 Q. Okay. So he pulled straight through the intersection?

4 A. He did.

5 Q. And how was his rate of speed shortly thereafter?

6 A. He -- as soon as he went through the intersection it  
7 kept increasing.

8 Q. Okay. And how did you respond to that?

9 A. Me sitting already in my vehicle, I went after the  
10 suspect at that time and initiated blue lights, sirens, and  
11 within a short distance had gotten in view of him and he --

12 Q. All right. And as you were doing this, is your service  
13 vehicle equipped with a video camera?

14 A. Yes, sir.

15 Q. I'm going to show you what is marked State's Exhibit 1.  
16 Have you had the opportunity to take a look at this?

17 A. Yes, sir.

18 Q. And what was on this disc?

19 A. The actual in-car video of me behind the motorcycle.

20 Q. Okay. And is it a fair and accurate representation of  
21 what happened that night?

22 A. Yes, sir.

23 Q. As far as -- all right.

24 MR. KENDALL: Your Honor, I request that State's  
25 Exhibit 1 be placed into evidence. I would like to publish

1 it to the jury at this time.

2 THE COURT: Any objection?

3 MR. BERRY: Without objection, Your Honor.

4 THE COURT: Without objection, Exhibit 1 is  
5 admitted into evidence. It may be published to the jury.

6 (Whereupon, State's Exhibit No. 1, a videotape,  
7 was entered into the record as evidence)

8 (Whereupon, State Exhibit No. 1 was played to the  
9 jury panel)

10 (Videotape started)

11 (Videotape stopped)

12 BY MR. KENDALL:

13 Q. Lieutenant Bright, just to bring a couple things up, I  
14 would like to go ahead and talk about, that light, were you  
15 able to see that from the --

16 MR. KENDALL: You can go ahead and leave those  
17 off.

18 BY MR. KENDALL:

19 Q. Were you able to see to that vehicle in the distance on  
20 that?

21 A. Yes.

22 Q. Was that the vehicle that you were attempting to stop?

23 A. It was.

24 Q. All right. And we are looking at this whole layout  
25 right now. What does -- just so the jury can see as we

1 continue on, what does this number right here represent?

2 A. That's my -- that's the current speed of the vehicle.

3 Q. And how is that number determined? Is that linked in  
4 with the vehicle or GPS?

5 A. It's linked in through the camera by a GPS-type system.

6 Q. Okay. So that's how fast you all were doing, is that  
7 fair to say?

8 A. Correct, at that moment in time it is.

9 Q. Okay.

10 (Videotape started)

11 (Videotape stopped)

12 BY MR. KENDALL:

13 Q. I would like to stop for a second and point to -- can  
14 you take a look at the trees and everything on the left-hand  
15 side there?

16 A. Yes.

17 Q. And why -- do you have any idea why those are showing  
18 that blue color?

19 A. That's the lights from my patrol vehicle.

20 Q. Okay.

21 A. Illuminating.

22 Q. Did you also have your siren on --

23 A. Yes.

24 Q. -- as well at that point?

25 A. There is an icon up on the top there, LS, that says

1 lights and siren. It also shows -- when a B pops up, it  
2 also shows when I'm hitting my brake.

3 Q. Okay.

4 (Videotape started)

5 (Videotape stopped)

6 BY MR. KENDALL:

7 Q. Now, throughout the chase as being -- you have gone for  
8 a couple of minutes now. How would you describe the  
9 defendant's ability or his tendency to stay in his own lane?

10 A. He's -- from this -- from that point that I have been  
11 behind him, he -- we describe it as being from white line to  
12 white line --

13 Q. Okay.

14 A. -- on both sides of the road.

15 Q. So is it fair to say he's not making a particularly  
16 significant effort, or not making an effort -- he's not  
17 having great success in staying within the confines of his  
18 lane of travel?

19 A. Not maintaining one lane.

20 Q. Okay.

21 (Videotape started)

22 (Videotape stopped)

23 BY MR. KENDALL:

24 Q. Now, you pull off right there. Could you please  
25 describe to the jury kind of why you pulled off?

1 A. At this point in time we were in the actual State of  
2 North Carolina. The road that I just blocked right there, I  
3 have no idea where it goes to, unfamiliar area for us.

4 North Carolina had already been notified that we were  
5 in pursuit of a subject in their state, so they were coming  
6 to us and I wanted to keep them on one straight road where  
7 it would be easier for them to locate us, and we blocked  
8 that road to keep him from going deeper into North Carolina.

9 Q. And once you pulled over, did anybody else take chase  
10 at that point?

11 A. Correct, Lieutenant Mullinax then took lead car.

12 Q. Okay. Now, I noticed a couple of times on the video  
13 that sometimes you would also drift over the lane --

14 A. Right.

15 Q. -- to get -- why were you doing that? Why were you --

16 A. A lot of times if I was right behind him, him also  
17 being on a motorcycle, for one reason when he's on one side  
18 of the road and I'm on the other, he so happens to lay it  
19 down, he won't inadvertently go up under my vehicle.

20 Q. Okay.

21 A. And another is the safety thing. That late at night  
22 riding to the side of him illuminates him a little bit more  
23 for oncoming traffic to let them know that, hey, we are  
24 coming that way, so --

25 Q. So it was an intentional thing --

1 A. Right, exactly.

2 Q. -- that you were doing to try to be as safe as  
3 possible --

4 A. Exactly.

5 Q. -- overall.

6 And what speed did you get up to? I saw -- what speed  
7 did you get up to?

8 A. I think the top speed on that video was 109.

9 Q. Okay. Wow. Thank you very much.

10 And -- oh, I'm sorry. I need to do this. Did you also  
11 ultimately continue following him after this, after blocking  
12 off the road?

13 A. Correct.

14 Q. And where did you ultimately go, just very briefly?

15 A. We went to his house on --

16 Q. Okay.

17 A. He drove us -- we come back into South Carolina.

18 Q. Did you have the opportunity to observe him and take  
19 him into custody then?

20 A. Correct.

21 Q. And how would you describe his demeanor? How would you  
22 describe his smell at that point?

23 A. You could -- you could smell a strong odor of alcohol.

24 Q. Did you see any alcohol around -- any alcohol around  
25 when he was -- when he got to his house?

1 A. Yes. Yes.

2 Q. And where was that?

3 A. Both saddle bags of the motorcycle were full of beer.

4 Q. Okay. All right.

5 Please answer any questions that Mr. Berry might have  
6 for you.

7 A. Yes, sir.

8 BY MR. BERRY: Actually you can leave that on,  
9 please.

10 Your Honor, may it please the court?

11 THE COURT: You may proceed with  
12 cross-examination.

13 CROSS EXAMINATION BY MR. BERRY:

14 Q. Lieutenant Bright, again I apologize that you had to go  
15 through that this night. Certainly it was a dangerous  
16 situation that was going on, right?

17 A. Yes, sir.

18 Q. Okay. You say, though, that you swerving from side to  
19 side was for safety reasons and so that his motorcycle  
20 wouldn't roll up under your car?

21 A. If he was to lay it down or lose it in a curve, or  
22 something like that, if you are directly behind him, you  
23 know the chances of him coming under my car with him being  
24 on a motorcycle versus a full-sized vehicle.

25 Q. But that would take into account that you would also be

1 going off the road if he were to roll it off in a curve,  
2 right?

3 A. What do you mean?

4 Q. Well, if he loses control, lays it down, the bike is  
5 going to slide off the road, right?

6 A. If he's going through a curve. If he is going through  
7 a curve.

8 Q. That would also mean --

9 A. Right.

10 Q. -- you would be going off the road?

11 A. I'm not sure what you mean.

12 Q. Well, if his bike is going to end up under your car and  
13 if his bike has slid off the road, your car is off the road,  
14 right? Under the scenario that you are giving the jury,  
15 your car would have to be off the road.

16 A. If we are -- if I'm behind him, directly behind his  
17 back tire and he lays it down, and even though I'm directly  
18 behind him, I'm saying the chances of him going under my car  
19 is there.

20 Q. Okay. On that video do you know how many times that  
21 you swerved from side to side --

22 A. Not exactly.

23 Q. -- and left your lane?

24 A. Not exactly.

25 Q. No.

1 But you would admit it was quite a bit on that video,  
2 right?

3 A. That, some -- there was different areas where we went  
4 from line to line with him.

5 Q. Okay. What if I said eleven times, would you agree  
6 with that?

7 A. I'm not sure. I didn't count them.

8 Q. Okay. Would you agree with me that on that video that  
9 the times that Mr. Medley leaves the correct lane, which  
10 would be the right lane, was only when he was going in the  
11 curve? They are doing the same thing that you are doing,  
12 driving in the curve. Would you agree with me on that  
13 statement?

14 A. Would that -- was that the only time that he crossed  
15 the line?

16 Q. Sure.

17 A. No, I would say he crossed it before that, other than  
18 curves.

19 Q. Okay. Let's play the video again.

20 (Videotape started)

21 BY MR. BERRY:

22 Q. Again, with the chase we are looking to see whether  
23 he's going across the line into curves, kind of like you  
24 just did earlier.

25 A curve and the straightaway.

1 A. He crossed it there.

2 (Videotape stopped)

3 BY MR. BERRY:

4 Q. He crosses the center line on the straightaway once,  
5 right, that we saw on that video?

6 A. According -- that you could make it out that he went  
7 across it on the straightaway.

8 Q. But that's the video from your car?

9 A. Correct.

10 Q. Okay. So that was accurate showing him?

11 A. Correct.

12 Q. So it only showed one time?

13 A. Correct.

14 Q. Okay. Now, you were not the arresting officer for Mr.  
15 Medley --

16 A. No, sir.

17 Q. -- correct?

18 But you do say when you got to the scene where Mr.  
19 Medley was actually stopped, got off the motorcycle on foot  
20 and y'all apprehended him?

21 A. Yes, sir.

22 Q. You said when you searched the motorcycle, you found  
23 the beer in the motorcycle, right?

24 A. Correct.

25 Q. Okay. All unopened cans of beer?

1 A. Yes, all those were. They were.

2 Q. Do you have evidence of any other cans of beer anywhere  
3 else?

4 A. No, just the ones that I visually saw.

5 Q. Okay. They were all un-open?

6 A. Yes.

7 Q. No empty cans in any of the saddle bags?

8 A. Not that I saw.

9 Q. In any coat pockets, or anywhere like that?

10 A. Not that I saw.

11 Q. Okay. You also said that you noticed an odor of  
12 alcoholic beverage about the person, which is --

13 A. Correct.

14 Q. -- which is the key phrases that we see and get thrown  
15 around in DUI's all the time, right?

16 A. Correct.

17 Q. What does that mean?

18 A. The smell of an alcoholic beverage.

19 Q. What beverage?

20 A. It's anything alcoholic; beer.

21 Q. Anything alcoholic.

22 A. Well, some of them smell different than others.

23 Q. Okay. You are getting into my next point. I don't  
24 know if you are familiar with liquor drinks or not. Are  
25 you?

1 A. Correct.

2 Q. So you are aware that Vodka generally has no smell? I  
3 mean, you could put it up to your nose and if it's a good  
4 Vodka, you are not going to smell anything.

5 A. That's not always true, but a lot of them can be.

6 Q. If it's a good Vodka, you are not going to smell  
7 anything, right?

8 A. Yes.

9 Q. But there are liquors that are odorless --

10 A. Yes.

11 Q. -- but are much more potent in their alcohol volume,  
12 right?

13 A. Correct.

14 Q. Okay. Whereas beer, almost any beer, that you get has  
15 a very recognizable smell, right?

16 A. Correct.

17 Q. So you could have one beer that smells really bad; two,  
18 three, four Vodka drinks that have no smell whatsoever,  
19 right?

20 A. You could. That's possible.

21 Q. It is possible.

22 And you could be more intoxicated by the Vodka that has  
23 no smell as opposed to the beer that has the pungent  
24 recognizable smell, right?

25 A. It's possible. You got a lot of variables in there.

1 Q. Well, I'm just asking --

2 A. Correct.

3 Q. -- it can happen?

4 A. It's possible.

5 Q. Okay. But you can't tell us how much beer, if any, had  
6 been consumed by Mr. Medley, can you?

7 A. I can't say for sure how many he consumed.

8 Q. Okay. He could have had one?

9 A. I'm not sure. I don't know how many he consumed.

10 Q. Okay.

11 Lieutenant Bright, I think that's all the questions I  
12 have for you?

13 A. Okay. Yes, sir.

14 MR. KENDALL: I'll be very brief.

15 THE COURT: Any redirect?

16 MR. KENDALL: Just very, very briefly, Your Honor.

17 REDIRECT EXAMINATION BY MR. KENDALL:

18 Q. I just want to touch on the motorcycle and how -- I  
19 think it's a little bit confusing as to why you would want  
20 to be behind the vehicle.

21 A. Correct.

22 Q. When the motorcycle is being laid down, as you call it,  
23 what does that mean?

24 A. He's going to slide, especially on a straight road.  
25 And my vehicle -- he's going to dissipate a lot of energy

1 right off the bat --

2 Q. Uh-huh.

3 A. -- from being laid on its side --

4 Q. Okay.

5 A. -- or sliding on the road.

6 Q. Okay.

7 A. And just, you know, safety precaution to avoid him from  
8 going under my car --

9 Q. Okay.

10 A. -- because I won't be able to stop as quick as he's  
11 dissipating energy.

12 Q. Okay. And just -- Mr. Berry brought this up. It's  
13 still up on the screen right there, but there were -- but  
14 there was at least one time where you see pretty clearly  
15 from this video that he was, in fact, crossing over the  
16 center line to go in a straight path, is that correct?

17 A. Correct.

18 Q. He was driving a motorcycle, is that correct?

19 A. Correct.

20 Q. And there is plenty of lane space that he could have  
21 used?

22 A. Correct.

23 Q. And that he's right up on the center line multiple  
24 other times?

25 A. Correct.

1 Q. Okay. Finally, Mr. Berry asked you questions about  
2 beer and Vodka and smells and stuff like that. In your  
3 eleven years, correct?

4 A. Ten years.

5 Q. Ten years as a law enforcement officer, have you had  
6 the opportunity to come in contact with intoxicated  
7 individuals?

8 A. Often.

9 Q. And have you had the opportunity to observe their  
10 behaviors and smells and speech and everything like that?

11 A. Yes, sir.

12 Q. As in this case?

13 A. Yes.

14 Q. And what did you believe that Mr. Medley's mental state  
15 was, as far as his intoxication?

16 A. As far as him being intoxicated?

17 Q. Yes.

18 A. As far as the smell, or --

19 Q. Just all the package?

20 A. He appeared to have been drinking that night.

21 Q. Okay. And is it fair to say that his behavior was  
22 consistent of other people that you have seen --

23 A. Correct.

24 Q. -- intoxicated since you have been --

25 A. Correct.

1 Q. -- in law enforcement?

2 A. Yes.

3 Q. Okay.

4 MR. KENDALL: No further questions.

5 A. Yes.

6 THE COURT: All right. Thank you, sir. You may  
7 step down.

8 THE WITNESS: Yes, sir.

9 MR. KENDALL: The State would call Brian Mullinax,  
10 Your Honor.

11 LIEUTENANT BRIAN MULLINAX, having been first duly  
12 sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. KENDALL:

14 Q. Could you please state your name for the record?

15 A. Brian Mullinax.

16 Q. And Mr. Mullinax, what is your occupation?

17 A. I'm lieutenant over special operations, Cherokee County  
18 sheriff's office.

19 Q. And what does that entail? What is special operations  
20 comprised of?

21 A. It's our bloodhound tracking team. I'm also on our  
22 traffic enforcement team and DUI enforcement team.

23 Q. Have you received training with respect to DUI's?

24 A. Yes, sir.

25 Q. And what kind of training have you received?

1 A. I have had the ARIDE class and have been certified in  
2 SFFT and certified through the South Carolina Criminal  
3 Justice Academy in DUI detection.

4 Q. Okay. And so is this something that you do a lot of  
5 your time as a law enforcement officer?

6 A. Yes.

7 Q. And how long have you been a law enforcement officer?

8 A. Eight years.

9 Q. All right. And were you working with the Cherokee  
10 County Sheriff's Office about a little after midnight on  
11 April 21st, 2013?

12 A. Yes.

13 Q. And where were you working at that time? Where were  
14 y'all kind of stationed?

15 A. Highway 150 and Ellis Ferry Road, Grassy Pond Road.

16 Q. And what county is this located in?

17 A. Cherokee.

18 Q. Could you please describe to the jury what happened at  
19 around 12:45 a.m. that night?

20 A. We were conducting a public safety checkpoint. I went  
21 up -- I seen a vehicle approaching, noticed it was a black  
22 in color motorcycle coming up to a stop sign. I started  
23 walking across Highway 150 toward the stop sign. I heard  
24 the motorcycle decelerate. As I got closer to him, you  
25 heard him pop the clutch and accelerate and take off,

1 running through a stop sign.

2 Q. Did you see the individual who was driving that  
3 motorcycle?

4 A. Yes, sir.

5 Q. And is he in the courtroom today?

6 A. Yes, sir.

7 Q. What is he wearing?

8 A. A yellow shirt. It's the defendant.

9 Q. Okay. Could you go ahead and point him out to us?

10 A. Yes, sir.

11 MR. KENDALL: Your Honor, if we could let the  
12 record reflect that the officer has identified the defendant  
13 who was driving the motorcycle?

14 THE COURT: It's so reflected.

15 BY MR. KENDALL:

16 Q. And, sir, as he approached the checkpoint he did not  
17 stop at the stop sign, is that fair to say?

18 A. Yes, sir.

19 Q. And how did you respond?

20 A. I ran back to my vehicle, activated my blue lights and  
21 siren and I fell in behind Lieutenant Bright.

22 Q. Okay. And is there a camera in your car?

23 A. Yes, sir.

24 Q. And if you -- and was there a camera in your car the  
25 night this took place?

1 A. Yes, sir.

2 Q. And I'm going to -- we have kind of preloaded it, but  
3 did you provide a copy of this video to our office?

4 A. Yes, sir.

5 Q. And did we have the opportunity to watch that video  
6 before court?

7 A. Yes, sir.

8 Q. And was that a fair and accurate representation of what  
9 took place that night?

10 A. Yes, sir.

11 Q. All right.

12 MR. KENDALL: Your Honor, we would offer State's  
13 Exhibit 2 into evidence and request permission to publish to  
14 the jury.

15 MR. BERRY: Without objection.

16 THE COURT: Without objection, Exhibit 2 is  
17 admitted and may be published.

18 (Whereupon, State's Exhibit No. 2 was entered into  
19 the record as evidence)

20 BY MR. KENDALL:

21 Q. Lieutenant Mullinax, before I start this -- now, you  
22 were not initially the lead vehicle behind him, is that  
23 correct?

24 A. No, sir.

25 Q. Who was initially the lead vehicle?

1 A. Lieutenant Bright.

2 Q. And you took the lead to the chase when?

3 A. Excuse me?

4 Q. You took the lead to the chase when?

5 A. After we was in North Carolina, when Lieutenant Bright  
6 went to block the road.

7 Q. Okay. And so to be clear, just so I kind of get this  
8 taken care of, where did this begin? What county did this  
9 begin?

10 A. It began in Cherokee County.

11 Q. What county did it end in?

12 A. Cherokee County.

13 Q. Okay. I'm going to go ahead and --

14 MR. KENDALL: With the court's permission, go  
15 ahead and publish the video?

16 THE COURT: You may do so.

17 (Whereupon, State's Exhibit No. 2, a videotape,  
18 was played to the jury panel)

19 (Videotape started)

20 (Videotape stopped)

21 BY MR. KENDALL:

22 Q. Now, at that point right there were you initially  
23 behind him, what happened there? When did you ultimately  
24 get to the lead vehicle?

25 A. Understand --

1 Q. When did you become the lead vehicle?

2 A. As Lieutenant Bright pulled to the right to block him  
3 from going down that road into North Carolina, he pulled to  
4 the right and I came around to the left and passed him.

5 Q. Okay.

6 (Videotape started)

7 (Videotape stopped)

8 BY MR. KENDALL:

9 Q. Do you recall what road that was, by chance?

10 A. That's crossing back over Highway 150.

11 Q. Okay. And it's hard to see from here, but on the far  
12 left side of that screen there is this kind of an object,  
13 circular object. Do you recall what that was?

14 A. Stop sign.

15 Q. And how did he respond when he got to that stop sign  
16 there?

17 A. He went right through it.

18 Q. And up until this point, as you were following him, how  
19 would you describe his rate of speed?

20 A. We were anywhere from 85 to a 100 miles an hour.

21 Q. Okay.

22 (Videotape started)

23 (Videotape stopped)

24 BY MR. KENDALL:

25 Q. Now, here -- and I think we saw this before as well,

1       how would you describe even on the straight parts his  
2       abilities to stay in his lane of travel?

3       A.    He's failing to maintain his lane of traffic.

4       Q.    Okay.

5               (Videotape started)

6               (Videotape stopped)

7       BY MR. KENDALL:

8       Q.    What was that?

9       A.    That was -- it appeared to be a beer that it had come  
10      out of his saddle bag or he threw it down. I couldn't tell  
11      you which one it did --

12      Q.    Okay.

13      A.    -- but it came from the motorcycle.

14      Q.    But it came back to the police car as he was going down  
15      the road?

16      A.    Yes, sir.

17      Q.    Okay.

18      A.    And I advised Lieutenant Bright that he either threw  
19      something or something fell out of his motorcycle.

20      Q.    Okay.

21               (Videotape started)

22               (Videotape stopped)

23      BY MR. KENDALL:

24      Q.    Officer Mullinax, we can't see what's kind of happening  
25      back in there. Could you please basically describe to the

1 jury what was taking place as he ran back into that area?

2 A. Yes, sir. The subject got off the motorcycle, ran back  
3 to his -- the front porch of a residence. I ran up on the  
4 porch and got him and put him on the ground. And we were --  
5 as I was chasing him, I was telling him to get on the  
6 ground.

7 The other parts you hear in there is Lieutenant Bright  
8 telling people to get back. As I was -- as I had the  
9 subject on the ground, his mother came out and also his -- I  
10 believe it was his father came out from around the house  
11 somewhere in the dark. They were coming up toward me and  
12 Lieutenant Bright stopped them from coming any closer toward  
13 me.

14 Q. Okay.

15 (Videotape started)

16 (Videotape stopped)

17 BY MR. KENDALL:

18 Q. Now, I would like to stop it right there.

19 You asked him a question I believe on the tape, and I  
20 can go back and --

21 MR. BERRY: Your Honor, I'm going to renew my  
22 objection --

23 THE COURT: It's noted.

24 MR. BERRY: -- for the record.

25 BY MR. KENDALL:

1 Q. When you asked him how much he had to drink in that  
2 situation -- and we can go pull it back. I know it's hard  
3 to hear from the acoustics in the courtroom, but how did he  
4 respond?

5 A. He responded "too much."

6 Q. Okay. So you said "how much had you had to drink," and  
7 he says "too much"?

8 A. Yes, sir.

9 (Videotape started)

10 (Videotape stopped)

11 BY MR. KENDALL:

12 Q. And before -- in a typical DUI stop, before you place  
13 somebody under arrest, and it doesn't involve a chase or  
14 anything like this, what do y'all typically do when trying  
15 to determine if somebody is under the influence of drugs or  
16 alcohol?

17 A. Normally we get the subject out of the vehicle and give  
18 them what we call a field sobriety test.

19 Q. What would some examples of field sobriety tests be,  
20 just in common parlance?

21 A. We check the HGN test. It checks for involuntary  
22 jerking of the eyes. We give them a Walk and Turn Test. It  
23 checks their balance, how they comprehend the instructions,  
24 and also a One Leg Stand.

25 Q. Okay. And why didn't you perform one of those in this

1 case?

2 A. Due to officer's safety where the subject had already  
3 ran from us from two states, we had already placed him in  
4 the handcuffs and we were not going to take the handcuffs  
5 off to give him those field sobriety tests to give him an  
6 opportunity to run again.

7 Q. Okay. And is it fair to say that each one of those  
8 field sobriety tests, if correctly done, would not involve  
9 somebody being handcuffed? Is that fair to say?

10 A. Yes, sir.

11 Q. Okay. Were you able to -- as to running away and back,  
12 were you able to determine, other than his statement he made  
13 that he had too much to drink, get an opinion as to his  
14 overall demeanor, and just taking into account speech and  
15 smell and motions and everything like that?

16 A. He was real slow speech. He had glassy eyes and had  
17 that strong odor of alcoholic beverage coming from his  
18 person.

19 Q. Okay. And have you had in your career the opportunity  
20 to interact with intoxicated people?

21 A. Yes.

22 Q. And approximately how many over the course of your  
23 career have you dealt with?

24 A. I would say over a thousand.

25 Q. Okay. And how many have been DUI-type scenarios, like

1 somebody in an automobile or something like that?

2 A. I have had over four hundred DUI arrests.

3 Q. Okay. So you have had a fair opportunity to observe  
4 folks that have been intoxicated, is that fair to say?

5 A. Yes, sir.

6 Q. And was this defendant's behavior consistent with  
7 someone who is intoxicated?

8 A. Say that again.

9 Q. In other words, was his behavior consistent with  
10 somebody being intoxicated? Was it similar to people that  
11 had been drunk in the past?

12 A. Yes, sir, you have different kinds. You have some  
13 people that are real cooperative. You have some people that  
14 they will want to fight you, cuss you, and some just don't  
15 want to say anything.

16 Q. Okay. Based upon his behavior, did you form an opinion  
17 at roadside whether or not you believed him to be  
18 intoxicated?

19 A. Yes, sir.

20 Q. And what was that opinion?

21 A. That he would be under the influence of alcohol.

22 Q. Okay. And what was that based on?

23 A. The smell, the glassy eyes, and just his overall  
24 demeanor. His driving.

25 Q. Okay. All right. Well, let's go ahead and continue

1 on.

2 (Videotape started)

3 (Videotape stopped)

4 BY MR. KENDALL:

5 Q. Just to be clear about a couple of things, kind of  
6 while we are -- while we are sitting there, what -- on the  
7 hood, it's kind of hard to read what that is. Can you tell  
8 what kind of substance in those cans there?

9 A. It was beer.

10 Q. It was beer cans?

11 A. Yes, sir.

12 Q. Okay.

13 (Videotape started)

14 (Videotape stopped)

15 BY MR. KENDALL:

16 Q. Now, that voice we are hearing in the background, kind  
17 of -- is that him talking back and forth? Were you able to  
18 tell us if that's okay?

19 A. He's asking can he answer his phone.

20 Q. Okay.

21 (Videotape started)

22 (Videotape stopped)

23 BY MR. KENDALL:

24 Q. I'm going to kind of fast forward a little bit so we  
25 are not listening to radio chat between this, but after this

1 happened, after he was secured in the vehicle, what  
2 basically happened next?

3 A. After then we had the motorcycle towed. Lieutenant  
4 Bright stayed with it. I transported Mr. Medley to the  
5 Cherokee County detention center where we offered him a  
6 breathalyzer test.

7 Q. Okay. And did you have the opportunity to speak with  
8 him while you were in the car?

9 A. Yes.

10 Q. And during those conversations in the car, did he  
11 indicate to you if he had had any alcohol, consumed any  
12 alcohol?

13 A. Yes.

14 Q. And what did he say?

15 MR. BERRY: Your Honor, I'm going to object to  
16 this line of questioning.

17 THE COURT: Your objection is noted and overruled.

18 BY MR. KENDALL:

19 Q. What did he say when he -- when you asked him about how  
20 much he had had to drink?

21 A. He stated I "think four or five."

22 Q. Okay. And initially -- did he initially just come out  
23 and say four or five, or did he say something else?

24 A. Initially he told me he had too much.

25 Q. Okay. All right.

1           And do you remember what he said when he was -- so  
2 actually let's just listen to it, if that's all right.

3           (Videotape started)

4           (Videotape stopped)

5 BY MR. KENDALL:

6 Q.   Let's kind of go over that conversation again and make  
7 sure I heard that right. It was very difficult to hear, but  
8 the first time you asked him how much he had to drink riding  
9 in the car, what did he indicate?

10 A.   I couldn't hear what he said --

11 Q.   Okay.

12 A.   -- on the tape.

13 Q.   I'm sorry, I can actually pull it back.

14           (Videotape stopped)

15           (Videotape stopped)

16 BY MR. KENDALL:

17 Q.   It should be coming up.

18 A.   Okay.

19           (Videotape started)

20           (Videotape stopped)

21 BY MR. KENDALL:

22 Q.   Were you able to hear that?

23 A.   It sounded like he said he didn't drink a whole lot.

24 Q.   On the first part.

25           Did you hear what he said the second part when you

1 asked him how many he had had that day?

2 A. I didn't hear what he was --

3 Q. Okay, I'm sorry. The acoustics in here are bad.

4 (Videotape started)

5 (Videotape stopped)

6 BY MR. KENDALL:

7 Q. Did it sound right there you asked him much to drink  
8 and he said --

9 A. He said "I quit counting."

10 Q. Okay. Or "couldn't count"?

11 (Videotape started)

12 (Videotape stopped)

13 BY MR. KENDALL:

14 Q. And at that point is it fair to say he said that he  
15 had -- he was admitting to having four and a half? Is that  
16 what --

17 A. Yes.

18 Q. Okay. And after that point where did y'all go? Where  
19 did y'all go after that?

20 A. We went to the Cherokee County detention center.

21 Q. Okay. And what were you going to do at the detention  
22 center?

23 A. We offered him a breathalyzer test.

24 Q. All right. Could you please describe very briefly to  
25 the jury what the breathalyzer machine is?

1 A. It's a machine that detects the breath content on a  
2 person's breath.

3 Q. Okay.

4 A. Or the alcohol concentration on a person's breath.

5 Q. Are you trained to operate the breathalyzer machine?

6 A. Yes.

7 Q. And where did you undergo training?

8 A. The South Carolina Criminal Justice Academy.

9 Q. All right. And have you used the breathalyzer machine  
10 in the past?

11 A. Yes.

12 Q. Approximately how many times have you used that?

13 A. Over four hundred times.

14 Q. Okay. So this is a procedure that you are fairly  
15 familiar with?

16 A. Yes.

17 Q. All right. Could you please describe this procedure?

18 A. When we first came in, we turned to activate the video,  
19 start the machine up. It prints out his implied consent  
20 rights to drive in the State of South Carolina. I filled  
21 out the information on that. I give the subject a copy of  
22 it. I read him his implied consent rights and then I ask  
23 him to sign.

24 After that there is a twenty minute waiting period.

25 What that twenty minute waiting period is for is to give any

1 kind of residual alcohol in the person's breath time to  
2 evaporate versus you just drinking a beer and blowing into  
3 the machine, your concentration would be higher than if you  
4 wait that twenty minutes.

5 After the twenty minutes we administer the test and the  
6 subject has the right to take it or refuse it.

7 Q. All right. I'm going to show you what is marked  
8 State's Exhibit 4. Are you able to recognize this?

9 A. Yes.

10 Q. And what are those pages?

11 A. This first one is the advisement of implied consent  
12 rights that I read to Mr. Medley where he signed it and I  
13 signed it also.

14 Q. Okay.

15 A. The second one is the South Carolina Law Enforcement  
16 Division breath alcohol analysis test report and it has the  
17 subject's biographical information, the arresting officer's  
18 information, the machine operator's information, and the  
19 test results. And it's also signed by Mr. Medley and myself  
20 and dated and timed.

21 This third one is the South Carolina Department of  
22 Motor Vehicles notice of suspension. This notice of  
23 suspension is for refusing to submit to a breath, blood, or  
24 urine test. It's also signed and dated by myself and Mr.  
25 Medley.

1 Q. Are those fair and accurate copies of the documents  
2 that you provided him with?

3 A. Yes.

4 MR. KENDALL: Your Honor, we would offer State's  
5 Exhibit 4 into evidence.

6 THE COURT: Any objection?

7 MR. BERRY: Without objection.

8 THE COURT: Without objection, Exhibit 4 is  
9 admitted and may be published.

10 (Whereupon, State's Exhibit No. 4 was entered into  
11 the record as evidence)

12 BY MR. KENDALL:

13 Q. All right. And so this is the advisement of consent  
14 rights form --

15 A. Yes, sir.

16 Q. -- is that correct?

17 A. Yes, sir.

18 Q. At the bottom it's his signature and your signature?

19 A. Yes, sir.

20 Q. All right. And this is the South Carolina Law  
21 Enforcement Division breath analysis report?

22 A. Yes, sir.

23 Q. And he did sign the bottom of that as well?

24 A. Yes, sir.

25 Q. As well as you?

1 A. Yes.

2 Q. What does that report indicate as to whether or not he  
3 took that breathalyzer test or not?

4 A. It states he refused to take it.

5 Q. Okay. And finally this document here, the notice of  
6 suspension?

7 A. Yes, sir.

8 Q. All right. And, again, that has his signature and  
9 information and your signature and information at the bottom  
10 of it?

11 A. Yes, sir.

12 Q. And so is it fair to say that in this case that he was  
13 advised of his ability to take the breathalyzer test?

14 A. Yes, sir.

15 Q. You explained to him what would happen if he refused  
16 it?

17 A. Yes, sir.

18 Q. And then given what happened when you refuse, is that  
19 fair to say?

20 A. Yes, sir.

21 Q. And is this breath reporting videotaped?

22 A. Yes.

23 Q. I'm going to show you what is marked State's Exhibit 3.  
24 Have you had the opportunity to watch the BA video in this  
25 case?

1 A. Yes.

2 Q. Do you believe it to be a fair and accurate  
3 representation of what's going on in the BA room?

4 A. Yes, sir.

5 Q. All right.

6 MR. KENDALL: Your Honor, we would offer State's  
7 Exhibit 3 into evidence.

8 THE COURT: Any objection?

9 MR. BERRY: Without objection.

10 THE COURT: Without objection, Exhibit 3.

11 (Whereupon, State's Exhibit No. 3 was entered into  
12 the record as evidence)

13 MR. KENDALL: And request permission to publish.

14 THE COURT: You may publish it.

15 It's admitted without objection.

16 (Whereupon, State's Exhibit No. 3 was played to  
17 the jury panel)

18 (Videotape started)

19 (Videotape stopped)

20 BY MR. KENDALL:

21 Q. Now, Officer Mullinax, does this go on? Why are we  
22 kind of just sitting in the room without a lot going on at  
23 this point? What are we actually waiting for here?

24 A. This is the twenty minute observation period where we  
25 have to give him twenty minutes -- anybody that we give a

1     breathalyzer to, we give them twenty minutes and that gives  
2     them the time for the alcohol to evaporate off the breath.

3     Q.    Okay. And did he basically sit there for kind of like  
4     this for the entire twenty minutes?

5     A.    He stayed slumped over. He did speak a little bit  
6     sometimes to me. At one point he said he was sorry for what  
7     happened.

8     Q.    Okay. We will continue on then.

9                 (Videotape started)

10                (Videotape stopped)

11     BY MR. KENDALL:

12     Q.    We are going go ahead and kind of fast forward to  
13     the -- near the end of the twenty minute waiting period.

14                Once the twenty minutes is up on the machine, what  
15     happens next?

16     A.    The machine runs a self test on itself to make sure  
17     it's working properly.

18     Q.    Uh-huh.

19     A.    After that twenty minute period we will put a breath  
20     tube on the end of the sample tube --

21     Q.    Uh-huh.

22     A.    -- and ask the subject to give a sample. They have two  
23     minutes to give a sample. If after two minutes they do not  
24     give a sample or they do not blow enough air into it, or  
25     just refused, it's put down as a refusal.

1 Q. Do you recall what the defendant did in this case?

2 A. He refused to take the test.

3 Q. Okay. We will go ahead and just jump forward to the  
4 twenty minute mark.

5 (Videotape started)

6 (Videotape stopped)

7 BY MR. KENDALL:

8 Q. And, again, this is kind of what his behavior looked  
9 like throughout the course of the entire twenty minute  
10 waiting procedure?

11 A. Yes, sir.

12 Q. I'm going to go ahead and just finally jump right to  
13 where the test occurred.

14 (Videotape started)

15 (Videotape stopped)

16 BY MR. KENDALL:

17 Q. What's that noise it makes?

18 A. That machine is purging itself, clearing all the air  
19 out of the machine itself.

20 Q. Okay.

21 A. It does it before and after each test.

22 Q. Okay. And does it do that almost immediately before a  
23 test is administered to the person, or a couple minutes  
24 before, or --

25 A. Yeah, that's part of the procedure that it goes through

1 the self test it does on itself. It purges itself before  
2 and after each test.

3 (Videotape started)

4 (Videotape stopped)

5 BY MR. KENDALL:

6 Q. At that point he shook his head, was he indicating  
7 whether or not he wished to take the test?

8 A. He was indicating that he wasn't going to take the  
9 test.

10 (Videotape started)

11 (Videotape stopped)

12 BY MR. KENDALL:

13 Q. And then following that, after he has refused to take  
14 the test, what happens at that point?

15 A. That's when we filled out the paperwork for notice of  
16 suspension. And after that we take him inside the detention  
17 center to where he is booked in.

18 Q. Okay.

19 (Videotape started)

20 (Videotape concluded)

21 BY MR. KENDALL:

22 Q. So, in conclusion, I just want to kind of summarize for  
23 the jury, I know the breath room is always somewhat boring  
24 part of the trial, but if I could just rehash the testimony.  
25 You were working on April 21st in Cherokee County, is that

1 correct?

2 A. Yes, sir.

3 Q. When the defendant failed to stop for a stop sign?

4 A. Yes, sir.

5 Q. And you chased after him?

6 A. Yes, sir.

7 Q. With blue lights and siren, is that correct?

8 A. Yes, sir.

9 Q. And after a prolonged chase, ultimately you were able  
10 to detain him?

11 A. Yes, sir.

12 Q. Did you ultimately form an opinion -- and all that  
13 occurred in -- the beginning and end of the chase occurred  
14 in Cherokee County?

15 A. Yes, sir.

16 Q. And were you able to form --

17 Or, excuse me, did you make a determination as to  
18 whether or not the defendant was also under the influence of  
19 drugs or alcohol?

20 A. Yes, sir.

21 Q. And what was that based on? What was that opinion  
22 based on?

23 A. His demeanor, his driving, and just his general  
24 appearance.

25 Q. Now, when you say his demeanor, do you refer to just

1 the roadside tests, just the driving, or the roadside tests,  
2 the driving and the BA room?

3 A. All of it together.

4 Q. Okay. And what about any of his smells? Did those  
5 lead you to any indication as to whether or not he is  
6 intoxicated?

7 A. Yes, sir.

8 Q. And what did that kind of tell you?

9 A. He had a strong odor. A person that's been drinking  
10 one or two don't have as strong of an odor --

11 Q. Okay.

12 A. -- in my experience of law enforcement.

13 Q. Okay. And what about your conversations with him? Did  
14 any of his conversations, did he indicate that he had had  
15 too much alcohol?

16 A. Yes, sir, he stated he had too much. And at one point  
17 he even apologized.

18 Q. Okay. And based on all of this, were you able to  
19 form --

20 And also, I guess, to also summarize, what was your  
21 experience again with intoxicated drivers?

22 A. I have had over four hundred DUI arrests.

23 Q. Okay. And based on your experience, your observation,  
24 smells of the defendant, statements taken from him roadside,  
25 during the chase and in the BA room, were you able to form

1 an opinion as to whether the defendant was too impaired to  
2 drive an automobile?

3 A. Yes, sir.

4 Q. And what was that opinion?

5 A. That he was too -- his -- his ability to drive a  
6 vehicle was impaired.

7 Q. Okay. And it was too -- was he too impaired to safely  
8 operate that vehicle on the roads and highways of South  
9 Carolina?

10 A. I think the video shows that.

11 Q. Okay, yes, sir.

12 Please answer any questions that Mr. Berry may have.

13 THE COURT: This might be a good time for us to  
14 take a short break before we start the cross-examination.

15 Mr. Foreman, ladies and gentlemen, go back to your  
16 jury room, take a short break. Don't discuss the case while  
17 you are back there. We will call you back in just a few  
18 moments.

19 Everyone else please remain seated.

20 (The following takes place outside the presence of  
21 the jury panel)

22 THE COURT: All right, Officer Mullinax, you can  
23 step down. Don't discuss your testimony with anyone while  
24 we take a break.

25 We will take about a ten minute break.

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: All right, ready to proceed?

4 MR. BERRY: Yes, sir.

5 THE COURT: All right. Let's have the jury come  
6 in, if they are ready.

7 (The following takes place in the presence of the  
8 jury panel)

9 THE COURT: All right, Mr. Berry, you may  
10 cross-examine the witness.

11 MR. BERRY: Thank you, Your Honor. May it please  
12 the court?

13 CROSS EXAMINATION BY MR. BERRY:

14 Q. Lieutenant Mullinax, I want to -- we are probably going  
15 to spend a lot of time together this afternoon. I'll try to  
16 be as brief as I can, but there are a lot of questions that  
17 I want to ask you about the incidents that occurred, okay?

18 A. Yes, sir.

19 Q. I'm probably going to skip around a lot from incident  
20 location to the BA room, maybe back and forth between the  
21 two, okay?

22 A. Yes, sir.

23 Q. If you are confused, just let me know. If I ask you  
24 any question that offends you, please don't take it that  
25 way, okay? I don't mean it any way other than trying to get

1 the facts out, okay?

2 A. Yes, sir.

3 Q. When you encountered Mr. Medley on April 21st of last  
4 year, was that the first time that you had met him?

5 A. As far as I know.

6 Q. Okay. So you couldn't really say what his mannerisms  
7 were up until that point, right?

8 A. No, sir.

9 Q. Okay. After you had placed him under arrest, you  
10 prepared an arrest report, right?

11 A. Yes, sir.

12 Q. Okay. And that was prepared around the time that you  
13 arrested him, maybe just a little after you placed Mr.  
14 Medley under arrest, right?

15 A. It was done after I was completed in the BA room.

16 Q. Okay. So directly after the BA room you typed up or  
17 narrated a --

18 A. After he was booked in -- after the BA room he was  
19 booked in and then I went to the sheriff's office and done  
20 the report.

21 Q. When it was all fresh in your mind?

22 A. Yes, sir.

23 Q. So it was done that night after the arrest?

24 A. Yes, sir.

25 Q. And you had an opportunity to review that report before

1 you came to court to testify today?

2 A. Yes, sir.

3 Q. Okay. After reading that report, that was able to  
4 refresh your memory, is there anything else that you wanted  
5 to add to that report, take away from that report? Is there  
6 anything in there that you left out?

7 A. Not that I know of.

8 Q. Okay. All right.

9 So since April 21st of last year can you estimate for  
10 the jury the number of DUI cases that you have made or that  
11 you have investigated?

12 A. I would say around seventy.

13 Q. Around seventy since April 21st of last year, just a  
14 little over a year ago?

15 A. Yes, sir.

16 Q. How about the number of people that you actually placed  
17 under arrest for DUI?

18 A. I'm not sure. I know in 2013 I had seventy-seven DUI  
19 arrests.

20 Q. Okay.

21 A. That was in 2013, but --

22 Q. But you can't tell the jury since April 21st how many  
23 people that you have placed under arrest for DUI?

24 A. No, sir.

25 Q. How about the name of the person that you arrested for

1       DUI before you placed Mr. Medley under arrest?

2       A.    I would have to go back and look.

3       Q.    You can't recall that from memory?

4       A.    No, sir.

5       Q.    Okay.  What about the person after you placed Mr.  
6       Medley under arrest?

7       A.    Not after Mr. Medley, but right before I met with a  
8       Hispanic male.  His last name I believe was Ramirez, but  
9       that was the one right before.  It was on the same night.

10      Q.    How about the total number of tickets that you have  
11      written since you arrested Mr. Medley, all tickets combined?

12      A.    I -- I'm not sure.

13      Q.    Okay.

14      A.    It's over a hundred and fifty.

15      Q.    Okay.  So you would tell the jury that you have  
16      forgotten things in the past, not intentionally, just  
17      inadvertently, by the course of your work?

18      A.    Yes, sir.

19      Q.    I mean, you do a lot of work every day?

20      A.    Yes, sir.

21      Q.    You can't remember everything that you do, right?

22      A.    No, sir.

23      Q.    Okay.  Now, when you went to the academy and through  
24      your training and experience and education you were taught  
25      that it's important to take reports, right?

1 A. Yes, sir.

2 Q. And you have done that in this case? You completed a  
3 police report?

4 A. Yes, sir.

5 Q. Okay. You provided that to the solicitor's office,  
6 right?

7 A. Yes, sir.

8 Q. And you were taught that you had to fully, accurately,  
9 completely, truthfully put everything in that report that  
10 you knew?

11 A. Yes, sir.

12 Q. Everything was important to you for the investigation  
13 of the case that you were working on that you are preparing  
14 the report for, right?

15 A. Yes, sir.

16 Q. Okay. And although in this case we have a video, we  
17 have several videos, it doesn't show everything that went on  
18 that night, does it?

19 A. No, sir.

20 Q. Okay. So going back to the reports and the importance  
21 of those, were you taught at the academy what observational  
22 evidence is?

23 A. Yes, sir.

24 Q. And can you explain to the jury what that is?

25 A. It's things that you observe.

1 Q. Okay. Things that are short lived, right?

2 A. Yes, sir.

3 Q. Things that may be important in a case, right?

4 A. I'm not understanding what you are saying.

5 Q. Well, if you're observing something, it could  
6 potentially be important in a case, particularly a DUI case,  
7 right?

8 A. It could be.

9 Q. Okay. So did you take any other notes on the night  
10 that this occurred, or is the police report the only thing  
11 that you have?

12 A. The police report, the BA, the video, and the stuff  
13 that was done in the BA room.

14 Q. Okay. Another reason that you're taught that you have  
15 to fully and accurately put everything in the police report  
16 that you observe things that happen is because the solicitor  
17 at some point is going to get that report and they are going  
18 to determine whether they can actually proceed to court,  
19 right?

20 A. Yes, sir.

21 Q. And they have to have all of the facts surrounding the  
22 incident in order to go forward, right?

23 A. Yes, sir.

24 Q. Okay. So, again, I'll ask you when you reviewed the  
25 report and when you reviewed it with the solicitor, after

1 having viewed the video and again refreshing your memory,  
2 did you notice any inaccuracy or anything that you have  
3 omitted from the police report?

4 A. I don't have it in front of me, but as far as I know, I  
5 didn't.

6 Q. We will get there. I will actually hand you a copy in  
7 just a moment.

8 So you would say that you had not omitted any  
9 significant aspects of anything that you observed on the  
10 night that you arrested Mr. Medley for failure to stop, DUI,  
11 and I believe you arrested him for one other offense, right?

12 A. Driving under suspension, second offense.

13 Q. Okay. Which he has -- do you know the disposition of  
14 that case?

15 A. Yes, sir, he pled to it.

16 Q. Pled guilty to it?

17 A. Yes, sir.

18 Q. Okay. He admitted to driving under suspension?

19 A. Yes, sir.

20 Q. That would have been an arrestable offense that night  
21 as well, right?

22 A. Yes, sir.

23 Q. So when you testified earlier, you wrote that -- or you  
24 said to the solicitor that you based everything on what  
25 amounts to a totality of the circumstances; that you based

1 it on the arrest of Mr. Medley, on his demeanor, his  
2 driving, right?

3 A. Yes, sir.

4 Q. And with regards to his demeanor, what all again can  
5 you tell the jury were you looking at?

6 A. At first was the -- his admittance he had had too much  
7 to drink. That was his words. A strong odor of alcohol  
8 coming from his person. The glassy eyes that he had. And  
9 when he got into the BA room he just sat there. At one  
10 point he apologized and he was remorseful that what he had  
11 done.

12 Q. Okay. Let's talk about that, too, because that was a  
13 question I had later on, and that's why I said we would  
14 probably skip around.

15 A. Yes, sir.

16 Q. He did apologize on the tape, but he didn't say "I  
17 apologize for driving under the influence," did he?

18 A. His words were "I apologize for everything."

19 Q. Okay. But he did not specifically say "I apologize for  
20 driving under the influence". After he had led you on a  
21 high speed chase he said "I apologize," correct?

22 A. He said "I apologize for everything."

23 Q. But never specifically said, just yes or no, that "I  
24 apologize for driving under the influence"?

25 A. He never apologized for anything specifically.

1 Q. He never apologized for driving under the influence?

2 A. No, sir.

3 Q. Okay. Now, with the report that we are talking about  
4 here, and again you testified just a moment ago that it was  
5 accurate, complete, and you included all observations that  
6 you made of Mr. Medley that night, is that right?

7 A. I said as far as I know.

8 Q. Okay. But, again, you testified that you would put in  
9 your report things that led you to the conclusion that you  
10 were going to arrest him for driving under the influence,  
11 right?

12 A. Yes, sir.

13 Q. Okay. So I will give you a minute to look at this  
14 report. And this is the report that you made, you narrated  
15 and typed up, or had typed up, right? And actually there is  
16 another report as well.

17 A. (Witness reviewing document).

18 This first one, Mr. Berry, was what I typed up. I  
19 don't know who typed the second one up.

20 Q. Okay. But that would have come from information that  
21 you would have given someone or entered somewhere?

22 A. Yes, sir.

23 Q. Okay. Now, can you tell -- after reading this, can you  
24 tell the ladies and gentlemen of the jury where in here it  
25 says that Mr. Medley had glassy eyes?

1 A. It doesn't state it in there.

2 Q. Okay. It's an important fact that you have testified  
3 here today?

4 A. Yes, sir.

5 Q. Okay. You mentioned earlier during Mr. Kendall's  
6 direct examination of you that Mr. Medley slurred his  
7 speech. Where in here does it say that he had slurred  
8 speech?

9 A. It doesn't.

10 Q. Important fact --

11 A. Yes, sir.

12 Q. -- that would lead to an arrest for DUI in a typical  
13 case?

14 A. Yes, sir.

15 Q. Okay. And, again, that's all observational evidence  
16 that is fresh in your mind near the arrest, right?

17 A. Yes, sir.

18 Q. Okay. And you have had no other -- you didn't take any  
19 notes or anything that you can rely on to say that he had  
20 glassy eyes, or that he had slurred speech, or anything to  
21 that effect, right?

22 A. You can hear the slurred speech on the video at times.

23 Q. Again, you -- at this point you had never met Mr.

24 Medley, so you don't know whether his speech was slurred or  
25 not? I mean, that could be his every-day talk, right?

1 A. It's possible.

2 Q. Okay. So you cannot definitively make that  
3 determination that he had slurred speech on the night that  
4 you arrested him for driving under the influence?

5 A. Say that one more time.

6 Q. You cannot definitively make the assertion that Mr.  
7 Medley had slurred speech on the night that he was arrested  
8 for driving under the influence?

9 A. He did have slurred speech that night.

10 Q. Well, you can't make the assertion that was not his  
11 normal speech --

12 A. No, sir.

13 Q. -- is that correct? Okay.

14 Can you tell me what words he slurred, what speech he  
15 slurred?

16 A. Not right off. I couldn't remember them all.

17 Q. Okay. Now, also with regard to his demeanor, we  
18 talked -- or you talked with Mr. Kendall about his behavior  
19 in the breath alcohol room. Is slumping over in your chair  
20 behavior that's indicative, absolutely indicative, of  
21 intoxication?

22 A. I don't think anything is absolute, because you have  
23 had different people in there that something had been irate  
24 with you in the BA room and you give them the breath test  
25 and they are not -- they don't blow high enough to be

1 intoxicated, as considered by the State.

2 Q. And that's something else that I wanted to ask you too.

3 Mr. Medley never yelled at you?

4 A. No, sir.

5 Q. Never became physical with you?

6 A. No, sir.

7 Q. Never cursed at you?

8 A. No, sir.

9 Q. But you have been yelled at, unfortunately, by people  
10 accused of DUI?

11 A. Yes, sir.

12 Q. You have been physically probably abused by folks  
13 accused of DUI?

14 A. Yes, sir.

15 Q. And you have been cussed at by people accused of DUI?

16 A. Yes, sir.

17 Q. So a lot of that behavior was not present with Mr.  
18 Medley?

19 A. No, sir.

20 Q. Okay. And he was cooperative with you?

21 A. Yes, sir.

22 Q. Okay. On the BA room video, and we weren't able to  
23 hear it because the sound quality was bad on that particular  
24 version, but did Mr. Medley have a conversation with you  
25 throughout the time that he was in there?

1 A. Not throughout. At times he had questions and --

2 Q. He carried on some limited conversation with you?

3 A. Yes, sir.

4 Q. Which was cordial and --

5 A. Yes, sir.

6 Q. Okay. Now, speaking of the BA room and some of those  
7 things that you all did in there, Mr. Kendall has already  
8 gone over the implied consent form, the breath alcohol  
9 testing result form with you earlier, right?

10 A. Yes, sir.

11 Q. Okay. And we were able to see that Mr. Medley signed  
12 those documents, right?

13 A. Yes, sir.

14 Q. Did he scribble his name on there?

15 A. I'm not sure how he writes. He just signed it is all I  
16 can tell you.

17 Q. Did he sign on the line where you asked him to and was  
18 able to --

19 A. Yes, sir.

20 Q. -- stay on that line?

21 He had pen writing that was legible?

22 A. Yes, sir.

23 Q. I'll put this back up here.

24 So this is the document that he signed, right?

25 A. Yes, sir.

1 Q. Okay. And what is that right there?

2 A. That's his signature.

3 Q. Which is legible. You can tell that is Matthew Medley,  
4 right?

5 A. Yes, sir.

6 Q. On the line?

7 A. Yes, sir.

8 Q. Okay. So that's one document that he signed.

9 Again, you advised him of his implied consent rights  
10 and asked him to sign that and he complied with you there  
11 too, right?

12 A. Yes, sir.

13 Q. And what is that?

14 A. That's his signature.

15 Q. On the line?

16 A. Yes, sir.

17 Q. Legible?

18 A. Yes, sir.

19 Q. So he's able to do some basic tasks, right?

20 A. Yes, sir.

21 Q. Okay. Now, while you are talking with him in the BA  
22 room, you said earlier that on those implied consent rights  
23 forms that you have biographical information of the person  
24 who is being charged, right?

25 A. Yes, sir.

1 Q. How do you get that information?

2 A. I asked him questions.

3 Q. So tell the jury what all you asked him for.

4 A. His name, address -- not his name, but his address,  
5 date of birth. His address. I think his address on his ID  
6 that he had was different from what he had on his -- that he  
7 had put down or that he had given me.

8 Q. Okay. When you are writing tickets, do you ask for any  
9 other information? Social Security number?

10 A. His height, weight, hair color.

11 Q. Social Security number?

12 A. The Social Security number part we ask on the booking  
13 sheet.

14 Q. Okay. But that would have been asked while you were  
15 talking with him?

16 A. Yes, sir.

17 Q. Okay. Did he hesitate at all, or, you know, not  
18 remember any of that information?

19 A. No.

20 Q. Was he able to provide that immediately?

21 A. He provided it all.

22 Q. Now, let's kind of jump back. We are going back to the  
23 incident location here and let's talk a little bit about  
24 things that went on there.

25 You testified earlier that you didn't give Mr. Medley

1 any field sobriety tests due to his already running from  
2 police, right?

3 A. Yes, sir, it was an officer's safety issue.

4 Q. Okay. And, again, the things that you are looking for  
5 when you are conducting those field sobriety tests, can you  
6 tell the jury?

7 A. On the HGN you are looking for involuntary jerking of  
8 the eyes.

9 On the One Leg Stand and Walk and Turn you are looking  
10 for them to be able to understand the directions that you  
11 give them; their balance, if they use their arms for  
12 balance, if they put their foot down, stuff like that.

13 Q. Okay. Balance is a big key on two of those tests,  
14 correct?

15 A. Yes, sir.

16 Q. Now, can you -- we didn't do any field sobriety tests  
17 in this case, but can you one hundred percent say that they  
18 are fool proof and they will always tell you a person who is  
19 under the influence of alcohol?

20 A. No, sir, because somebody that has a medical condition  
21 or elderly person you wouldn't give those tests to, just  
22 because somebody that may have back surgery doesn't have  
23 good balance, or have ear trouble, you wouldn't give those  
24 tests on any way.

25 Q. But even a healthy person, are they always one hundred

1 percent going to be able to complete the test to your  
2 satisfaction?

3 A. Are you talking about somebody with no health problems  
4 or anything?

5 Q. That's right.

6 A. Yes, sir, I feel like they could.

7 Q. Okay. But one hundred percent can you say that they  
8 definitely --

9 A. I'm not a doctor. I can't say what everybody can do.

10 Q. Okay. Have you ever not arrested someone who has not  
11 been able to complete your field sobriety tests?

12 A. Yes, sir.

13 Q. Okay. So in that case, what I have just asked you is  
14 true, that not even a healthy person can always one hundred  
15 percent pass --

16 A. The person that couldn't do it had health problems and  
17 I found that out after. He stated afterwards that he had  
18 the problems.

19 Q. Okay. But that's not an issue in this case, because we  
20 don't even have the field sobriety tests, right?

21 A. That's right.

22 Q. Okay. Now, at an earlier hearing you testified that  
23 you read Mr. Medley his Miranda Rights, correct?

24 A. At an earlier hearing?

25 Q. Yes. Before the jury came in at the earlier hearing --

1 A. Yes, sir.

2 Q. Okay -- you did --

3 A. Well, I didn't testify. We didn't -- well, I wasn't  
4 asked any questions then.

5 Q. But you did, in fact, read Mr. Medley Miranda Rights,  
6 right?

7 A. Yes, sir.

8 Q. Now, was that before any questioning commenced?

9 A. No, sir.

10 Q. Can you tell the jury again, and they have seen the  
11 video, that I just want to refresh their memory, what  
12 questions you asked of Mr. Medley before you read him his  
13 Miranda Rights?

14 A. I asked him did he have his driver's license and I  
15 asked him how much he had to drink.

16 Q. Okay. And then immediately after you asked that  
17 question, you then read Miranda Rights, right?

18 A. Yes, sir.

19 Q. Okay. And then immediately after you read Miranda  
20 Rights, do you remember what question that you asked him  
21 then?

22 A. I'm not a hundred percent sure. I think I might have  
23 asked him how many he had to drink.

24 Q. Okay. But you had already asked that prior to reading  
25 Miranda, right?

1 A. Yes, sir.

2 Q. So why ask it again?

3 A. In my experience you ask somebody how many they have  
4 had to drink, they will tell you three or four. You ask  
5 them again, they will tell you one or two. It will either  
6 go up or down. It's very seldom the same answer.

7 Q. Okay. So you do admit, though, that you had asked  
8 prior to Miranda, asked again after you gave Miranda, and  
9 then as you were transporting Mr. Medley to the police  
10 station and you asked a third time?

11 A. Yes, sir.

12 Q. Okay. Now, everybody knows Miranda Rights from TV and  
13 things like that. There are four or five basic sentences  
14 that comprise of those rights, correct?

15 A. Yes, sir.

16 Q. Okay. And your testimony is that Mr. Medley, when he  
17 gave his statement that he had quit counting how many drinks  
18 he had had voluntarily waived his Miranda Rights, right, by  
19 answering your questions and talking with you?

20 A. He -- at that point that was in the car traveling to  
21 the detention center --

22 Q. Uh-huh.

23 A. -- and he started that conversation. And then I asked  
24 him how many he had to drink. He said he quit counting. I  
25 asked him was it ten, or more, and said no. I said five, or

1 more, and he said no. Then he said four.

2 Q. But you were asking the questions and by him responding  
3 to you, that would, in essence, to you be a waiver of  
4 Miranda Rights, right, by him talking with you?

5 A. I mean --

6 Q. Because that's what Miranda protects against, right?

7 A. Yes.

8 Q. Okay. So by him talking with you, he had waived his  
9 Miranda Rights?

10 A. Yes, sir.

11 Q. Okay. Now, you know as an officer and with all the  
12 experience that you have that for a Miranda Waiver to be  
13 effective, that the person waiving them has to fully  
14 understand what they are doing and what rights they are  
15 giving up, right?

16 A. Yes, sir.

17 Q. Okay. And that the person who waives the Miranda  
18 Rights can only do that by making a knowing, intelligent and  
19 voluntary decision to give up those rights?

20 A. Yes, sir.

21 Q. Okay. Did you violate his rights by asking him  
22 questions or engaging in conversation with him?

23 A. No, sir, I don't feel like I did.

24 Q. Okay. And you are saying that you feel confident that  
25 Mr. Medley made a one hundred percent voluntarily, knowingly

1 and intelligently waiver of those Miranda Rights by engaging  
2 in conversation with you?

3 A. He had the option to answer that question or not answer  
4 it.

5 Q. Okay. But you are saying that he made that knowing and  
6 intelligent waiver to do that?

7 A. He done it on his own free will. He wasn't coerced to  
8 do anything.

9 Q. All right. And you are saying that he understood those  
10 rights as you read them to him after you had asked him the  
11 first question, but before you asked him again how much he  
12 had to drink?

13 A. Yes, sir.

14 Q. Okay. So, in essence, you are telling this jury that  
15 whatever amount of alcohol that Mr. Medley consumed, that he  
16 was able to give a knowing, voluntary and intelligent waiver  
17 of his rights?

18 A. He give the statement and I don't see where the alcohol  
19 affected that.

20 Q. Okay. So you charged Mr. Medley with driving under the  
21 influence?

22 A. Yes, sir.

23 Q. Driving under the influence, the judge is going to  
24 cover the law for the jury at the close of the case, but a  
25 person's faculties to operate their motor vehicle has to be

1 materially and appreciably impaired, right?

2 A. Yes, sir.

3 Q. That's straight from the statute?

4 A. Yes, sir.

5 Q. Okay. You are telling me that Mr. Medley was under the  
6 influence to the extent that he couldn't safely operate a  
7 motor vehicle, but he could make an intelligent decision to  
8 waive his Miranda Rights and talk to you and give answers to  
9 you?

10 A. That's correct.

11 Q. That's what you are telling us?

12 A. Yes, sir.

13 Q. Okay. Going back even further to the chase, is it  
14 routine for you to write tickets for hugging the yellow  
15 line, center line?

16 A. Are you asking what the statute, or --

17 Q. No. Is it routine for you to write a ticket for that,  
18 for someone who just happens to be a little bit close to the  
19 yellow line?

20 A. (No response).

21 Q. Is that an offense --

22 A. It is an offense, but --

23 Q. -- to write a ticket for?

24 A. It is an offense.

25 Q. To be close to the yellow line, not touching the yellow

1 line?

2 A. Not hugging it, but crossing the center line.

3 Q. Now, you testified earlier in direct that -- and the  
4 jury saw the video, that a can, I believe, was either thrown  
5 or dropped, right?

6 A. It was either thrown -- it came out of the saddle bag.

7 Q. You can't say that he threw this can down?

8 A. Not one hundred percent, no, sir.

9 Q. Okay. And did anyone stop or go back to get the can to  
10 see if it was open?

11 A. No, sir, because you could see on the video that it  
12 busts open and --

13 Q. It busts open?

14 A. Yes, sir.

15 Q. We don't know whether it was open or not before --

16 A. No, sir.

17 Q. -- it hit the ground?

18 A. No, sir.

19 Q. Okay. And one final question I have for you. When you  
20 were leaving the residence where Mr. Medley went, did he  
21 help you get out of that area? Did he give you directions  
22 to get out?

23 A. He had stated some, and the sheriff was behind me and  
24 he also -- I had my signal to turn one way and he told me  
25 the other way, because I wasn't familiar with that area.

1 Q. Mr. Medley did?

2 A. The sheriff did on the radio.

3 Q. Mr. Medley never helped you with directions?

4 A. He may have, but I didn't pay him any attention because  
5 I was looking to the sheriff.

6 Q. Okay. But you did, in fact, go right when Mr. Medley  
7 had said from the back seat go right?

8 A. Mr. Medley was never in the back seat of my car.

9 Q. Okay. Well wherever he was, he said go right and you,  
10 in fact, went right?

11 A. I went right is what the sheriff said on the radio.

12 Q. All right. I think that is all the questions that I  
13 have at this point. Thank you.

14 THE COURT: Any redirect?

15 MR. KENDALL: Yes, sir, Your Honor. I'll be  
16 brief.

17 REDIRECT EXAMINATION BY MR. KENDALL:

18 Q. I'm going to kind of also jump all over the place, kind  
19 of do it in the same order Mr. Berry did, so I'm going to  
20 bounce around a bit.

21 Now, he asked you a moment ago about mannerisms, is  
22 that correct?

23 A. Yes, sir.

24 Q. And you testified that you had never actually met Mr.  
25 Medley before?

1 A. Yes, sir.

2 Q. And that you hadn't really, you know, seen him since?

3 A. No, sir.

4 Q. But have you been around other intoxicated people?

5 A. Yes, sir.

6 Q. Would you say that's something in your line of work  
7 that happens very, very frequently?

8 A. Yes, sir.

9 Q. And so is it fair to say that you can identify or have  
10 identified some mannerisms that intoxicated people have that  
11 other people don't have?

12 A. Yes, sir.

13 Q. Okay. And is it also fair to say that any one of us  
14 may have one or two of those mannerisms ourselves?

15 A. Yes, sir.

16 Q. But that as more mannerisms show up, more likely it is  
17 that somebody is intoxicated, is that fair to say?

18 A. What?

19 Q. As more of those mannerisms show up, it makes it more  
20 likely that somebody is intoxicated?

21 A. I have had people treat me nicer than what Mr. Medley  
22 did that night that were a lot more really intoxicated that  
23 actually blew into the breathalyzer that blue like a .29. I  
24 have had them be -- treat disrespectful and cursing me and  
25 they would be only like a .6.

1 Q. Okay. So it's a little bit different for everybody?

2 A. Everybody is different.

3 Q. And when you are making a determination, what all do  
4 you look at? What all are you examining when you are making  
5 a determination someone is intoxicated?

6 A. We look at their demeanor, statements that they make.  
7 If we give them the field sobriety tests, we take the  
8 totality of the circumstances into that.

9 Q. So as in the field sobriety tests, Mr. Berry asked you  
10 about healthy people and some people failing some stuff and  
11 not stuff like that. There is not like an automatic fail on  
12 a field sobriety tests, is it fair to say?

13 A. No, there is not an automatic fail.

14 Q. So if you are doing a One Legged Stand, you put your  
15 leg down once, that doesn't mean automatically handcuffed to  
16 jail, we are done here?

17 A. No, sir.

18 Q. So you are looking at everything? That's how DUI's are  
19 done?

20 A. Yes, sir.

21 Q. Is there any test that's done, either in the BA room or  
22 on the side of the road, that is not totality of the  
23 circumstances?

24 A. No, sir.

25 Q. All right. And what about the BA room? What is all of

1 that testing for? What is the blood alcohol testing for?

2 A. It tests for the alcohol concentration on a person's  
3 breath. On the sheet, that's why it circled. On the  
4 advisement of implied consent rights, it's circled. There  
5 is also a place for a urine test or a blood test that we  
6 could also offer.

7 Q. Okay. So if we really wanted to answer the question of  
8 how much Mr. Medley had to drink, the breath test would be  
9 how you would do that, is that fair to say?

10 A. Yes, sir.

11 Q. That is a way you could do that?

12 A. Yes, sir.

13 Q. All right. He had the opportunity to take that,  
14 correct?

15 A. Yes, sir.

16 Q. And that would have said -- that would have answered  
17 that question, right?

18 A. Yes, sir.

19 Q. And he refused to take that test, is that correct?

20 A. Yes, sir. If he would have blew under a .08, he would  
21 not have been charged with DUI.

22 Q. Okay. Now, Mr. Berry brought up this whole questioning  
23 thing. I would like to talk to you about a couple of those  
24 pretty quickly. Asking someone for license and registration  
25 and whether they are intoxicated -- or how much they had to

1 drink, would you say those are fairly standard questions you  
2 ask almost everybody you talk to when you pull somebody  
3 over?

4 A. That's two questions that I'll ask everybody that I  
5 feel is under the influence of some kind of drugs or  
6 alcohol.

7 Q. Okay. All right.

8 This wasn't some out of the order interrogation,  
9 correct?

10 A. No, sir.

11 Q. Now, when he first made that statement of too much, he  
12 had drank too much, he was actually sitting on his front  
13 porch, correct?

14 A. He was lying on his front porch.

15 Q. His front porch.

16 His mother was standing right there, correct?

17 A. His mother was right there on the porch and I believe  
18 his father was either on the porch or in the yard.

19 Q. Okay. And in the post-Miranda thing, when he was  
20 riding back in the back of your car, do you remember who  
21 started that conversation?

22 A. Mr. Medley did.

23 Q. And where were you when these statements started? Do  
24 you remember -- do you recall him saying that he didn't  
25 drink too much any more?

1 A. He said he didn't drink too much. And he asked also  
2 how much or what he -- how much time he was facing.

3 Q. Yeah.

4 And when you asked him how much he had to drink, he  
5 responded he didn't know, correct?

6 A. He stated he quit counting.

7 Q. That's right.

8 And then you asked him for an estimate and he said he  
9 couldn't guess, right?

10 A. Yes, sir.

11 Q. And then he got four and a half, right?

12 A. Yes, sir.

13 Q. Is that fairly common -- you talked to Mr. Berry about  
14 this moments ago, that part of the reason you are asking  
15 these questions is to get different answers, is that  
16 correct?

17 A. Yes, sir.

18 Q. And people that are trying to conceal their  
19 intoxication from law enforcement, is that a fairly common  
20 thing, for them to either change stories or make up  
21 different stories, things like that?

22 A. Yes, sir.

23 Q. Okay. In fact, what --

24 Mr. Berry also talked about him being cooperative. How  
25 would you describe his behavior up until you caught him?

1 Would that be described as cooperative?

2 A. No, sir.

3 Q. In fact, wouldn't that be extremely uncooperative?

4 A. Yes, sir.

5 Q. Okay.

6 MR. KENDALL: I have no further questions, Your  
7 Honor.

8 THE COURT: All right. Thank you, sir. You may  
9 step down.

10 The State may call its next witness.

11 MR. KENDALL: The State rests at this time, Your  
12 Honor.

13 THE COURT: Mr. Foreman, ladies and gentlemen, I'm  
14 going to ask, if you would, to go back to your jury room.  
15 There is a matter of law we need to take care of at this  
16 time. If you would not discuss the case, we will call you  
17 back in just a few moments. You may retire to your jury  
18 room.

19 Everyone else please remain seated.

20 (The following takes place outside the presence of  
21 the jury panel)

22 THE COURT: All right. Before we settle the  
23 record and talk to Mr. Medley about his right under our  
24 Constitution to testify, are there any other matters we need  
25 to take care of?

1 MR. KENDALL: None from the State, Your Honor.

2 MR. BERRY: Yes, sir.

3 At this time I would make just the standard motion  
4 for a directed verdict, particularly with the DUI. I  
5 believe the State has failed to prove beyond a reasonable  
6 doubt Mr. Medley was materially and appreciably impaired as  
7 contemplated by the statute.

8 THE COURT: All right. I respectfully deny your  
9 motion, Mr. Berry. I believe that there has been sufficient  
10 direct evidence and substantial circumstantial evidence,  
11 that it would be a matter for the jury to decide. I'll deny  
12 the motion.

13 If you would come forward with your client. Mr.  
14 Medley, if you would, just stand there with your attorney.  
15 Come over here, please.

16 Mr. Medley, if you would, raise your right hand,  
17 please, sir.

18 MATTHEW MEDLEY, having been first duly sworn,  
19 testified as follows:

20 THE COURT: Mr. Medley, I need to explain to you  
21 certain rights that you enjoy. I'm confident that you have  
22 had a chance to talk about all these with your attorney, but  
23 I need to be satisfied in my own mind you understand the  
24 rights that you enjoy.

25 We are at the stage in the trial now where you can

1 present a defense. You have the right under the  
2 Constitution of South Carolina and Article I of the  
3 Constitution of the United States of America in the Fifth  
4 Amendment to exercise those rights which say that no person  
5 in a criminal proceeding can be compelled or required to be  
6 a witness against himself. That means that you can't be  
7 required to testify.

8 You have a right to testify, if you choose to, but  
9 nobody can make you testify. It's a personal right that you  
10 enjoy. Nobody can waive this right except you.

11 You may decide to testify. And if you do, you  
12 would be subject to the same rules that govern any other  
13 witness. You could be examined and cross-examined on any  
14 relevant issue in the case.

15 If you have prior convictions that involve  
16 dishonesty or crimes of false statements or other offenses  
17 that are punishable by imprisonment for more than one year  
18 and the court determines that the probative value of  
19 admitting these offenses outweigh any prejudicial effect to  
20 you, then the solicitor would be able to use those prior  
21 convictions to attack your credibility.

22 You may decide to testify. And if you do so, that  
23 decision must be voluntarily made by you and intelligently  
24 made by you with the knowledge of the protections that you  
25 have under our Constitution, also of the knowledge of the

1 consequences of your decision to testify.

2 You may choose not to testify. And if you make  
3 that choice, I'll instruct the jury that the fact that you  
4 didn't testify could not be held against you in any way.  
5 There is to be no prejudice to you because you chose not to  
6 testify.

7 It's left entirely up to you, Mr. Medley, as to  
8 whether or not you wish to testify. You can talk to your  
9 family, your friends, or with your attorney, but ultimately  
10 that's a decision that you, and you alone, will have to  
11 make.

12 Do you understand what I have gone over with you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions of me?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. You can return to your  
17 seat, please.

18 Are there any offenses for which the State would  
19 seek to use to impeach the defendant, if he chose to  
20 testify?

21 MR. KENDALL: I don't believe so, Your Honor.

22 THE COURT: All right. There would be no prior  
23 offenses for which he would be subject to impeachment?

24 MR. KENDALL: That's correct, Your Honor.

25 THE COURT: All right. Do you need additional

1 time to decide whether or not he wishes to testify? I would  
2 be glad to take a short break if you feel like you need to  
3 talk to your client about that.

4 MR. BERRY: No, sir, we have talked about that  
5 pretrial and he advised me he does not wish to testify.

6 THE COURT: All right. I don't believe we will  
7 present it to the jury today. This is voting day and they  
8 certainly maybe haven't had a chance to vote, so we will  
9 give it to the jury the first thing in the morning.

10 Are there any -- while we are breaking on that  
11 issue, are there any requests for charge, other than what I  
12 would normally -- I'll certainly go over with you what I  
13 will charge on the burden of proof, and credibility of  
14 witnesses, and about DUI, and the right to refuse taking the  
15 BA test, and the law failing to stop for a blue light,  
16 reasonable doubt, criminal intent, those matters. If there  
17 are anything particularly that you want me to charge, I  
18 would be glad to look at those tomorrow. I think I'll  
19 pretty well cover everything that we would have.

20 Anything else before I bring the jury out?

21 MR. KENDALL: No, sir, nothing from the State,  
22 Your Honor.

23 MR. BERRY: Nothing.

24 THE COURT: Nine o'clock in the morning all right?

25 MR. KENDALL: Yes, sir.

1 MR. BERRY: Yes, sir.

2 THE COURT: Okay. All right. Let's have our jury  
3 come in, if they are all ready, Mr. Ellis.

4 What I want to do is let you rest on the record  
5 and then we will dismiss them. I'll call upon you to  
6 present your defense, if you wish to, and then rest, if you  
7 are ready tonight.

8 (The following takes place in the presence of the  
9 jury panel)

10 THE COURT: All right, Mr. Berry, you may call  
11 your first witness.

12 MR. BERRY: Your Honor, the defense would call no  
13 witnesses, and, therefore, the defense rests.

14 THE COURT: All right. Mr. Foreman, ladies and  
15 gentlemen, you have heard all the testimony in the case.  
16 You haven't heard my instruction on the law. You haven't  
17 heard the closing statements of the attorneys. Normally we  
18 would be ready to go into those stages of the trial.  
19 However, because of the hour I think we are going to delay  
20 that until in the morning. This is a day in which you can  
21 exercise your right to vote. I certainly don't want you to  
22 feel any time restraints while you are here deliberating, if  
23 you need to vote. Some of you may have already done that.  
24 Those who wish to, I want to make sure that you have an  
25 opportunity, so we are going to start back at nine o'clock

1 in the morning. We will have the closing statements of the  
2 attorneys and then I'll instruct you on the law. The case  
3 would then be yours to decide.

4 Let me remind you again tonight while you are out  
5 and about not to be discussing the case with anyone. Tell  
6 your loved ones and your family and other friends that you  
7 may see tonight that you can't talk about the case. I have  
8 instructed you not to until it's over, completed.

9 Likewise, let me remind you again about the Chief  
10 Justice's order not to do any kind of independent research,  
11 to not do any kind of social media to describe your  
12 experiences today. Again, that will certainly be allowed  
13 after the case is concluded. Remember the commitment that  
14 you have made to these parties. We want to maintain the  
15 process in its pure form without any interference from  
16 outside sources.

17 Have a good evening, ladies and gentlemen, and we  
18 will be ready to start back at nine o'clock in the morning,  
19 if you will be in your jury room, we will hopefully be ready  
20 to start soon thereafter. Have a good evening.

21 Everyone else please remain seated while the jury  
22 departs.

23 (The following takes place outside the presence of  
24 the jury panel)

25 THE COURT: All right. Y'all have a good evening.

1 We will be ready to -- I have got a verdict form ready.  
2 I'll just let y'all look those over and make sure. We  
3 talked about it before. I won't be sending the indictment  
4 back.

5 (Off the record)

6 (Back on the record)

7 THE COURT: Let the record reflect the attorneys  
8 have seen the verdict form.

9 Have a good evening and we'll see you back at nine  
10 in the morning.

11 (Whereupon, proceedings were adjourned to June 11,  
12 2014)

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

3  
4 THE STATE )  
5 -vs- ) TRANSCRIPT OF RECORD  
6 MATTHEW MEDLEY, ) 2013-GS-11-00822  
7 DEFENDANT. ) 2013-GS-11-00823  
8 ) JUNE 11, 2014  
9 ) GAFFNEY, SOUTH CAROLINA

10  
11 (VOLUME II)

12 B E F O R E:

13 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; And a Jury.  
14

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

16 MATT KENDALL, ASSISTANT SOLICITOR  
17 ATTORNEY FOR THE STATE

18 MICHAEL BERRY, ASSISTANT PUBLIC DEFENDER  
19 ATTORNEY FOR THE DEFENDANT

20  
21  
22 MICHAEL R. WATTS  
23 CIRCUIT COURT REPORTER  
24  
25

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1 (PROCEEDINGS, JUNE 11, 2014).

2 THE COURT: All right. Everybody ready to  
3 proceed? Anything we need to take care of before the jury  
4 comes in?

5 MR. BERRY: Nothing from the defense.

6 MR. KENDALL: No, sir, Your Honor.

7 THE COURT: Let's have them come in, if they are  
8 ready.

9 THE BAILIFF: Yes, sir.

10 (The following takes place in the presence of the  
11 jury panel)

12 THE COURT: Good morning, ladies and gentlemen.

13 We are now ready to proceed with the closing  
14 statements. The attorneys will address you in a moment. As  
15 I told you yesterday, what they have to say to you is not  
16 evidence. You have heard all the evidence in the case.  
17 Again, I urge you to listen carefully as they address you.  
18 I'm confident they can give you insights that perhaps help  
19 you in your deliberations. After they have addressed you, I  
20 will instruct you on the law, and then the case would be  
21 yours to decide.

22 Solicitor, you may address the jury in your  
23 closing.

24 MR. KENDALL: Thank you, Your Honor.

25 May it please the court?

1 Counsel.

2 Ladies and gentlemen of the jury, thank you for  
3 coming back here this morning and for your service today and  
4 yesterday. This is going to be my last chance to talk to  
5 you. There's only one of two times during the course of  
6 this trial I'm allowed to address you as a group.

7 At the beginning of this trial I asked that you do  
8 three things. The first was to listen to all the  
9 instructions of the judge. In a few minutes the judge is  
10 going to give you your final instructions. Listen to them  
11 very carefully. They are going to give you the law that you  
12 need to apply in this case and the standards of law which  
13 are important in deciding the case.

14 The second thing I asked of you is that you pay  
15 attention to all the evidence that's been presented here.  
16 And I appreciate the fact, and I think Mr. Berry would as  
17 well, that this has been a very attentive jury. We get  
18 tired sometimes and dozing off and sleeping and I know y'all  
19 haven't done that. I know everybody in the courtroom really  
20 appreciates it.

21 I would like to take few minutes to go over some  
22 of the facts in this case.

23 Mr. Medley is charged with two separate and  
24 distinct crimes; failure to stop and driving under the  
25 influence.

1 I would first like to start with the failure to  
2 stop. This occurred late at night on April 21st. The  
3 police had set up a checkpoint over here in Cherokee County.  
4 As he approached the checkpoint Mr. Medley ran through the  
5 red light, as you heard from testimony from two officers  
6 yesterday, and proceeded at a high rate of speed from  
7 Cherokee County up into North Carolina, and back down into  
8 Cherokee County before he ultimately abandoned his bike and  
9 ran on foot. This was all recorded, or all except the very  
10 last bit on foot, was all recorded by law enforcement. And  
11 because you have had a break overnight I would like to take  
12 and second and just replay a little bit, not all of that  
13 video for you.

14 (Videotape started)

15 (Videotape stopped)

16 MR. KENDALL: Thank you, ladies and gentlemen.

17 I believe from watching that tape what you saw was  
18 something disturbing and dangerous. As you saw from  
19 Lieutenant Parker's (sic) video, which had the speed limits  
20 on it, many of these speeds were in excess of a 100 miles an  
21 hour, a chase that lasted nearly eight minutes on public  
22 highways in South Carolina, crossing roads without stopping  
23 at stop signs and just completely disregarding the safety  
24 requirements of the road.

25 You can also see very clearly from this video the

1 blue lights were flashing and the sirens were also working  
2 effectively.

3 Now, you will have these videos back with you --  
4 or excuse me, not back in the jury room. You would have the  
5 ability to see these videos again, if you need to. There  
6 were three of them that were put into evidence for you. We  
7 can come back and take a look at them any time during  
8 deliberations that you want to. I'm not going to play all  
9 of them for you now for times sake, but you do have the  
10 ability to see those, if you so desire.

11 The second one of these charges we have is the  
12 driving under the influence charge. And though these crimes  
13 are separate and distinct, I feel they are related in very  
14 strong ways.

15 First, in this case the defendant ran from the  
16 police. He fled. There is a roadside checkpoint. He  
17 didn't want to go through the checkpoint, so he took off on  
18 his motorcycle. Ladies and gentlemen, you are allowed to  
19 consider flight from law enforcement as evidence of  
20 conscious guilt, that he knew what he was doing was wrong.  
21 He knew that he wasn't doing something he was supposed to be  
22 doing. He was driving under the influence. And instead of  
23 going through that checkpoint, he decides to flee. You are  
24 allowed to make that consideration. He wasn't on this high  
25 speed chase for no reason. He didn't just want to test out

1 the tires on the bike. He took off because he wanted to  
2 flee from the police so they wouldn't catch him for driving  
3 under the influence.

4 Second, the timing which this occurred is very  
5 important. This didn't happen mid day. This didn't happen  
6 in the morning. This happened late at night. He approached  
7 the checkpoint late at night and went tearing off, because  
8 he knew he was driving under the influence.

9 Third, from that video I think you can see he had  
10 difficulty maintaining his lane. The standard on driving  
11 the road isn't you just got to keep it on the pavement. The  
12 standard is you stay in your lane of traffic. Yes, you  
13 could drive in maneuvers, you safely need to execute to keep  
14 yourself and other people on the road safe. He clearly did  
15 not do that in these videos. You can even see him on some  
16 of the straightaways swaying over across the road. Ladies  
17 and gentlemen, I believe this is evidence that he's unable  
18 to maintain his lane of travel, that he's unable to safely  
19 operate that vehicle.

20 Moreover, you heard testimony from two officers  
21 about his demeanor at the scene of the crime. He smelled  
22 like alcohol. He had alcohol with him. You could actually  
23 see on the video as he goes through that stop sign a beer  
24 actually comes flying back from the bike. He smelled like  
25 alcohol. You can hear his speech slurring. He had glassy

1 eyes. The telltale signs of somebody who is intoxicated he  
2 had.

3 Moreover, you saw his behavior in the BA room. He  
4 wasn't sitting upright. He sat there, slouched over, head  
5 down. It didn't appear he was passed out. It did appear he  
6 was not doing so great. I think at once he comes back  
7 around and puts his head down. I don't think that was the  
8 behavior of a sober man. That wasn't somebody who had the  
9 facilities about them in a way capable to operating an  
10 automobile safely.

11 Moreover, he had the opportunity in this case in  
12 that BA room to blow. This was all just one big thing.  
13 Maybe he was trying to avoid a ticket for DUS, that's why he  
14 ran. He didn't get up here and show us that. There was a  
15 breathalyzer machine sitting right there. He sat there for  
16 twenty minutes, waited the whole twenty minutes. When it  
17 came time to go ahead and take this test, he chose not to do  
18 it. He chose not to do it because he knew what it would  
19 show, that he was intoxicated.

20 But most importantly, and most obviously, what  
21 shows he's intoxicated is what he says. We know he had too  
22 much to drink, because when officers asked him how much he  
23 had to drink, he said "too much." They asked him again, not  
24 in the immediate flight, once things had calmed down when he  
25 was sitting in the back of -- or, excuse me, sitting in the

1 front of the officer's patrol car. He brought it up.  
2 "Well, I'm not drinking much any more." The officer asked  
3 him how much he had to drink. He couldn't even estimate,  
4 couldn't fathom a guess as to how much he had to drink. He  
5 eventually got to a point where, as the officer testified a  
6 lot of times people do when they are trying to get  
7 themselves out of trouble, he did come up with a number of  
8 four and a half, a number which, quite frankly, I don't  
9 think is safe to drink and drive, and that was his best  
10 answer of "don't know; couldn't tell you; couldn't estimate;  
11 four and a half." He gets it down to the half there as he's  
12 actually going through it.

13 Ladies and gentlemen, this is a man that drank a  
14 lot of beer that day. By his own admission four and a half  
15 beers, but I got to believe it's a lot more than that,  
16 seeings as he couldn't even guesstimate how many beers it  
17 was until he ultimately came up with something.

18 Now, ladies and gentlemen, this is going to be my  
19 last chance to talk to you. I'm going to sit down here in a  
20 minute and I won't be able to discuss anything with you  
21 again in this case, so what I would like to do now is kind  
22 of go over some of the points the defense raised in their  
23 cross-examination.

24 First. The first point the defense raised was  
25 they didn't understand, that the officer had never seen his

1 mannerisms; therefore, he didn't know how he behaved when he  
2 was sober. Well, that's not exactly true. You heard  
3 Officer Mullinax testify he had dealt with thousands of  
4 people, thousands of intoxicated people over the years. He  
5 had made hundreds of DUI arrests. He had had the  
6 opportunity to visualize them. And each one of these cases  
7 what they looked at was the totality of the circumstances.  
8 There wasn't just one factor that led him to believe that he  
9 was drunk, one factor didn't believe he was sober. And even  
10 on the roadside tests, which the officer wasn't able to do  
11 in this case because of the high speed chase and dangerous  
12 behavior, they looked for a lot of different factors, and he  
13 was able to observe those mannerisms in this case; the smell  
14 of the alcohol, the glassy eyes, the slurred speech, the  
15 flight from law enforcement, and the refusal -- the behavior  
16 and refusal in the BA room, all to reach a determination  
17 that he was under the influence of alcohol. This wasn't  
18 something that was one particular fact, like, well, maybe he  
19 always has glassy eyes. This was based on the totality of  
20 the circumstances that night following a high speed  
21 two-state chase.

22 Ladies and gentlemen, the second point the defense  
23 raised was that he had -- that the defendant was able to  
24 sign his name on the paper, as if that he was capable of  
25 operating a motor vehicle, as long as you are able to write

1 your name on a piece of paper. Ladies and gentlemen, just  
2 because you are able to sign on a line doesn't mean you are  
3 allowed to drive over it. Clearly his behavior on the road  
4 that night was dangerous. Whether or not he could write his  
5 name on a piece of paper does not mean he's able to operate  
6 that motorcycle safely that night.

7 Third, he brought up a Miranda argument, which I  
8 find somewhat sort of bizarre in this case, because the  
9 defense can't have it both ways. What they seem to be  
10 arguing was that the officer shouldn't have asked him if he  
11 had had anything to drink, because he was too drunk to tell  
12 him if he had anything to drink. You can't have it both  
13 ways. You can't be saying he shouldn't have asked questions  
14 because he didn't know he was able to answer them because he  
15 was drunk, because there are questions about him being  
16 drunk.

17 Moreover, these weren't an interrogation. As you  
18 you saw on the video, these are the standard questions that  
19 they ask somebody if they suspect they are drinking;  
20 license, have you been drinking right as you pull somebody  
21 over.

22 In addition, as you saw on the second part of  
23 that, the officer didn't even bring it up. The defendant  
24 was the one that started the conversation in that. This  
25 wasn't anything the officer is eliciting from him. The guy

1 started the conversation with him and the officer began  
2 asking questions about it, and that's on the video at the 31  
3 minute mark. If y'all would like to take a look at that, of  
4 course, you can.

5 He also attacks the officer's memory, indicating  
6 because he didn't have the fact his eyes were glassy in the  
7 report that he wouldn't remember. You heard him ask  
8 questions about other people he had arrested, and he  
9 actually did remember some of the ones he did arrest that  
10 night. Well, I think overall tried to make it sound like he  
11 would have remembered this very well.

12 Ladies and gentlemen, at the beginning of this  
13 trial I asked you to use your common sense. I think common  
14 sense would show you that this wasn't your typical DUI.  
15 This was a high speed chase across two counties in excess of  
16 a 100 miles an hour, across a field, before they were able  
17 to finally detain the person who had gotten off his bike and  
18 running from the police. This is the one you remember.  
19 This isn't the guy who pulled to the checkpoint and smelled  
20 a little funny and took the breathalyzer test and blew a  
21 .09.

22 In moment you are going to go back and you are  
23 going to deliberate this case. I would hope that you would  
24 consider this and look at this from a rational perspective,  
25 based on the totality of these circumstances. You know, we

1 come into courtrooms, we tend to do so and we think about it  
2 from the perspective of what takes place now. We get into  
3 courtroom language. You go through all this procedure and  
4 circumstances and things like that, and it's important.  
5 It's very important to follow the rules and things like  
6 that, but you also shouldn't leave your common sense at the  
7 door. You can consider this as it happened, not within a  
8 carpeted, air conditioned room, but late at night on a  
9 highway, where a man blows through a stop sign, refuses to  
10 stop for police, takes them on an eight minute high speed  
11 chase, following no traffic laws, with beer falling out of  
12 his saddle bags. He is placed under arrest; says he's had  
13 too much to drink; put in the car; again he starts a  
14 conversation where he can't even estimate how many beers  
15 he's had; smells like alcohol; looks like alcohol. Ladies  
16 and gentlemen, this case is a walks like a duck, it quacks  
17 like a duck.

18 Ladies and gentlemen, he's drunk. There is no  
19 other explanation for this. He wasn't running from the  
20 police for some other reason or just fun. It wasn't a  
21 recreational thing. He was running from the police because  
22 he knew he was under the influence of alcohol. He was  
23 unable to safely operate that vehicle. He looks like he was  
24 under the influence of alcohol. He said he had had too much  
25 to drink. This is not a case where we are going to go

1 through the technicalities and intricacies and try to make  
2 something that looks like a duck and quacks like a duck not  
3 a duck. That's what this is, just plain and simple. It's a  
4 man who ran because he was drunk, he smelled like he was  
5 drunk, he looked like he was drunk, and he said he had had  
6 too much to drink. The only logical conclusion, the only  
7 common sensical conclusion in this case, ladies and  
8 gentlemen, is that that man was drunk. Thank you.

9 THE COURT: Mr. Berry, you may address the jury.

10 MR. BERRY: Thank you, Your Honor.

11 May it please the court?

12 Mr. Solicitor.

13 Good morning, ladies and gentlemen.

14 Mr. Kendall is right. I do want to thank you for  
15 paying attention to everything that we have done yesterday  
16 and listening to our arguments today.

17 Ladies and gentlemen, yesterday we all told you  
18 that what you are doing here is very important. Yesterday  
19 was sort of a momentous occasion, because you got to  
20 exercise two Constitutional Rights. You got the right to  
21 vote yesterday and you got the right to be selected and  
22 serve on a jury. Whether you wanted to or not, we are glad  
23 that you were here to do that for us. I know that you have  
24 all paid attention. We have all been watching. You have  
25 all been very attentive to the evidence.

1 Ladies and gentlemen, Mr. Kendall is right. These  
2 are two separate and distinct offenses. Like I told you  
3 yesterday, I'm not going to argue about everything. I told  
4 you that the State would most likely be able to put up the  
5 evidence on the failure to stop. We conceded that  
6 yesterday.

7 I told you what we were here arguing about was the  
8 driving under the influence and I wanted you to look for  
9 what you didn't hear and what you didn't see on the video,  
10 in the conduct, and in the testimony of the officers that  
11 were before you yesterday.

12 Ladies and gentlemen, in just a few moments the  
13 judge is going to charge you on the law of the case. And as  
14 I told you yesterday, he is the judge of the law. You have  
15 to accept what he tells you.

16 One of those instructions is going to be on  
17 reasonable doubt. The judge is going to tell you that a  
18 reasonable doubt is one that causes a reasonable person to  
19 hesitate to act. A fancy legal way of defining that, and I  
20 like to use just another example that I believe helps to  
21 illustrate just exactly what reasonable doubt is. The way I  
22 generally like to explain reasonable doubt is if you would  
23 imagine that the State and the defense are traveling down  
24 I-85 and we are side by side on I-85 going just right there  
25 together. We continue down the road until the point where

1 the defendant, Mr. Medley, was charged. At that point in  
2 the lane that the State is traveling in imagine an imaginary  
3 brick wall there. From that point forward the State can't  
4 go any further. Every brick in that brick wall is  
5 reasonable doubt. And in order for you to return a  
6 conviction of guilty the State not only has to knock down  
7 that brick wall, but they have to remove every single brick  
8 out of the road before you can return a verdict of guilty  
9 under the oath that you have taken.

10 Ladies and gentlemen, I would submit to you that  
11 the State certainly has not met that burden and there are  
12 absolutely bricks still in the road. And I'm going to go  
13 through with you right now and show what those bricks are  
14 and why they are still there and why I'm still asking you to  
15 return a verdict of not guilty on the driving under the  
16 influence charge against Mr. Medley.

17 First of all, I want to ask you to remember Mr.  
18 Medley and let's look at who we are talking about here. We  
19 are going through some background for Mr. Medley. A scared  
20 24 year old, trying to get home. He says that on the video.  
21 "Why did you run from us?

22 "I was trying to get home to my mom."

23 Mr. Kendall made the assertion that he had been  
24 driving under the influence because he was running. That's  
25 the only reason that he could have run.

1           You heard Officer Mullinax testify yesterday that  
2 in addition to the driving under the influence and the  
3 failure to stop Mr. Medley had also been charged with  
4 driving under suspension, which he's already pled guilty to  
5 and admitted to.

6           We have also admitted they would likely be able to  
7 produce evidence to support the failure to stop conviction.  
8 Mr. Medley is not one that runs from crimes that he has  
9 committed. Why was he running? Because he knew he was  
10 going to be arrested that night for driving under  
11 suspension. Absolutely. It's not as clear cut as Mr.  
12 Kendall put it to you and that's not -- him running is not  
13 proof that he was driving under the influence.

14           Ladies and gentlemen, next I want to talk to you  
15 about another assertion that Mr. Kendall made about the  
16 Miranda Warnings and the argument that I made yesterday.  
17 Ladies and gentlemen, it's well known that when a person  
18 receives their Miranda Warnings, there is a few sentences  
19 there, very important rights that a person waives by talking  
20 to police. In order to waive those rights you actually have  
21 to understand them. You have to know what's going on. And  
22 for an intelligent waiver to be given, you have to be  
23 coherent enough. Well, the officer obviously continued  
24 questioning him. He obviously thought he was coherent  
25 enough to waive those Miranda Rights, but he's saying he

1 wasn't coherent enough to operate the motorcycle. We are  
2 going to talk about a lot in just a few moments. That just  
3 struck me as odd that you can, again, have it one way, but  
4 on the other; you are coherent enough to waive the most  
5 important fundamental Constitutional Rights that you have,  
6 but you are so inebriated that you can't operate your motor  
7 vehicle. I ask you to use common sense there.

8 Ladies and gentlemen, when Mr. Medley was taken  
9 into custody at his home, again, he went to his home where  
10 his mother and father resides, immediately the officers say  
11 immediately we smelled an odor of alcohol.

12 You heard Lieutenant Bright testify yesterday  
13 alcohol has no odor. He could have drank ever how many  
14 Vodka drinks, any other liquor, and would not have smelled  
15 the same way as he had if he had consumed beer, but would  
16 have been much more intoxicated if he had consumed the same  
17 number of liquor drinks as he had beer.

18 Lieutenant Bright also testified yesterday that  
19 beer does have a very pungent noticeable odor. It stands to  
20 reason that you can have a person who is consuming a lot  
21 less beer, but still be more smelly than a person who is  
22 drinking liquor drinks.

23 Now, the solicitor and Lieutenant Mullinax  
24 testified that the decision to arrest Mr. Medley for driving  
25 under the influence was based on a totality of the

1 circumstances, a totality that was not reported the night  
2 that this occurred, even though Lieutenant Mullinax  
3 testified that he should have put everything in the report  
4 that was important for Mr. Medley's arrest. He should have  
5 put in the report everything that he noticed that would have  
6 led him to a conclusion that Mr. Medley was driving under  
7 the influence. He testified yesterday that that report was  
8 accurate, complete, and truthful, and it's not. You heard  
9 things yesterday that was said for the first time yesterday.  
10 No one ever knew that Mr. Medley had glassy eyes.

11 Mr. Kendall also said, well, Lieutenant Mullinax  
12 made hundreds of arrests; he can observe people all the  
13 time. He still never observed Mr. Medley. He doesn't know  
14 what his conduct is like. He doesn't know if he slurs  
15 speech. He doesn't know if he has glassy eyes. That was  
16 the first contact he had ever had. So for him to say, oh,  
17 he obviously had slurred speech, what does he have to base  
18 that on? Ask yourselves that when you are deliberating,  
19 ladies and gentlemen.

20 The things that he testified that he based it on  
21 also included his demeanor, both at the incident site and  
22 the breath alcohol room. Mr. Kendall said that his behavior  
23 was not behavior of a sober man. Ladies and gentlemen, that  
24 was not behavior of a drunk man. That was the behavior of a  
25 shamed man. Slouching over in your seat is not indicative

1 of being under the influence. He knew what he had done was  
2 wrong by running from police. He knew that he was driving  
3 under suspension. He apologized to them for that. He was  
4 shamed. He was shamed because he had done that to them,  
5 shamed because he had gotten to his home and his mom and dad  
6 had to see him being taken to the ground and arrested. His  
7 behavior was that of a shamed man, not one under the  
8 influence.

9 Ladies and gentlemen, yesterday, even though there  
10 were no field sobriety tests in this case, Mr. Kendall and I  
11 both asked what the aim of those field sobriety tests are.  
12 Why do they do them, what do they look for when they are  
13 administering those field sobriety tests to people who they  
14 suspect of driving under the influence. The main thing was  
15 balance.

16 Ladies and gentlemen, Mr. Kendall asked you  
17 yesterday, and I echoed him, because this was going to be  
18 the main theme of mine during the trial of this case. I  
19 asked you to use common sense. Ladies and gentlemen,  
20 driving a motorcycle -- I don't know if all of you have  
21 driven a motorcycle. I don't know if any of you have ever  
22 driven a motorcycle, but most of us have ridden a bike  
23 before. Riding a bike takes what? It takes balance.  
24 Absolutely.

25 The common sense question that I want you to ask

1 yourselves is is it possible for a man who is under the  
2 influence to lead police on an eight minute chase going 90  
3 to 100 miles an hour on a motorcycle, not a car with four  
4 wheels, but a motorcycle with two, that requires him to keep  
5 it up? Is it possible that he was driving under the  
6 influence to the extent that his ability was materially and  
7 appreciably impaired? I want you to ask yourself and think  
8 real deep on that when you are deliberating.

9 And I brought it up yesterday, but Mr. Kendall  
10 kind of picked up on it and started playing on it, on the  
11 video you can see Mr. Medley go in the opposite lane. He's  
12 all over the roadway. We offered yesterday that the  
13 majority of the time that he was doing that was when he was  
14 going into curves. And I want you to think about your own  
15 every-day common experiences. When you are driving, you are  
16 driving fast, you come upon a road that you are not too  
17 familiar with and you are going a little bit too fast and  
18 you get to a curve, what sometimes happens? Your car  
19 drifts. You saw on that video, though, that as soon as he  
20 came out of the curve Mr. Medley almost always got back in  
21 his lane of travel and was able to maintain that lane.  
22 There are one, maybe two times where he drifted over the  
23 yellow line. And he did hug the line quite often, but  
24 Officer Mullinax testified yesterday it's not against the  
25 law. He can't write him a ticket for that. So what? He

1 was close to the yellow line.

2 The final point I want to bring up, ladies and  
3 gentlemen, is the actual law of driving under the influence,  
4 and I'm going to put it on the screen here. We are going to  
5 read through it. The judge is going to charge you on this  
6 in just a few moments. And this is the law as it relates to  
7 driving under the influence. It says it is unlawful for a  
8 person to drive a motor vehicle within this state while  
9 under the influence of alcohol to the extent that the  
10 person's faculties to drive a motor vehicle are materially  
11 and appreciably impaired. Under the influence of any other  
12 drug, or a combination of other drugs or substances, which  
13 cause impairment to the extent that the person's faculties  
14 to drive a motor vehicle are materially and appreciably  
15 impaired; or, under the combined influence of alcohol and  
16 any other drug or drugs or substances which cause impairment  
17 to the extent that the person's faculties to drive a motor  
18 vehicle are materially and appreciably impaired.

19 Now, ladies and gentlemen, we heard about the  
20 breath alcohol room and Mr. Medley's refusal to take that  
21 breath alcohol test. One of the rights that Lieutenant  
22 Mullinax read out to Mr. Medley was you can refuse the test.  
23 You don't have to take it. One thing he didn't tell Mr.  
24 Medley, though, is that even if he had any small amount of  
25 alcohol in his system, that he wouldn't have arrested him

1 for DUI. Mr. Medley had already admitted that he had four  
2 beers, four and a half beers. Why would he think that  
3 Officer Mullinax was not going to arrest him for DUI? Why  
4 would he then compound his problem by taking the  
5 breathalyzer test? It's just not fair to me that they tell  
6 you that you can refuse, but they don't tell you that they  
7 won't arrest you at some point. They won't arrest you if  
8 you have had any alcohol in your system, because, ladies and  
9 gentlemen, for some people it's a hard pill to swallow, but  
10 driving after you have consumed alcohol is not a crime. The  
11 crime comes when you are driving to the extent that your  
12 faculties to operate the motor vehicle are materially and  
13 appreciably impaired. I simply don't think they can show  
14 that in this case.

15 I'm going to ask you again to return a verdict of  
16 not guilty, ladies and gentlemen. Again, like I said, I'm  
17 not arguing about everything. I think the State has proven  
18 their case on the failure to stop, but I do want you to  
19 consider everything that I have just shown you and to  
20 remember that there are bricks still in the road. And  
21 unless every one of you individually is convinced that they  
22 were able to clear all those bricks from the road, that each  
23 of you have to make up your own mind and to say there is  
24 nothing in my mind that's causing me to hesitate to convict  
25 Mr. Medley of driving under the influence, and no one,

1 except for you, can make up your mind and can make that  
2 decision for you.

3 Again, I would submit to you there is still bricks  
4 in the road. I think half of the wall is still there and I  
5 would ask you to return a verdict of not guilty on the  
6 driving under the influence. Thank you so much.

7 (Whereupon, at 10:49 a.m., the Court gave the jury  
8 panel the jury instructions)

9 THE COURT: Mr. Foreman, ladies and gentlemen,  
10 it's now my responsibility to instruct you on the law of the  
11 case.

12 This is a charge in which the two indictments are  
13 before you; the charge of driving a motor vehicle while  
14 under the influence of alcohol or drugs; also the failure to  
15 stop for a blue light.

16 Let me remind you of the fact that the defendant  
17 in this case has been arrested, charged and indicted, that's  
18 not proof. It's not to be considered in any way as evidence  
19 of guilt. It doesn't create any presumption of guilt. The  
20 indictment is merely the paper by which the case is brought  
21 before this court for disposition.

22 There is two charges in this case and each  
23 indictment states a separate and distinct offense. You can  
24 decide -- you must decide each of them separately, based on  
25 the law and the evidence that's been presented on each of

1       them. In other words, the defendant may be convicted or  
2       acquitted on either or both of the charges. You will be  
3       asked to write separate verdicts for each of the cases.

4               Now, the defendant in this case has entered a plea  
5       of not guilty to each of the indictments and that plea  
6       places the burden on the State to prove his guilt.

7               A defendant charged with committing a criminal  
8       offense in South Carolina is never required to prove himself  
9       innocent. That's an important rule of law. No matter how  
10      serious a charge may be, one charged will always be presumed  
11      innocent of the crime for which that indictment was issued,  
12      unless guilt has been established by proof satisfying you of  
13      that guilt beyond a reasonable doubt.

14              Presumption of innocence doesn't end when you  
15      begin your deliberations, but it accompanies the defendant  
16      throughout the trial, until you have reached a verdict of  
17      guilt based on evidence satisfying you of that guilt beyond  
18      a reasonable doubt.

19              Presumption of innocence has often been described  
20      as a robe of righteousness that's placed about the shoulders  
21      of an individual and remains with that defendant until it's  
22      been stripped from him by evidence satisfying you of that  
23      defendant's guilt beyond a reasonable doubt.

24              Presumption of innocence isn't a mere legal phrase  
25      that's used. It's not a legal theory. It is a substantial

1 right to which every defendant is entitled, unless you, the  
2 jury, are satisfied from the evidence of that defendant's  
3 guilt beyond a reasonable doubt.

4 You may ask yourself what is a reasonable doubt in  
5 the law? A reasonable doubt is the kind of doubt that would  
6 cause a reasonable person to hesitate to act. It's not mere  
7 suspicion, even strong suspicion. That's not enough to  
8 sustain a conviction.

9 Some of you may in the past have served on a jury  
10 which a judge told you that it was only necessary to prove a  
11 fact by what was called the greater weight of the evidence  
12 or the preponderance of the evidence. That would be in a  
13 civil case, the standard of proof, but in criminal cases the  
14 State's proof is more powerful than that. It must be proof  
15 beyond a reasonable doubt. That would be proof that leaves  
16 you firmly convinced of the defendant's guilt.

17 There are very few things in this world we know  
18 with absolute certainty, ladies and gentlemen, and in  
19 criminal cases the law doesn't require proof that overcomes  
20 every possible doubt.

21 If, based upon your consideration of the evidence,  
22 you are firmly convinced that the defendant is guilty of the  
23 crimes charged, then you must find the defendant guilty.

24 If, on the other hand, you think there is a real  
25 possibility that the defendant did not commit the offense,

1 then you must find the defendant not guilty and give him the  
2 benefit of that doubt.

3 Now, during the course of the trial you and I have  
4 had certain duties to perform. As the trial judge it's been  
5 my responsibility to preside over the trial of the case and  
6 to rule on the admissibility of the evidence that's been  
7 presented. You are to consider only the competent evidence  
8 before you, the testimony of the witnesses that have been  
9 offered, the exhibits that have been made a part of the  
10 record, and that alone. My job also is to charge you the  
11 applicable law in the case.

12 As the presiding judge I'm the sole judge of the  
13 law. It's your duty as jurors to accept the law and apply  
14 the law just as I state it to you now. Some of you may  
15 already have an idea of what the law is, or even a notion of  
16 what the law ought to be in a case such as this, but if your  
17 idea is not in agreement with what I now tell you the law  
18 is, you must abandon such an idea, because under your oath  
19 you have sworn to accept the law and apply the law just as I  
20 state it to you.

21 Every case that's tried in this courtroom before a  
22 jury, that jury becomes the sole and exclusive judge of the  
23 facts in a case. A trial judge can't comment on, or  
24 intimate, or state, or make any statement whatsoever to a  
25 trial jury about the facts in a case. Since you, the jury,

1 are the sole judges of the facts, you are not to infer from  
2 anything I have said during the course of the trial, any  
3 rulings I have made on the admissibility of evidence, or  
4 otherwise, anything I say to you now in the course of this  
5 instruction to you that I have an opinion about the facts.  
6 I don't have an opinion about the facts. Not only does the  
7 law in South Carolina prohibit that, our Constitution  
8 prohibits the trial judge from having an opinion about the  
9 facts of the case. That's totally up to you, solely in your  
10 prerogative to determine the facts. You decide the effect,  
11 the value, the weight and the truth of the evidence that has  
12 been submitted during the course of the trial.

13 In most trials there is two types of evidence.  
14 There is what's called direct evidence and circumstantial  
15 evidence.

16 Direct evidence is the testimony of a person who  
17 claims to have actual knowledge of a fact, such as an  
18 eyewitness. It's evidence which immediately establishes the  
19 main fact to be proved.

20 Circumstantial evidence is proof of a chain of  
21 facts and circumstances that would indicate the existence of  
22 a fact. It would be evidence that establishes a collateral  
23 fact from which the main fact may be inferred.

24 Circumstantial evidence is based on inference and  
25 not upon personal knowledge or observation.

1           Now, the law makes absolutely no distinction  
2 between the weight or value to be given either  
3 circumstantial evidence or direct evidence, nor is a greater  
4 degree of certainty required of circumstantial evidence than  
5 of direct evidence.

6           You should weigh all the evidence in the case,  
7 ladies and gentlemen. And after weighing that evidence, if  
8 you are not firmly convinced of the guilt of the defendant  
9 beyond a reasonable doubt, you must find the defendant not  
10 guilty.

11           Necessarily, you must determine the credibility of  
12 the witnesses who testified in the case. Credibility simply  
13 means believability. It becomes your duty as a juror to  
14 analyze and evaluate the evidence and decide which evidence  
15 convinces you of its truth.

16           In determining believability of witnesses who have  
17 testified, in your discretion you can believe one witness  
18 over another witness. You can believe part of the testimony  
19 of a witness and reject the remaining part of the testimony  
20 of that very same witness. You can believe the testimony of  
21 a witness in its entirety. You can reject the testimony of  
22 witness in its entirety. You can decide whether any witness  
23 had an interest or a bias or a prejudice, other motive in  
24 the case. You can consider whether the demeanor of the  
25 witness while on the witness stand led to the believability

1 of that witness, the consistency or inconsistency of the  
2 testimony, how the testimony stacked up with other evidence  
3 or testimony presented. Was it weakened or strengthened by  
4 that. It's totally up to you, ladies and gentlemen, to  
5 determine the credibility of the witnesses who have  
6 testified.

7 Now, in order to establish criminal liability,  
8 criminal intent is required and must be proven by the State  
9 beyond a reasonable doubt. Criminal intent is always a  
10 matter that must be determined by a jury from the  
11 surrounding situation. There is no way to prove intent to a  
12 mathematical certainty. Medical science hasn't devised a  
13 way that we can dissect a person's mind and know what the  
14 intent was, so the law says that criminal intent may be  
15 inferred from circumstances shown to have existed.

16 It's not necessary to establish intent by direct  
17 and positive evidence, but it may be established by  
18 inference, in the same way as any other fact, taking into  
19 consideration the acts of the parties and all the facts and  
20 circumstances of the case.

21 Criminal intent is a mental state. It's a  
22 conscious wrongdoing.

23 It's up to you, ladies and gentlemen, to determine  
24 what the defendant intended to do, based upon the  
25 circumstances shown to have existed.

1 Now, I instruct you and I emphasize to you the  
2 fact that in this case the defendant did not testify is not  
3 a factor to be considered by you in your deliberations and  
4 in your consideration of the question of the guilt or the  
5 innocence of the defendant. It must not be considered by  
6 you in any manner whatsoever. A defendant has the  
7 Constitutional Right to remain silent, and the assertion of  
8 this right must not be considered by you in your  
9 deliberations.

10 I repeat, under your oath you are to draw no  
11 conclusions whatsoever from the fact that the defendant in  
12 this case did not testify. The fact that he chose not to  
13 testify should not even be discussed by you during your  
14 deliberations.

15 The burden of proof, as I have said, is on the  
16 State of South Carolina. The defendant is not required to  
17 prove his innocence. The burden of proof remains with the  
18 State to prove guilt beyond a reasonable doubt.

19 Now, statements alleged to have been made by the  
20 defendant have been admitted into evidence in this case.  
21 While the court has determined that the statements are  
22 admissible, I instruct you that you make the ultimate  
23 decision of whether or not the defendant made the  
24 statements. If the defendant did make the statement, you  
25 must determine whether the statement was made by the

1 defendant voluntarily and of his own free will. This means  
2 that the statement was not caused by pressure, or force, or  
3 coercion, or threats, or intimidation, or by hope or promise  
4 of leniency or reward of any kind.

5 In determining whether the statement was  
6 voluntary, you may consider the characteristics of the  
7 defendant, the details of the questioning. Among the  
8 factors you can consider are the age of the defendant,  
9 education, or lack of education, the mental abilities and  
10 capacities, the background, the environment, the place and  
11 length of the detention, the nature of the questioning, and  
12 the advice, or lack thereof, of the defendant's  
13 Constitutional Rights, including, but not limited to, the  
14 right to remain silent; that any statements he made could be  
15 used against him in a court of law; the right to have a  
16 lawyer; if he could not afford one, then a lawyer would be  
17 appointed to represent him without any costs; and he could  
18 stop making the statement at any time.

19 You must carefully consider all of the surrounding  
20 circumstances before you give any weight to the alleged  
21 statement.

22 The State has the burden of proving beyond a  
23 reasonable doubt that the alleged statements were voluntary.  
24 If you determine it was, you can give the statements any  
25 further consideration that you deem proper. You must decide

1 the weight, if any, should be given to the alleged  
2 statement.

3 If you determine the statement was not free and  
4 voluntary, the statement of the defendant, you should not  
5 consider the statement in any manner whatsoever.

6 Now, this is a case in which the defendant has  
7 been charged with driving under the influence.

8 The State must prove beyond a reasonable doubt  
9 that the defendant was driving a motor vehicle in this state  
10 while under the influence of alcohol and/or drugs or other  
11 substances to the extent that the defendant's faculties to  
12 drive were materially and appreciably impaired.

13 Driving a motor vehicle means that the vehicle was  
14 in motion. This may be proved by direct or circumstantial  
15 evidence.

16 The State must prove beyond a reasonable doubt  
17 that the defendant was sufficiently under the influence to  
18 impair his ability to drive with reasonable care, with due  
19 regard for others and himself, or as a reasonable prudent  
20 person would drive.

21 It's not necessary to show that the defendant was  
22 in a helpless condition, passed out, or even intoxicated.

23 On the other hand, the fact that the defendant at  
24 some point prior to the incident drank an alcoholic beverage  
25 or took a drug does not prove that the defendant was driving

1 under the influence.

2 The defendant in this state has a right to refuse  
3 to take a blood alcohol concentration test.

4 Now, I mentioned to you there is two separate  
5 distinct charges here. The defendant is also charged with  
6 failing to stop for a blue light.

7 In order to prove this crime, the State must prove  
8 beyond a reasonable doubt that the defendant was driving a  
9 motor vehicle; that the defendant was driving that motor  
10 vehicle on a road, a street, or a highway in this state;  
11 that the defendant was signaled to stop by a law enforcement  
12 vehicle by means of a siren or a flashing light and that the  
13 defendant did not stop.

14 In determining whether or not there are mitigating  
15 circumstances which would justify the defendant's failure to  
16 stop for the blue light, you may consider actual road  
17 conditions; the roadside conditions; other conditions, such  
18 as lighting and weather; the officer's, driver's,  
19 passenger's safety; any other circumstances you believe to  
20 reasonably mitigate the alleged violation.

21 An official signal requiring a motorist to stop  
22 may be a siren or it may be flashing lights. Both are not  
23 required.

24 An attempt to increase the speed of the vehicle or  
25 in some other manner avoid the pursuing law enforcement

1 vehicle when signaled by a siren or a flashing light may be  
2 considered as evidence of failure to stop for the blue  
3 light. However, it's merely an evidentiary fact to be taken  
4 into consideration by you, along with all the other evidence  
5 in the case and you give it the weight that you decide it  
6 should receive.

7 Now, Mr. Foreman, I indicated to you there is a  
8 verdict form that I have prepared for you. There is two  
9 separate and distinct charges. I think the form would be  
10 self-explanatory. You merely check the appropriate block.  
11 Either you find the State has met its burden of proof beyond  
12 a reasonable doubt, you would find guilty on each charge  
13 distinctly. One could be guilty. One could be not guilty.  
14 That's up to you. Both could be guilty. Both could be not  
15 guilty. There is no significance in the order in which they  
16 are listed. One specifically has to be listed before the  
17 other.

18 Once you have checked each of those decisions on  
19 each of the charges, then you sign your name as foreperson  
20 and date it and we will receive your verdict back here in  
21 the courtroom.

22 All twelve of you must agree upon a verdict. It  
23 can't be based upon sympathy, or passion, or prejudice,  
24 emotion, or any other consideration not in evidence in the  
25 case.

1           Let me remind you that you are free to ask me any  
2 questions concerning the law that I have explained to you  
3 now, but it's impermissible for me to make any comments or  
4 answer any kind of questions that you have about the facts  
5 of the case. That's your decision. You are the sole fact  
6 finders.

7           At this time I'm going to ask you, if you would,  
8 to retire back to your jury room. Don't start your  
9 deliberations just yet. There is a final matter of law that  
10 I need to take care of with the attorneys. Afterwards,  
11 hopefully, we will be able to send the exhibits back with  
12 the verdict form with instructions to begin your  
13 deliberations, but for right now don't start your  
14 deliberations.

15           You may retire to your jury room.

16           Everyone else please remain seated.

17           (Whereupon, at 10:12 a.m., the jury panel went to  
18 the jury room, awaiting instructions to begin deliberations)

19           THE COURT: Any exceptions to the charge from the  
20 State?

21           MR. KENDALL: None from the State, Your Honor.

22           THE COURT: From the defense?

23           MR. BERRY: Not from the defense.

24           THE COURT: All right. If y'all would make sure  
25 all the exhibits are in proper order. I don't know if

1 y'all -- I guess you can send the CD back. It's marked, but  
2 they don't have anything to play it on back there, so either  
3 way that you want to do that, but make sure all the other  
4 exhibits are there.

5 Here is the verdict form for them.

6 (Off the record)

7 (Back on the record)

8 THE COURT: If you would have Mr. Martin come out  
9 please and tell them they can start their deliberations.

10 THE BAILIFF: Yes, sir.

11 (Whereupon, at 10:14 a.m., the jury panel was  
12 instructed to begin deliberations)

13 (Whereupon, the alternate juror was brought into  
14 the courtroom)

15 THE COURT: Mr. Martin, thank you for your  
16 service. Your fellow jurors have survived, so we don't need  
17 you in the deliberations. You are welcome to stay with us.  
18 We would love to have you, or you are free to go by the same  
19 token. You need to call back tonight after six o'clock,  
20 though, for further instructions about the week. Thank you  
21 for your service.

22 (Whereupon, the alternate juror was discharged)

23 THE COURT: We will be at ease until we hear from  
24 our jury.

25 (Whereupon, at 10:15 a.m., proceedings were

1 recessed, pending the verdict of the jury panel)

2 (Whereupon, at 11:14 a.m., proceedings were  
3 reconvened)

4 THE COURT: All right. We have received a  
5 question from the jury. The foreperson wrote they wanted to  
6 view the footage of Officer Mullinax's car; like to view the  
7 portion of the video beginning with Mr. Medley dropping the  
8 bike in the yard through the time in which Mr. Medley was  
9 placed in the cruiser.

10 We will mark this as Court Exhibit No. 2.

11 (Jury Note marked as Court Exhibit No. 2 for  
12 identification)

13 THE COURT: And what I normally do, gentlemen -- I  
14 understand y'all got that set up now and mute what needs to  
15 be muted from it. I'll just tell them that we are going to  
16 show it at their request. If they want us to back it up or  
17 see more or see less, I'll let the foreman tell me when they  
18 have seen enough. We will try to follow their instructions.

19 If the jury is ready, we can have them come in,  
20 Mr. Ellis.

21 (Whereupon, at 11:16 a.m., the jury panel returned  
22 back to the courtroom)

23 THE COURT: Mr. Foreman, I have received a note  
24 from you about wanting to view a portion of the videotape of  
25 Officer Mullinax's car. I have talked with the attorneys.

1 I think they have got the video ready to proceed along the  
2 window of time that you wish to see.

3 Please let us know if you want to see more, if you  
4 want to see less, if you want us to back it up, we will  
5 follow your instructions. They are going to start it at the  
6 time that you requested as to when the motorcycle was  
7 dropped in the yard at that time, but you let us know ever  
8 how we need to move it, we will accommodate you, sir.

9 JURY FOREPERSON: Thank you.

10 THE COURT: All right, you may show the video now.

11 (Whereupon, the videotape was started)

12 (Whereupon, the videotape was stopped)

13 THE COURT: All right. If you would, go back to  
14 your jury room.

15 Do you need to see more?

16 JURY FOREPERSON: Yes, sir, please. I'm sorry.

17 THE COURT: All right. Do you need to talk to the  
18 jury about what you need to see, or --

19 JURY FOREPERSON: No, sir, we know.

20 THE COURT: That's enough?

21 JURY FOREPERSON: Yes.

22 THE COURT: Go back.

23 JURY FOREPERSON: No, I'm sorry. We know the  
24 direct -- we were confused as to what point the --

25 THE COURT: Do you need to see any more of the

1 video?

2 JURY FOREPERSON: Yes, sir, we do.

3 THE COURT: What portion do you need to see? The  
4 same thing again, or --

5 JURY FOREPERSON: Longer as they removed certain  
6 things.

7 THE COURT: Okay. So keep playing it --

8 JURY FOREPERSON: Yes, sir.

9 THE COURT: -- as to where it is now?

10 JURY FOREPERSON: Yes, sir.

11 THE COURT: All right. If you would start it  
12 back.

13 (Whereupon, the videotape was started)

14 (Whereupon, the videotape was stopped)

15 THE COURT: All right. Thank you, ladies and  
16 gentlemen. I'll let you go back to your jury room now and  
17 continue your deliberations.

18 (Whereupon, at 11:27 a.m., the jury panel returned  
19 to the jury room to continue deliberations)

20 THE COURT: All right. We will be at ease. I  
21 don't know if they had it back there or not. Do they have  
22 it?

23 MR. KENDALL: Yes, sir.

24 THE COURT: You can give it back to them.

25 THE COURT: We will be at ease until we hear from

1 our jury.

2 (Whereupon, at 11:28 a.m., proceedings were  
3 recessed, pending the verdict of the jury panel)

4 (Whereupon, at 11:32 a.m., proceedings were  
5 reconvened)

6 THE COURT: All right. I understand we have a  
7 verdict from the jury.

8 Is there any matters we need to take care of  
9 before we receive the verdict?

10 MR. KENDALL: None from the State, Your Honor.

11 MR. BERRY: None from the defense.

12 THE COURT: If our jury is ready, have them come  
13 in.

14 (Whereupon, at 11:33 a.m., the jury panel returned  
15 to open court to report its verdict)

16 THE COURT: Mr. Foreman, I understand the jury has  
17 reached a verdict, is that correct?

18 JURY FOREPERSON: Yes, Your Honor, we have.

19 THE COURT: Is it a unanimous verdict as to both  
20 charges?

21 JURY FOREMAN: Yes, it is, Your Honor.

22 THE COURT: If you would please hand the verdict  
23 forms to the bailiff.

24 All right, Madam Clerk. You may be publish the  
25 verdicts.

1 THE CLERK: 2013-GS-11-822 and 2013-GS-11-823,  
2 State of South Carolina versus Matthew Steven Medley, we,  
3 the jury, unanimously find the defendant Matthew Steven  
4 Medley, as to the charge of driving under the influence,  
5 guilty.

6 As to the charge of failure to stop for motor  
7 vehicle when signaled by officers, the jury responds guilty.

8 It's signed by foreperson Kristopher Showen.

9 Ladies and gentlemen of the jury, if this is the  
10 verdict of you all, please indicate by raising your right  
11 hand.

12 Thank you.

13 THE COURT: Any other matters we need to take care  
14 of with the jury before they are discharged in this case,  
15 from the State?

16 MR. KENDALL: None from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. BERRY: No, sir, Your Honor.

19 THE COURT: All right. Ladies and gentlemen,  
20 thank you very much for your service in this case. You have  
21 performed a valuable asset work for your county and your  
22 community. I have enjoyed working with you. It's been a  
23 treat for me to have jurors such as yourselves to serve. I  
24 don't know if we will have other trials this week, whether  
25 you will get picked or not, but I hope that if you remember

1 from what we said on Tuesday, that you can be exempted from  
2 jury service in the next two years. But I hope that if you  
3 get called, you would waive that exemption. I'm confident  
4 that if you ever find yourself sitting at one of the tables,  
5 a charge against you or a dispute with another citizen, that  
6 you will get good solid jurors such as yourselves to hear  
7 the case to be the fact finder for you.

8 I'm going to need you to call back tonight. We  
9 will find out then whether we need you tomorrow or whether  
10 we will need part of the panel tomorrow to call back in, but  
11 if you will call back in after six o'clock tonight, I would  
12 appreciate it.

13 Again, I hope that I see you later this week. If  
14 not, then it's been a pleasure for me to serve with you.

15 I also wanted to introduce Judge Wright, Julian  
16 Wright, a newly appointed magistrate here in Cherokee  
17 County. He's been observing this today. You may have some  
18 dealings with him in the future, but thank you for your  
19 service. You are free to go at this time. If you will call  
20 back tonight after six o'clock.

21 I will ask the foreman, if you would, to please  
22 remain back in the hallway. There is additional papers I  
23 need to have you sign. The clerk will meet you there.  
24 Thank you very much.

25 Everyone please remain seated while the jury

1 departs.

2 (Whereupon, at 11:37 a.m., the jury panel was  
3 discharged)

4 THE COURT: All right. Any matter we need to take  
5 care of before sentence is imposed?

6 MR. KENDALL: No, sir, Your Honor.

7 MR. BERRY: No, sir.

8 THE COURT: All right. Let's bring your client  
9 forward.

10 All right. I will be glad to hear anything from  
11 the State first and then I'll --

12 MR. KENDALL: Yes, sir, Your Honor.

13 This is a DUI, fourth offense. I believe it will  
14 be with a probation violation as well, is that correct?

15 MR. BERRY: Yes.

16 MR. KENDALL: Prior driving history. Driving  
17 under suspension, it was mentioned during the trial that  
18 involved the same incidents from 2013.

19 Violation of driving under the influence from  
20 2012.

21 Driving under suspension, 2012.

22 Driving under the influence from 2010.

23 And a driving under the influence from 2007.

24 Speeding, too fast for conditions from 2007 and  
25 '06.

1 And nonowners operating uninsured motor vehicle  
2 from 2006.

3 In addition to that, his other prior criminal  
4 history I believe just includes a public disorderly conduct  
5 from 2008, Your Honor.

6 THE COURT: All right, Mr. Berry, I'll be glad to  
7 hear from you and Mr. Medley.

8 MR. BERRY: Thank you, Your Honor.

9 May it please the court. You have heard during  
10 the course of the trial that Mr. Medley is 24 years old. He  
11 went to the 10th grade, but was able to go back and get his  
12 GED.

13 Judge, he's a self-employed individual. He does a  
14 lot of automotive work. It's actually what he was doing  
15 with this bike. He had been working on it and was heading  
16 home on it when he ran into the roadblock.

17 Judge, he's now spent two days in jail on the  
18 charge.

19 He's engaged, has no children. His fiance and  
20 father are in the audience today. They are standing here  
21 supporting him. We are just going to ask that you be as  
22 lenient as possible in whatever sentence that you impose.

23 THE COURT: Has he been served with the probation  
24 matter?

25 What's the nature of the probation?

1 PROBATION AGENT TODD PANTHER: He picked up this  
2 probation back in November of 2012 for DUI second before  
3 Judge Maddox. He received a sentence of one year, \$2,000,  
4 suspended upon five days and an \$1,100 fine and five years  
5 probation.

6 THE COURT: Was the DUI second that he pled to in  
7 2012 was really the third?

8 MR. KENDALL: Yes, sir.

9 THE COURT: Correct?

10 PROBATION AGENT TODD PANTHER: Yes.

11 THE COURT: All right. Any other issues with  
12 probation?

13 PROBATION AGENT TODD PANTHER: He's not paid  
14 anything on his fine. He owes a balance of \$2,625 on that  
15 and he's behind \$660 on the supervision fee.

16 THE COURT: Mr. Medley, is there anything that you  
17 want to tell me, sir?

18 THE DEFENDANT: Sir, I'm sorry for running from  
19 the law. I apologize to you and the officers. I should  
20 have stopped. I was scared, wanting to go home to see my  
21 family. I knew I was going to jail. I apologize and ask  
22 forgiveness. I ask that you have mercy on me, if there is  
23 any way possible. That's all.

24 THE COURT: How long have you had a drinking  
25 problem?

1 THE DEFENDANT: I started back in, like I say,  
2 probably my first public intoxication. I believe it was a  
3 charge in '08. I have had a drinking problem for a little  
4 while, yes, sir. I have been fighting it a lot. I have  
5 been doing good, but it seemed to -- I seem to slip up  
6 and --

7 THE COURT: When did you discover that you were an  
8 alcoholic, or do you think that you are?

9 THE DEFENDANT: I believe I might be. I mean -- I  
10 mean, it's been a while since I have admitted that. I  
11 haven't admitted it.

12 THE COURT: Have you used any other kind of drug  
13 in past? Marijuana?

14 THE DEFENDANT: No, sir. I have used marijuana  
15 when I was young, when I was a teenager. I haven't used it  
16 since that night. Maybe pills. Kind of like I was, you  
17 know, bored. I didn't like it, so --

18 THE COURT: Alcohol is your choice? Beer?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: What's -- it's a one year sentence on  
21 the other charge?

22 PROBATION AGENT TODD PANTHER: Yes, sir. That's  
23 what's hanging over him, yes, sir.

24 THE COURT: Do you agree that this violates your  
25 probation, the fact that you got caught again?

1 THE DEFENDANT: Say again sir?

2 THE COURT: Do you agree that that violates your  
3 probation?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you have a job?

6 THE DEFENDANT: Yes, sir, I worked part-time at  
7 Fowler's Automotive, and I'm also self-employed. I do take  
8 stuff to the scrap yard.

9 THE COURT: All right. I find there has been a  
10 willful violation of the terms and conditions of probation  
11 and I'll revoke his full sentence on that of one year and  
12 terminate his probation.

13 As far as the other cases, 2013-GS-11-822, the  
14 sentence of the court is that the defendant by committed to  
15 the State Department of Corrections for a period of five  
16 years, provided upon the service of 27 months. The balance  
17 is suspended and placed on probation for five years.

18 Conditions of the probation to have substance  
19 abuse counseling; random alcohol and drug testing; complete  
20 the MADD impact course; and no operation of a motor vehicle  
21 without a valid driver's license while on probation.

22 This sentence will be consecutive to that  
23 previously imposed on the probation violation just now.

24 Case 2013-823, the sentence is commitment to the  
25 State Department of Corrections for a period of three years,

1 provided upon the service of three months. The balance is  
2 suspended during probation.

3 This again to be a consecutive sentence to that  
4 just imposed on case 822.

5 The same conditions of probation.

6 I wish you the best, Mr. Medley.

7 MR. KENDALL: Thank you, Your Honor.

8 THE COURT: Thank you, Your Honor.

9 (END OF REQUESTED TRANSCRIPT OF RECORD)

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WITNESSES

Cherokee County Sheriff's Dept.

*[Signature]*

ARREST WARRANT NUMBER

84044GF

ACTION OF GRAND JURY

**TRUE BILL**

*Sarah Brant*

Foreperson of Grand Jury

Date: *8-8-13*

VERDICT

*Guilty*

*V. S. R.*

Foreperson of Petit Jury

Date: *6.11.2014*

**13-GS-11-0822**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 08 2013

TERM

THE STATE

vs.

Matthew Steven Medley

Indictment for

**DUI/DRIVING VEHICLE WHILE UNDER THE  
INFLUENCE OF ALCOHOL  
AND/OR DRUGS-2<sup>nd</sup>/sub**

SC Code: 56-5-2930

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

2013 AUG 8 AM 10 08

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE )

INDICTMENT

At a Court of General Sessions, convened on AUG 09 2013, the Grand Jurors of Cherokee County present upon their oath:

**DUI/DRIVING VEHICLE WHILE UNDER THE  
INFLUENCE OF ALCOHOL AND/OR DRUGS-2<sup>nd</sup>/sub**

That Matthew Steven Medley, did in Cherokee County on or about April 21, 2013, drive a motor vehicle while under the influence of alcohol, drugs, substances or any combination thereof, to the extent that the person's faculties to drive were materially and appreciably impaired, such not being the first offense within a period of ten years including and immediately preceding the foregoing date, all in violation of §56-5-2930, 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.

  
ASSISTANT SOLICITOR

**13-GS-11-0823**  
DOCKET NO.

Scanned

WITNESSES

Cherokee County Sheriff's Office

*[Signature]*

ARREST WARRANT NUMBER

84045GF

ACTION OF GRAND JURY

**TRUE BILL**

*Sarah Brach*

Foreperson of Grand Jury

Date: 8-8-13

VERDICT

*Guilty*

*[Signature]*

Foreperson of Petit Jury

Date: 6.11.2014

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 08 2013

TERM

THE STATE

vs.

Matthew Steven Medley

Indictment for

**FAILURE TO STOP MOTOR VEHICLE  
WHEN SIGNALLED BY OFFICER**

SC Code: 56-5-750 (B)(1)

CDR Code: 0065

Class MIS/A

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

2013 AUG 8 AM 10 08

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )

## INDICTMENT

At a Court of General Sessions, convened on AUG 08 2013, the  
Grand Jurors of Cherokee County present upon their oath:

**FAILURE TO STOP MOTOR VEHICLE WHEN**  
**SIGNALED BY A LAW ENFORCEMENT VEHICLE**

That Matthew Steven Medley, did in Cherokee County on or about April 21, 2013, willfully fail to stop the motor vehicle which he was driving on a road, street, or highway of the State of South Carolina when he was signaled by a law enforcement vehicle by means of a siren or flashing light, in violation of §56-5-750 (B) (1), THE 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.

  
Assistant Solicitor

## 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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 20th, 2015



David Alexander  
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

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August 20th, 2015

  
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Appellate Defender

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ATTORNEY FOR APPELLANT

RECEIVED  
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SC Court of Appeals